

FORGING AHEAD: DESIGNING TRAVIS COUNTY PUBLIC DEFENSE TO MEET STANDARDS AND BEST PRACTICES



**A report by the University of Texas School of Law Civil Rights Clinic
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EXECUTIVE SUMMARY

The United States Constitution requires the state and Texas law requires counties to provide effective legal representation for people who are accused of crimes and who cannot afford to hire counsel. For those individuals, county public defense systems provide arguably the most important resource to ensuring the fairness of our criminal legal system—counsel. In addition to promoting fairness, providing effective representation to all community members charged with a crime promotes public trust in the criminal legal system.

In the past, Travis County has pursued innovation in public defense. In 1971, the County created a Juvenile Public Defender Office to provide quality representation to children who cannot afford counsel. In 2007, the County created a Mental Health Public Defender Office to handle certain misdemeanor cases for adult defendants who were experiencing serious mental illness. In 2015, Travis County created the Capital Area Private Defender Service, a managed assigned counsel system to handle the appointment of assigned counsel in adult felony and misdemeanor cases, both to increase the independence of assigned defense counsel and to provide them with education and mentoring services.

In 2018, Travis County began to study further innovations in public defense delivery. Research showed significant disparities in outcomes between criminal cases with hired counsel and cases with appointed counsel. Specifically, the County is examining whether to implement a public defender office, add resources to its managed assigned counsel system, and change the payment structure for private assigned counsel.

This report considers the implementation of a public defender office in Travis County, in light of relevant law, the American Bar Association’s standards on the provision of defense services, and national and state standards on criminal defense representation. It concludes that a public defender office would further enhance the quality of representation in Travis County’s public defense system, by enabling effective supervision, caseload management, and parity with the prosecution. It would work alongside assigned counsel and Capital Area Private Defender Service (CAPDS) to ensure that all persons accused of crimes receive quality

representation. A public defender office would be an important innovation in Travis County’s continued efforts to promote fairness and trust in the criminal legal system.

I. INTRODUCTION: LEGAL BACKGROUND

A. The Sixth Amendment Right to Counsel

The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.”¹ Over fifty years ago, the Supreme Court’s decision in *Gideon v. Wainwright* established that the Sixth Amendment right to counsel extends to those who lack the means to afford counsel, in all felony cases.² Later decisions expanded that right to all misdemeanor cases where a jail sentence is imposed, and to misdemeanors with suspended sentences.³ In addition, the Supreme Court has clarified that the right to counsel attaches when “formal judicial proceedings have begun,” and thereafter, the defendant must be represented by counsel at every “critical stage” of the case, or have made an informed and intelligent waiver of the right to counsel.⁴ Finally, the Supreme Court has made clear that representation provided to indigent defendants must be “effective.”⁵

B. The Texas Fair Defense Act

In 2001, the Texas legislature passed the Texas Fair Defense Act to address statewide deficiencies in public defense.⁶ The Act was aimed at improving the quality of indigent defense by implementing uniform standards and procedures and increasing state oversight of county public defense systems.⁷ The Act requires officers to bring any individual accused of a crime before a magistrate within 48 hours of arrest, and requires the magistrate to inform the individual of the right to appointed counsel if the person cannot afford counsel, and the procedures for requesting appointment of counsel.⁸ The Act also requires counties

¹ U.S. CONST., Amend. VI.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Alabama v. Shelton*, 535 U.S. 654 (2002).

⁴ *Rothgery v. Gillespie Co.*, 554 U.S. 191 (2008).

⁵ *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronin*, 466 U.S. 648 (1984).

⁶ Tex. Code of Crim. Pro. § 1.051; see *Fair Defense Law*, TEX. INDIGENT DEF. COMM’N 2 (2017), http://www.tidc.texas.gov/media/51974/primer-for-tx-legislators-85x11-2017-_final.pdf; *2017-2019 Fair Defense Laws*, TEX. INDIGENT DEF. COMM’N, available at <http://www.tidc.texas.gov/media/57918/tidc-fairdefenselaws-fy17-19.pdf>.

⁷ *Id.*

⁸ *Id.*

to adopt plans with standards and procedures for selection and appointment of counsel, payment of appointed counsel, and reimbursement of expert and investigative expenses.⁹ The Act also poses timeframes for the appointment of counsel and requires counties to report their public defense plans and expenditures to the state.¹⁰

Texas counties' implementation of the Fair Defense Act has improved public defense delivery around Texas. For example, the rates of *pro se* (unrepresented) misdemeanor defendants have decreased over the years, as more and more counties ensure that all individuals who cannot afford to retain counsel are appointed counsel, even for cases involving the least serious crimes.¹¹

The Act also created the Texas Indigent Defense Commission (TIDC), whose mission is to “assist counties in developing and maintaining quality, cost-effective indigent defense systems that meet counties’ unique needs and the requirements of the Constitution and state law.”¹² TIDC operates several programs to that end, including: grants; fiscal and policy monitoring; resources, publications, education, and awards; and an innocence program.¹³

II. NATIONAL STANDARDS FOR PUBLIC DEFENSE DELIVERY

A. ABA Standards for Providing Defense Services

The American Bar Association (ABA), after years of study and review, promulgated an extensive set of standards for the provision of defense services.¹⁴ These standards provide that “[t]he objective in providing counsel should be to assure that quality legal representation is afforded to *all* persons eligible for counsel . . .” (emphasis added).¹⁵ The

⁹ *Id.*

¹⁰ *Id.*; see also *Indigent Defense & ABA Pretrial Release Standards*, TEX. INDIGENT DEF. COMM’N 3–18 (Apr. 7, 2017), http://www.tidc.texas.gov/media/56289/170407_TAPS-Annual-Conf_SanAntonio_2017.pdf (describing procedures required under the Fair Defense Act).

¹¹ Scott Ehlers, *Overview of Texas Indigent Defense: Presentation for the Mexican American Bar Association (MABA) of Tarrant County*, TEX. INDIGENT DEF. COMM’N (Apr. 27, 2017), http://www.tidc.texas.gov/media/57759/170425_MABA-Ehlers.pdf [hereinafter Ehlers, *Overview of Texas Indigent Defense*].

¹² *Id.* The Act created the Texas Task Force on Indigent Defense, which was later re-named as the Texas Indigent Defense Commission. See *Fair Defense Law: A Primer for Texas County Officials*, TEX. INDIGENT DEF. COMM’N (January 2017), http://www.tidc.texas.gov/media/52836/2017_primer-for-county-officials.pdf.

