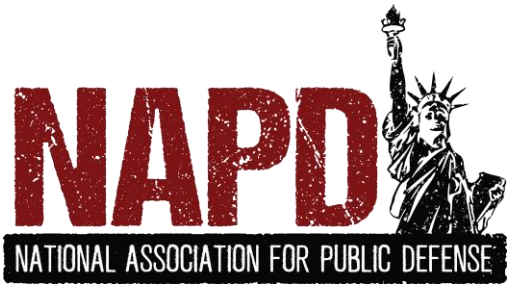


Public defenders and assigned counsel throughout the nation

National Association for Public Defense
Harris County Misdemeanor Assessment Report

Pursuant to November 21, 2019 Consent Decree, *ODonnell et al v. Harris County*, *Texas*

Sustain Progress
Make Additional Improvements

July 6, 2021

Summary of Contents

I.	Executive Summary……..	1
II.	History……..	8
III.	Findings on 2016-2020 Statistics Appointment of Counsel, Workload, Staffing, Effectiveness of