¹³ *Id.*

¹⁴ See American Bar Association, *Standards for Criminal Justice: Providing Defense Services* (1992), https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf [hereinafter *Providing Defense Services*].

¹⁵ *Providing Defense Services*, Standard 5-1.1, *Objective*.

Third Edition of these standards, published in 1992, make clear that “even the minimum constitutional mandate of ‘reasonably effective assistance’ cannot be met when the defender system is not structurally sound or is deprived of the resources necessary for quality performance by each and every attorney who provides defense services in individual cases.”¹⁶

The ABA standards express a preference for public defender offices in populous jurisdictions because, when adequately funded and staffed and properly structured, these offices can develop expertise in handling various types of criminal cases; supply counsel quickly and whenever needed; and work for changes in laws and procedures to increase fairness in the criminal legal system.¹⁷ The standard sets forth how a public defender office and the private bar (or assigned counsel) are complementary parts of public defense delivery:

Standard 5-1.2. Systems for legal representation

(a) The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization. Multi-jurisdictional organizations may be appropriate in rural areas.

(b) Every system should include the active and substantial participation of the private bar. That participation should be through a coordinated assigned-counsel system and may also include contracts for services. No program should be precluded from representing clients in any particular type or category of case¹⁸

Other general principles in the ABA standards include: 1) ensuring the independence of defense counsel through the selection, appointment, and payment processes; 2) ensuring that defense counsel have resources for “investigatory, expert, and other services necessary to quality legal representation;” 3) providing resources for the training, professional development, and continuing education for defense counsel; and 4) fully funding the costs of quality representation.¹⁹

¹⁶ Providing Defense Services, Standard 5-1.1, *Objective*, Commentary.

¹⁷ Providing Defense Services, Standard 5-1.2, *Systems of Legal Representation*, Commentary.

¹⁸ Providing Defense Services, Standard 5-1.2, *Systems of Legal Representation*.

¹⁹ Providing Defense Services, Standard 5- 1.3, *Professional independence*; Standard 5- 1.4, *Supporting services*; Standard 5- 1.5, *Training and professional development*; and Standard 5- 1.6, *Funding*.



B. ABA Principles of Public Defense Delivery

In 2002, the ABA developed a set of principles to guide government officials and policymakers who are creating or improving existing public defense delivery systems.²⁰ According to the ABA, the Principles “constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.”²¹

According to the Principles, every Public Defense Delivery System should include or ensure:

- (1) the independence of defense counsel, through selection, funding and payment;
- (2) for jurisdictions with sufficiently high caseloads, the use of a public defender office alongside private bar participation;
- (3) promptness of client screening and counsel assignment after arrest and detention;
- (4) sufficient time and confidential space for counsel to meet with the client;

²⁰ American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002), available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf [hereinafter *ABA Ten Principles*].

²¹ *ABA Ten Principles*, Introduction.

- (5) control of defense counsel's workload to enable quality representation;
- (6) defense counsel's "ability, training and expertise" match the complexity of a given case;
- (7) continuous representation by the same counsel throughout a case;
- (8) parity of resources and equal treatment between defense counsel and the prosecution;
- (9) continuing legal education requirements and opportunities for defense counsel; and
- (10) supervision and systematic review of defense counsel "for quality and efficiency according to nationally and locally adopted standards."²²

Public defense experts agree that substantial compliance with these principles is desirable.²³

C. NLADA Guidelines for Legal Defense Systems

The National Legal Aid & Defender Association (NLADA) also develops and disseminates guidelines for criminal defense representation and legal defense systems.²⁴ Among its earliest standards was the *Guidelines for Legal Defense Systems in the United States*, published in 1976. These Guidelines provide guidance to jurisdictions on topics such as determining indigency, structuring a public defense system, paying for counsel and other related services, providing a diverse defender program, and operating procedures.²⁵

Like the ABA, the NLADA envisions the operation of a public defender office alongside a system of assigned counsel.²⁶ NLADA also recommends that funds should be available for assigned counsel to acquire investigators and expert witnesses, to enable quality representation.²⁷

²² *ABA Ten Principles*, Principles 1–10.

²³ *ABA Ten Principles* at 1; see also Caroline Cooper, *The ABA "Ten Principles of A Public Defense Delivery System": How Close Are We to Being Able to Put Them Into Practice?*, 78 ALBANY L. REV. 1193 (2015) (summarizing and analyzing results of survey of public defense providers regarding adherence to ABA's Ten Principles).

²⁴ For a full listing of NLADA standards relating to criminal defense representation, see <http://www.nlada.org/defender-standards>.

²⁵ National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, NAT'L LEGAL AID & DEF. ASS'N (1976), <http://www.nlada.org/defender-standards/guidelines-legal-defense-systems>.

²⁶ *Guidelines for Legal Defense* at Guideline 2.1, *Administrative Structures for Mixed Systems*.

²⁷ *Performance Guidelines for Criminal Defense Representation*, NAT'L LEGAL AID & DEF. ASS'N (2006), <http://www.nlada.org/defender-standards/performance-guidelines> [hereinafter *NLADA Performance Guidelines*].

III. TEXAS STANDARDS FOR PUBLIC DEFENSE DELIVERY

Since the enactment of the Fair Defense Act, the State Bar of Texas and TIDC have developed guidelines and standards to assist attorneys in providing quality representation to all persons accused of crimes.

A. State Bar of Texas Performance Guidelines for Non-Capital Criminal Defense Representation

In 2011, the State Bar of Texas adopted Performance Guidelines for Non-Capital Criminal Defense Representation for defense attorneys.²⁸ In doing so, the members of the State Bar Committee on Legal Services to the Poor in Criminal Matters, which had spearheaded the effort, noted that assigned or appointed defense counsel often are paid little, have difficulty accessing investigators and witnesses, and lack the time needed to provide quality representation.²⁹ Nevertheless, the Guidelines are intended “to encourage defense attorneys to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants.”³⁰

Specifically, the Guidelines provide that in addition to having the requisite knowledge, skills, qualifications, and time to provide quality representation, defense counsel has a duty to: 1) promptly investigate the case; 2) pursue formal and informal discovery; 3) consider filing good-faith pretrial motions; and 4) fully analyze case facts and applicable law before plea negotiations.³¹ The Guidelines provide similar requirements regarding counsel’s performance at trial and at sentencing.³²

²⁸ Standing Committee on Legal Services to the Poor in Criminal Matters, *Performance Guidelines for Non-Capital Criminal Defense Representation*, 74 TEX. BAR J. 617, 620 (2011), https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703.

²⁹ Jeff Blackburn & Andrea Marsh, *The New Performance Guidelines In Criminal Cases: A Step Forward For Texas Criminal Justice*, 74 Tex. Bar J. 617, 620 (Jan. 28, 2011), https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703.

³⁰ State Bar, *Performance Guidelines*, Introduction.

³¹ State Bar, *Performance Guidelines*, Guideline 4.1 (*Investigation*); 4.2 (*Formal and Informal Discovery*); 5.2 (*The Decision to File Pretrial Motions*); 6.1 (*The Plea Negotiation Process and Duties of Counsel*).

³² See generally State Bar, *Performance Guidelines* at 7.1, 8.2.

B. TIDC Guidelines for Indigent Defense Caseloads

The Supreme Court has emphasized, in cases involving the reversal of criminal convictions on the basis of ineffective assistance of counsel, that defense counsel must provide zealous and meaningful opposition to the prosecutor's case.³³ One common barrier to performing that duty is excessive attorney caseloads, which erode the quality of representation by preventing an attorney from devoting the necessary time and attention to provide quality representation for each case.³⁴ TIDC, along with the Public Policy Research Institute at Texas A&M University, conducted a comprehensive study of defense attorney caseloads, and concluded that it is necessary to set maximum caseload guidelines, to ensure quality representation.

Based on this study, in 2015, TIDC published evidence-based *Guidelines for Indigent Defense Caseloads*.³⁵ The *Guidelines* recommends that each defense attorney handle no more than 128 felony cases or 226 misdemeanor cases per year.³⁶ Recommended hours per case vary depending on the class of charge.³⁷ TIDC arrived at these numbers by analyzing the number of hours per case required to provide effective representation, and then using that figure to calculate an annualized caseload.³⁸ As TIDC explains, controlling caseloads is a "necessary component" to providing quality representation in public defense systems, and is "essential to securing the Sixth Amendment right to counsel."³⁹

IV. PUBLIC DEFENSE DELIVERY SYSTEMS IN TEXAS

There are four primary types of public defense systems employed by Texas counties: (1) assigned counsel; (2) public defender office; (3) contract defender; and (4) managed assigned counsel.⁴⁰

³³ DOTTIE CARMICHAEL ET AL., GUIDELINES FOR INDIGENT DEFENSE CASELOADS xiii, 3–4 (Jan. 2015), http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf. At Page xiii; 3-4.

³⁴ *Id.* at 4–5.

³⁵ *Id.*

³⁶ *Id.*; see Ehlers, *Overview of Texas Indigent Defense* at 37.

³⁷ CARMICHAEL ET AL., GUIDELINES FOR INDIGENT DEFENSE CASELOADS at 38.

³⁸ *Id.*

³⁹ *Id.* at 37.

⁴⁰ *Primer on Managed Assigned Counsel Programs*, TEX. INDIGENT DEF. COMM'N 3 (Sept. 2017), http://www.tidc.texas.gov/media/57815/tidc_primer2017.pdf [hereinafter *Primer on MAC Programs*]. A fifth type, which is used only in one county, is called "client choice," where the defendant chooses a private attorney, from a list of qualified attorneys, and the judge then appoints the attorney to assist the client.

Under an assigned counsel system, a county uses public funds to compensate private attorneys for their representation of indigent defendants.⁴¹ Participating attorneys, who act as independent contractors, have been pre-approved based on their qualifications and are appointed from a rotating list accessible to every judge in the county.⁴² The benefit of an assigned counsel system is that it utilizes an existing pool of private attorneys.⁴³ The drawbacks include a lack of accountability, which impacts quality, a lack of institutional resources, and a lack of independence from the judiciary.⁴⁴ In an assigned counsel system, there is no entity independent of the judiciary to train or supervise appointed attorneys, or monitor the quality of their representation.⁴⁵ As a result, the county cannot provide systematic attorney training, supervision, or monitoring of performance.⁴⁶ Assigned counsel is the most prevalent system, used in around 90% of Texas counties.⁴⁷

A public defender office is a county-funded office employing full-time defense attorneys, support staff, and investigators. Public defender offices (PDOs) either are county offices, similar to prosecutor's offices, or they are non-profits operating under a contract with the county.⁴⁸ PDOs employ defense counsel who are salaried and specialize in criminal defense; PDOs provide direct supervision to all their attorneys, monitor performance, and regulate attorneys' caseloads.⁴⁹

In Texas, some public defender offices handle adult felony and misdemeanor cases, while others handle a subset of cases, such as juvenile or misdemeanor mental health cases.⁵⁰ According to TIDC data, of the ten most populous counties in Texas, several have public defender offices:

⁴¹ *Primer on MAC Programs* at 3.

⁴² *Id.*

⁴³ Ehlers, *Overview of Texas Indigent Defense* at 22.

⁴⁴ *Primer on MAC Programs* at 9, 12.

⁴⁵ *Id.* at 9-10, 12.

⁴⁶ Ehlers, *Overview of Texas Indigent Defense* at 23; *cf.* *ABA Ten Principles*, at Principle 10.

⁴⁷ *Id.* at 21.

⁴⁸ *Primer on MAC Programs* at 4; ; *cf.* *ABA Ten Principles*, at Principles 5, 10.

⁴⁹ *Id.*

⁵⁰ See Texas Indigent Defense Commission, *Direct Client Services Chart* (2018), <http://www.tidc.texas.gov/media/46142/direct-client-services-chart-2018.pdf>; see also *Texas Mental Health Defender Programs*, TEX. INDIGENT DEF. COMM'N (Oct. 2018), http://tidc.texas.gov/media/58014/tidc_mhdefenders_2018.pdf.

COUNTY PUBLIC DEFENDER OFFICES

LOCATION	PROGRAM NAME	SERVICES	YEAR EST.	% OF ALL I.D. CASES
Harris County	Harris County PDO	Felony, Juvenile, Felony Appellate, Misdemeanor Appellate, Misdemeanor Mental Health	2011	8%
Dallas County	Dallas County PDO	Capital, DNA Exoneration, Felony, Misdemeanor, Juvenile, Padilla Consultations & Referrals, CPS & Family Law, Appeals, Mental Health	1983	59%
Bexar County	Bexar County Public Defender	Felony Appellate, Misdemeanor Appellate, Juvenile Appellate, Misdemeanor Mental Health	2005	3%
Travis County	Travis County Juvenile PDO	Juvenile	1971	
Travis County	Travis County Mental Health PDO	Misdemeanor Mental Health	2007	
Hidalgo County	Hidalgo County PDO	Felony, Misdemeanor, Juvenile	2005	11%
El Paso County	El Paso County PDO	Capital, Felony, Misdemeanor, Juvenile	1987	60%
Fort Bend County	Fort Bend County PDO	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2010	14%

As shown above, public defender offices often take only a percentage of the criminal cases in the county, which means that assigned counsel also participate in public defense. In addition, when conflicts arise with existing PDO cases, or co-defendants are charged, assigned counsel will take on representation.

A contract defender system is one in which private attorneys, acting as independent contractors and compensated by public funds, are engaged by one or more counties under a contract to provide legal representation to indigent defendants who appear before particular courts or group of courts.⁵¹ TIDC has promulgated rules governing the program, under which counties must have an open bidding process before entering into contracts, and contracts must include provisions on payment, caseloads, and ensuring access to experts and investigators.⁵²

⁵¹ *Primer on MAC Programs* at 3–4.

⁵² *Id.*; see also, 1 TAC §§174.10 - 174.25 (Contract Defender Program Requirements)

Finally, managed assigned counsel systems (MAC) consist of a publicly funded governmental entity, nonprofit corporation, or bar association that is responsible for appointing private defense counsel and managing aspects of the appointment such as payments.⁵³ TIDC has stated that MACs have benefits when compared to the assigned counsel system. First, MACs provide more access to training and resources for private assigned counsel, as well as greater transparency of attorney caseloads and representation trends.⁵⁴ Second, MACs can collect and assess information on attorney performance, and provide mentoring and specialized consultation.⁵⁵ Such guidance has the potential to improve the quality of attorney performance and help attorneys to maintain a reasonable caseload.⁵⁶ Third, MACs promote greater independence by removing judges from the attorney approval and assignment process.⁵⁷

As compared with public defender offices, MACs are limited in their supervision and management powers. At a PDO, attorneys work in the same law firm and therefore can share confidential case information without compromising attorney-client privilege. PDOs use that shared information to effectively supervise and monitor the performance of attorneys on each case. PDOs also use that information to regulate caseloads. By contrast, MAC supervising attorneys do not have a confidential relationship with the assigned counsel whom they manage, and therefore lack access to the confidential case information necessary to supervise assigned counsel.

V. TRAVIS COUNTY'S PUBLIC DEFENSE SYSTEM

In 1971, Travis County created the Juvenile Public Defender office to provide representation to children ages ten to sixteen who could not afford counsel.⁵⁸ Meanwhile, Travis County judges assigned private defense counsel for all adults who could not afford counsel.⁵⁹ After the passage of the Fair Defense Act in 2001, Travis County created a Mental Health Public Defender (MHPD) in 2007 to handle certain misdemeanor cases involving

⁵³ *Primer on MAC Programs* at 3–4, 9-10, 12.

⁵⁴ *Id.* at 9-10, 12.

⁵⁵ *Id.* at 9.

⁵⁶ *Id.*

⁵⁷ *Id.* at 12.

⁵⁸ See Travis County Juvenile Public Defender, A Brief History, <https://www.traviscountytexas.gov/juvenile-public-defender>.

⁵⁹ Meg Ledyard, *An Evaluation of the Capital Area Private Defender Service of Travis County, TX*, 2 (2018) [hereinafter *CAPDS Evaluation*].

adults experiencing serious mental illness.⁶⁰ In so doing, Travis County recognized the value of public defender offices as an effective public defense provider.

In 2015, Travis County improved its public defense delivery system with the formation of the Capital Area Private Defender Services (CAPDS), a non-profit organization that helps administer and manage assigned counsel in Travis County.⁶¹ Travis County implemented CAPDS, a MAC system, in order to relieve the judiciary from the onerous administrative work of defense counsel appointments and oversight and increase the independence of defense counsel by replacing judicial appointment with appointment by CAPDS.⁶² In addition, Travis County sought to improve the quality of representation through training and mentoring of attorneys accepting assignments in the county.⁶³

As such, the implementation of CAPDS was also intended to target three of the ABA's Principles of a Public Defense Delivery System: Principle 1, ensuring independence of the public defense function, including the selection, funding, and payment of defense counsel; Principle 6, ensuring that defense counsel's ability, training, and experience match the complexity of the case; and Principle 10, ensuring that defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.⁶⁴

CAPDS is charged with maintaining attorney lists, approving payments subject to the fee schedule, approving of and paying for the use of experts, providing supervision and training of attorneys, and providing a representative to attend meetings and provide input for county policy.⁶⁵ Attorneys on the CAPDS panel currently handle adult felony and misdemeanor cases in Travis County for people who cannot afford counsel, excepting those handled by the Travis County Mental Health Public Defender (MHPD) Office and capital cases.⁶⁶

CAPDS has largely succeeded in meeting ABA Principle 1, in that decisions about selection and payment of defense counsel are now independent of the judiciary.⁶⁷ Judges are no longer responsible for maintaining the list of qualified counsel, signing payment

⁶⁰ *Travis County Mental Health Public Defender Office*, TRAVIS CTY. JUST. PLAN., 4 (2016).

⁶¹ *CAPDS Evaluation*, *supra* note 59, at 3.

⁶² *Id.* at 3.

⁶³ *Id.* at 2.

⁶⁴ *Id.* at 13.

⁶⁵ *Id.* at 3.

⁶⁶ *CAPDS Evaluation*, *supra* note 59, at 11.

⁶⁷ *Id.* at 13.

vouchers, and approving experts and investigators.⁶⁸ This allows defense attorneys to pursue the defense strategy that is the most beneficial to their client.⁶⁹ Indeed, the use of investigators in felony cases rose from 2.0% in 2012 to 4.9% in 2017.⁷⁰

With regard to ABA Principle 6, matching attorneys to cases based on their ability, training, and experience, a review committee now makes that decision; this group of qualified attorneys, along with CAPDS, reviews a large amount of information to determine the appropriate level for each lawyer on the panel.⁷¹

With regard to ABA Principle 10, calling for supervision and systemic review of defense counsel for quality and efficiency, challenges are ongoing. CAPDS has only three supervising attorneys charged with overseeing 180 attorneys.⁷² This means that, in addition to administrative work, on average, each of them must supervise 60 attorneys.⁷³ A 2018 review of CAPDS concluded that “[t]his managerial burden is large, and it is likely that CAPDS has too few resources to adequately supervise this many attorneys[s].”⁷⁴ In addition, even if capacity were expanded, since CAPDS attorneys lack access to confidential case information, they cannot provide direct supervision or monitor attorneys’ performance on individual cases.

Finally, a 2018 review of CAPDS noted that with regard to ABA Principle 5, which provides that a defense counsel’s workload should be controlled to permit the rendering of quality representation, CAPDS continues to face challenges.⁷⁵ For 2017, over 10% of the attorneys taking cases for CAPDS far exceeded state annual caseload guidelines, and even more attorneys may be taking cases in other counties, which CAPDS does not limit or control.⁷⁶ Attorneys suggested that the County’s flat-fee payments to assigned counsel incentivized excessive caseloads, and that hourly pay would draw more qualified private counsel with more reasonable caseloads.⁷⁷

In addition, while CAPDS limits attorneys’ carrying caseloads, it does not limit their annual caseloads. Attorneys who dispose of cases quickly can greatly exceed state and

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *CAPDS Evaluation, supra* note 59, at 14.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at 15-16.

⁷⁶ *CAPDS Evaluation, supra* note 59, at 16.

⁷⁷ *Id.* at 30, 40.

national caseload guidelines, all of which are based on annual caseload, even if they never exceed CAPDS' carrying caseload limit.

VI. CONTEMPLATING A TRAVIS COUNTY PUBLIC DEFENDER OFFICE

While the county's public defense system has seen improvements attributable to its greater independence from the judiciary, other problems have persisted. In 2018, a report from the Council of State Governments' Justice Center (CSG-JC) analyzed 2,458 Travis County drug possession cases from 2016 that resulted in state jail felony charges—crimes that are higher than misdemeanors, but lower than most felonies.⁷⁸ It documented large disparities in how cases were resolved, and the punishments meted out, between cases with appointed counsel and cases with privately retained counsel. The study employed a multivariate analysis, using all relevant factors such as race, gender, criminal history, pretrial detention, risk levels, and type of counsel, to isolate the effect of a single factor while holding the other factors statistically constant.⁷⁹ The study concluded that whether a person has hired counsel or appointed counsel was the most salient factor in determining the outcomes of their case.

The study found that 80% of individuals with appointed counsel, compared with 48% of individuals with hired counsel, were found guilty.⁸⁰ Of those with an appointed lawyer who were found guilty, 12% received some type of probation, while 88% were sentenced to county or state jail.⁸¹ Meanwhile, individuals who hired their own lawyers received some type of probation in 42% of cases and jail time in 58%.⁸² Individuals with hired counsel were often twice as likely to receive a personal bond as those with an appointed attorney.⁸³

As such, CSG-JC found that the most important factor in jail time or conviction rates is the type of legal representation a person obtains—hired counsel or appointed counsel.⁸⁴ CSG-JC recommended that Travis County officials “understand the incentives motivating the decisions of appointed counsel and their clients facing a State Jail Felony drug possession

⁷⁸ Tony Fabelo & Jessy Tyler, *Travis County District Attorney: Review of Drug Possession Case Dispositions 2016-2017 and Recidivism Analysis 2014-2015*, THE COUNCIL OF ST. GOV'TS JUST. CTR., 1 (2018) [hereinafter *Review of Drug Possession Case Dispositions*].

⁷⁹ *Id.*

⁸⁰ *Id.* at 3.

⁸¹ *Id.* at 20.

⁸² *Id.*

⁸³ *Id.* at 15.

⁸⁴ *Review of Drug Possession Case Dispositions*, *supra* note 80, at 4. “Multivariate analysis reinforces the above findings, with a person with an appointed attorney being 16% more likely to be convicted than a person with a retained counsel, controlling for all the factors in the data that can impact this outcome.”

charge and how these incentives may differ for those with hired counsel and explore policy recommendations to improve indigent defense services.”⁸⁵

The shortfalls of this system caught the attention of Travis County Judge Sarah Eckhardt. In April 2018, Judge Eckhardt announced that the county would explore alternatives to work in tandem with the current MAC system. The creation a public defender office with salaried employees and more direct oversight is one way to supplement the current system. At Travis County’s request, the Texas Indigent Defense Commission studied the feasibility and benefits of having a public defender officer in Travis County, and presented its findings to the Commissioners Court in October 2018.⁸⁶

TIDC’s Planning Study for Travis County proposed a public defender office that would incorporate the Juvenile Public Defender, the Mental Health Public Defender, and the Office of Parental Representation.⁸⁷ CAPDS would continue to exist, appointing private counsel to 70% of all felony and misdemeanor cases, while the PDO would take the remaining 30%.⁸⁸ The Planning Study addressed governance and leadership, case composition, and staffing and salaries. Referencing ABA Principle 8, which ensures parity in resources between the prosecution and defense functions, TIDC recommended that resource parity should extend to support staff, including investigators, caseworkers, and administrative assistants.⁸⁹ TIDC applauded Travis County’s effort to improve public defense and concluded that a PDO would be “both feasible and desirable.”⁹⁰

In response, the Commissioners Court created an Indigent Legal Services Work Group of people with diverse backgrounds and professional experiences to respond to the TIDC study and make recommendations. The Work Group has examined or will examine whether to implement a public defender office, add resources to the County’s managed assigned counsel system, and change the payment structure for private assigned counsel. After months of study, community meetings, review of data, and meetings with experts, on April 18, 2019, the Work Group voted to approve a grant proposal to TIDC for a Public Defender Office.

⁸⁵ *Id.* at 3–4.

⁸⁶ Texas Indigent Defense Commission, *Planning Study: Travis County Public Defender Office*, (2018), available at <http://traviscountyclerk.org/eclerk/Content.do?code=meeting-calendar>, Oct. 16, 2018 Meeting, Agenda Item VI(7)(a).

[hereinafter *Travis County Planning Study*].

⁸⁷ *Id.* at 7.

⁸⁸ *Id.* at 10-11.

⁸⁹ *Id.* at 12-13.

⁹⁰ *Id.* at 23.

VII. THE BENEFITS OF INTEGRATING A PUBLIC DEFENDER OFFICE INTO TRAVIS COUNTY'S PUBLIC DEFENSE SYSTEMS

In Texas, and the United States more broadly, major urban areas have established robust public defender offices, many of which work alongside a panel or group of private defense counsel.⁹¹ The American Bar Association (ABA) urges jurisdictions to develop a public defense delivery system that “consists of both a defender office and the active participation of the private bar” where the caseload is sufficiently high.⁹²

Studies show that the addition of public defender offices can make adherence to the ABA Principles achievable. For instance, a study of individuals facing criminal charges as co-defendants in San Francisco revealed that those represented by public defenders experience better case outcomes than their codefendants represented by private court-appointed attorneys.⁹³ The study



also revealed that the impact the type of defense counsel has on sentencing is more pronounced for defendants who face more severe charges or have longer criminal histories, indicating that as the likelihood of longer sentencing is higher, the effect of having a public defender will be larger.⁹⁴ In

addition to differences in attorney characteristics like diversity, age, and educational background, institutional differences between public defender offices and privately

⁹¹ In 2000, a survey of indigent defense systems conducted by the Bureau of Justice Statistics revealed that 80% of the one hundred largest U.S. counties employed both public defenders and appointed private attorneys as defense counsel in felony cases. James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J., 154, 161 (2012).

⁹² ABA *Ten Principles*, *supra* note 20, at Principle 2.

⁹³ Yotam Shem-Tov, *Are Public Defenders Better at Indigent Defense than Court-Appointed Attorneys?*, CAL. POL'Y LAB, 2 (2018) (“Defendants appointed a public defender are 6% less likely to be convicted of any crime . . . They are also 22% less likely to receive a prison sentence, and on average receive 10% shorter prison terms on average”).

⁹⁴ *Id.*

appointed attorneys may drive the differences in case outcomes.⁹⁵ Public defenders automatically have access to many resources that are not as readily available to court-appointed attorneys, such as brief banks and investigators, and these may allow public defenders to reach better outcomes for their clients.⁹⁶

If structured and funded adequately, public defender office also can help judges and local officials identify and resolve problems in the criminal legal system, such as jail overcrowding, which burdens both indigent individuals charged with crimes and other taxpayers. In addition, public defender offices can offer some financial advantages such as budget stability and reduced administrative costs.⁹⁷ These outcomes also produce savings in other areas, such as pretrial jail and prison costs.⁹⁸ Finally, public defender offices drive innovation in public defense, such as through the model of holistic representation, which involves social workers and case management to address clients' crimogenic risk factors, collateral consequences, and obstacles relating to poverty and vulnerability.⁹⁹

Supplementing a managed assigned counsel system with a public defender office not only benefits the individuals represented by those public defenders, it also benefits the system as a whole through more effective supervision, caseload management, and advances toward parity with the prosecution, as set forth in detail below.

A. Effective Supervision

Effective supervision is critical to ensuring quality representation.¹⁰⁰ Close monitoring of how a case is shepherded through the system by counsel creates a number of points at which a supervisor can make sure the attorney is providing effective representation, with timely intervention if necessary. The ABA has repeatedly recommended that public defense delivery systems ensure that “[d]efense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Eve Brensike Primus, *Defense Counsel and Public Defense*, ACADEMY FOR JUSTICE, A Report on Scholarship and Criminal Justice Reform, 121-45 (Erik Luna, ed. 2017), at 131 (discussing funding streams and public defense).

⁹⁸ See Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 748 (2017) (detained individuals are more likely than those released pretrial to plead guilty, receive a jail sentence, and receive a longer than average jail sentence).

⁹⁹ See James M. Anderson, Maya Buenaventura, and Paul Heaton, *The Effects of Holistic Defense on Criminal Justice Outcomes*, 132 Harv. L. Rev. 819 (2019) (discussing models of holistic defense representation and results of study of holistic defense).

¹⁰⁰ See Eve Brensike Primus, *Culture as a Structural Problem in Indigent Defense*, 100 MINN. L. REV. 1769, 1799-1800 (2015) (discussing the importance of direct supervision and oversight of defense counsel).

standards.”¹⁰¹ Periodic and ongoing review of defense counsel and their support staff help promote competence and efficiency.

Defense counsel tasks at every stage of a case would benefit from effective supervision. National and state standards require defense counsel to undertake investigation and discovery, and consider pretrial motions.¹⁰² These standards also prescribe minimum requirements for effective advocacy at trial and sentencing.¹⁰³ The Supreme Court case of *Padilla v. Kentucky* requires defense counsel to investigate, and provide affirmative and competent advice to the client about the immigration consequences of a plea, in advance of taking the plea.¹⁰⁴ Finally, both the ABA and the NLADA direct lawyers to keep their clients abreast of case developments and consult with clients regarding how to achieve the client’s goals.¹⁰⁵ Compliance with these standards is critical, and effective supervision would enhance the quality of representation on all these fronts.

Public defender offices closely track attorney conduct and performance on their cases, and thus provide effective supervision. Structurally speaking, attorneys within a PDO are in one law firm, and they can share confidential case information, which is necessary for purposes of supervision, as well as mentoring and peer support. By contrast, because CAPDS is not in a law firm with the defense counsel they manage, and lacks access to confidential case information, CAPDS attorneys cannot directly supervise, evaluate, and monitor defense counsel’s performance.

A number of public defender offices have successfully instituted supervision programs that trace an attorney’s adherence to national and performance guidelines at every phase in a case. For example, the San Diego County Public Defender monitors both the execution of discrete attorney responsibilities in every case and outcomes in cases handled

¹⁰¹ *ABA Ten Principles*, *supra* note 20, at Principle 10.

¹⁰² *State Bar, Performance Guidelines*, *supra* notes 31 and 32, Guidelines 4.1, 4.2, 5.2, 6.1; *NLADA Performance Guidelines*, *supra* note 27, Guidelines 4.1, 4.2 & 5.1.

¹⁰³ *State Bar, Performance Guidelines*, *supra* notes 31 and 32, Guidelines 7.1, 8.2; *NLADA Performance Guidelines*, *supra* note 27, Guidelines 7.1- 8.7.

¹⁰⁴ See *Padilla v. Kentucky*, 559 U.S. 356 (2010).

¹⁰⁵ American Bar Association, MODEL RULES OF PROF’L CONDUCT R. 1.4 (2018) (“a lawyer shall . . . reasonably consult with the client about the means by which the client’s objectives are to be accomplished . . . keep the client reasonably informed about the status of the matter . . . promptly comply with reasonable requests for information.”), *available at* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_4_communications/ [hereinafter *ABA Model Rules*]; *NLADA Performance Guidelines*, *supra* note 27, Guidelines 1.3(c) & 2.2(b).

by the office.¹⁰⁶ The office tracks whether each attorney meets with clients prior to the first court appearance, whether attorneys obtain discovery within 48 hours of appointment, the average number of elapsed days between appointment and any negotiated settlement, the percentage of cases tried, and the number of hours of training attended by each attorney.¹⁰⁷ With this information, the office can evaluate outcomes and guide attorneys toward quality representation.

B. Caseload Management

The ABA has noted that effective caseload management allows defense counsel to abide by certain client decisions, exercise diligence, and communicate effectively on behalf of and with clients.¹⁰⁸ Excessive caseloads are a common problem in assigned counsel systems, especially when accompanied by flat-fee payment schedules.¹⁰⁹ Limiting caseloads to reasonable numbers allows attorneys to take the time and attention needed for each case.¹¹⁰

Public defender offices can exercise better control over attorney caseloads, thereby improving representation. Through centralized oversight, management can ensure that no one public defender is handling too many active cases at any given time. In addition, the way in which public defenders work closely together within the organization allows attorneys to provide coverage for one another, when necessary. For instance, if an attorney has a serious felony going to trial, that attorney can ask other attorneys within the PDO to cover their other cases during the trial period. In this way, better caseload management enables defense counsel to provide better quality representation. When more time is available for an attorney to spend on investigation, negotiation, and trial preparation, better outcomes result for their clients. By contrast, CAPDS cannot guarantee case coverage assistance for attorneys in trial, and three CAPDS attorneys cannot closely track the caseloads of sixty attorneys each. Moreover, CAPDS only imposes a carrying caseload limit, not an annual caseload limit, and therefore, attorneys can exceed state and national annual caseload limits without consequence.

¹⁰⁶ Harry C. Coker, *Presentation at Achieving Quality in Indigent Defense: Proposals, Prototypes and Policymakers*, U. OF HOUS. L. CTR. (Sept. 4, 2008).

¹⁰⁷ *Id.*

¹⁰⁸ ABA Comm. on Ethics and Prof'l Resp., Advisory Op. 06-044 (2006).

¹⁰⁹ CARMICHAEL ET AL., GUIDELINES FOR INDIGENT DEFENSE CASELOADS at 3-5, 37-38.

¹¹⁰ *Id.*

C. Parity with the Prosecution

Parity is important to ensuring the vindication of the Sixth Amendment right to effective assistance of counsel. If the resources available to defense counsel are less than those available to the prosecution, defense counsel cannot provide their clients with the quality defense they are due. The ABA has long advocated for criminal justice systems to equally equip the prosecution and the defense to present their respective cases.¹¹¹ The ABA recommends that “there is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.”¹¹² This means there is “parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense”¹¹³ According to the ABA, “[p]ublic defense should participate as an equal partner in improving the justice system.”¹¹⁴

Public defender offices allow counties to strive for and reach parity with the prosecution, through cost-effective means. Public defender offices are better able to narrow this oft-significant resource gap. For instance, other Texas counties have found that public defender offices improve defense attorney access to investigators. In 2006, the Public Policy Research Institute (PPRI) at Texas A&M University performed a study on the feasibility of creating public defender offices throughout the state.¹¹⁵ PPRI’s analysis of district court cases statewide indicates that average investigation expenditures are more than two times higher for felony public defender cases than for felony cases handled by appointed counsel.¹¹⁶

A thorough investigation is a crucial aspect of trial preparation. Investigators assist in case development by interviewing prosecution witnesses, locating defense witnesses, photographing and diagraming alleged crime scenes, performing criminal background investigations, preparing courtroom exhibits, and providing sworn testimony in court. These tasks are often outcome determinative and have dire consequences when not properly executed. Prosecutors have easy access to investigators. In Travis County, appointed defense counsel must apply to CAPDS for approval of investigation fees. A public defender office

¹¹¹ *ABA Ten Principles*, *supra* note 20, at Principle 8.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

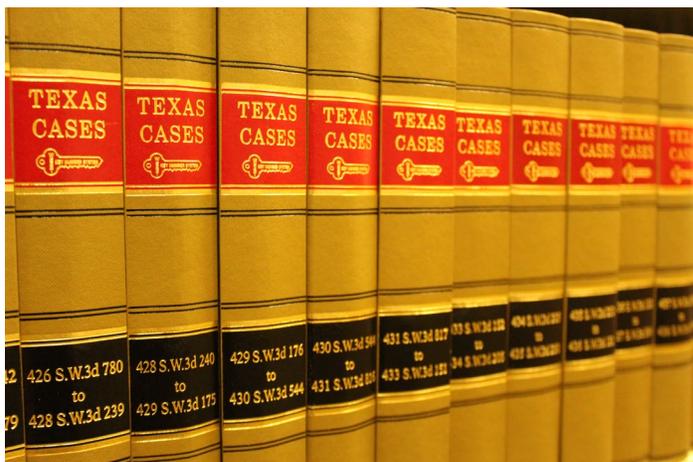
¹¹⁵ Dottie Carmichael, *Evidence for the Feasibility of Public Defender Offices in Texas*, PUB. POL’Y RES. INST., TEX. A&M U. at ii (2006), http://www.tidc.texas.gov/media/31124/pd-feasibility_final.pdf.

¹¹⁶ *Id.* at 11.

would employ its own investigators, thereby easing attorney access and enabling greater investigation.

Beyond increased access to necessary resources, public defender offices are better positioned to narrow the parity gap through more proactive recruitment of public defenders. Prosecutor offices offer entry-level positions as well as opportunities for advancement that enable them to recruit and develop young talent and provide incentives for advancement. Public defender offices allow counties to draw recent law graduates to the field of public defense and systematically evaluate and address barriers to entry such as a lack of training, stable compensation, and benefits. The ability to hire competitively makes for an office staffed with highly motivated advocates ready to defend their clients against a well-resources and well-staffed prosecutor’s office.

In addition, public defender offices are better positioned to narrow the parity gap with more successful retention of public defenders. Indeed, TIDC’s planning study for the Travis County PDO envisions pay parity between PDO attorneys and prosecutors.¹¹⁷ Public defender offices provide retention benefits for experienced attorneys, such as pension benefits, paid vacation time, and longevity pay, that currently are available to Texas prosecutors. Retaining experienced lawyers in-house enables the office to staff them on the toughest cases and permit new attorneys to benefit from their professional advice through formal and informal mentoring. By contrast, Travis County’s MAC system cannot provide these benefits.



VIII. PUBLIC DEFENDER OFFICES IN TEXAS DELIVER EFFECTIVE AND HIGH-QUALITY REPRESENTATION

The public defender offices that have formed in Fort Bend County and Harris County have proven to be successful in many of the above-mentioned ways. The Fort Bend Mental Health Public Defender Office (MHPDO) was formed in response to the growing number of

¹¹⁷ *Travis County Planning Study* at 12-13.

persons with mental health issues in the criminal justice system.¹¹⁸ Initiated in 2010, and funded by TIDC, the MHPDO's objectives include providing quality legal representation to indigent persons with severe mental illness and, as a result, decreasing jail time, increasing engagement in treatment, and ultimately decreasing recidivism rates.¹¹⁹

Three years after its inception, a study by the Office of Community Projects and Graduate School of Social Work at the University of Houston found that clients represented by the MHPDO after the program was well developed spent fewer days in jail prior to disposition compared to clients represented in the first year of the program.¹²⁰ The MHPDO has successfully reduced jail time, in part, because attorneys are able to bring important client matters to the court's attention prior to scheduled hearings, which effectively lowers bonds and provides an opportunity for the attorneys to advocate for the client's release on a personal bond.¹²¹ In addition, as part of the advocacy process, the MHPDO's social workers and case managers have a service plan in place that increases their clients' ability to comply with court directives.¹²² The study also found that clients who received the MHPDO services demonstrated decreased recidivism in the year following service compared to the year prior to service.¹²³

In addition to reducing jailtime and recidivism, through successful hiring and close caseload monitoring, the MHPDO has progressively decreased attorney caseloads over time, enabling the attorneys to dedicate more time to each case.¹²⁴ Social workers and case managers on staff provide clients with additional and specialized assistance that attorneys cannot typically provide.¹²⁵ These factors combined make for quality representation that addresses all of the MHPDO clients' needs. Finally, and most significantly, based on an anonymous client survey, the study found that the overwhelming majority of the MHPDO's clients were very satisfied with their representation.¹²⁶

¹¹⁸ Cache Steinberg, *Program Evaluation: Mental Health Public Defender Office Fort Bend County*, OFF. OF CMTY. PROJECTS, GRADUATE C. OF SOC. WORK, U. OF HOUS., 1 (2013) [hereinafter *Mental Health Public Defender Fort Bend Eval.*].

¹¹⁹ *Id.* at 1–3.

¹²⁰ *Mental Health Public Defender Fort Bend Eval.*, *supra* note 118, at 19.

¹²¹ *Id.* at 21.

¹²² *Id.* at 21.

¹²³ *Id.* at 19.

¹²⁴ *Id.* at 8.

¹²⁵ *Id.* at 9.

¹²⁶ *Id.* at 9 – 11.

Meanwhile, the Harris County Public Defender (HCPD) began operations in early 2011.¹²⁷ In 2012, the HCPD contracted with the Council of State Governments Justice Center (CSG-JC) for technical assistance and data analysis to evaluate the effectiveness of the office.¹²⁸ CSG-JC's report, released in September 2013, concluded that the HCPD adds significant value to the delivery of public defense services in Harris County by providing better case outcomes than assigned counsel, providing previously unavailable defense services such as training, mentoring, and advice, and increasing defense participation in the discussion of systemic issues.¹²⁹

In terms of better case outcomes, the report concluded that: (1) misdemeanor dismissals were more likely for HCPD clients with mental health diagnoses than for similar individuals represented by assigned counsel; (2) felony HCPD counsel achieved more dismissals, deferred sentences, and acquittals than assigned counsel; (3) more time was spent on investigations by HCPD staff than by assigned counsel; and (4) the HCPD Appellate Division achieved a higher than average reversal rate in the 1st and 14th Court of Appeals.¹³⁰

Regarding training and mentorship services, the HCPD received a grant to develop and staff a comprehensive training program for ten newly appointed assigned attorneys in the county.¹³¹ This program provided attorneys with access to numerous trainings, including ones conducted by the Gideon's Promise Training Center.¹³² Attorneys also participated in a lengthy mentorship program and regularly attended continuing legal education and mentorship meetings.¹³³ In addition, the HCPD Appellate Division runs a second-chair program for the Harris County Criminal Lawyers Association (HCCLA), in which newer criminal defense attorneys are paired with more experienced attorneys who mentor them and allow the younger attorneys to gain valuable practical experience.¹³⁴

HCPD also presented 63 hours of accredited Continuing Legal Education (CLE) programs, open to assigned counsel at no cost, through September of 2013.¹³⁵ Almost two

¹²⁷ Tony Fabelo at al., *Improving Indigent Defense: Evaluation of Harris County Public Defender*, THE COUNCIL OF ST. GOV'TS JUST. CTR., 1 (2013) [hereinafter *Harris County Public Defender Eval.*].

¹²⁸ *Id.* at 1.

¹²⁹ *Id.* at 1.

¹³⁰ *Harris County Public Defender Eval.*, *supra* note 127, at 2–3.

¹³¹ *Id.* at 37.

¹³² *Id.* at 37.

¹³³ *Id.* at 37.

¹³⁴ *Id.* at 38.

¹³⁵ *Harris County Public Defender Eval.*, *supra* note 127, at 38.

thousand attorneys in total attended.¹³⁶ HCPD also offers immigration law advice to private practitioners, and the Appellate Division provides research assistance to the private bar and to the judiciary.¹³⁷ As documented by others, the HCPD example shows that a PDO can boost the performance of not only its attorneys, but the entire pool of defense attorneys in the jurisdiction.

CONCLUSION

Travis County has led in innovation in public defense delivery, first by creating the Juvenile Public Defender in 1971, and more recently with the Mental Health Public Defender and the CAPDS managed assigned counsel system. With data showing persistent disparities in outcomes between clients with assigned counsel and clients with hired counsel, continued innovation is appropriate. Creating a Public Defender Office will lead to more effective direct supervision and caseload limits that comport with national and state standards, both of which will result in better outcomes for clients. The PDO will also take Travis County closer toward parity between the defense and prosecution functions, which is an important marker of fairness in the criminal legal system. In addition, as shown by the Harris County example, a Travis County PDO has the potential to benefit assigned counsel, through mentorship, education, and by raising the level of practice in both felony and misdemeanor cases.

¹³⁶ *Id.* at 38.

¹³⁷ *Id.* at 39.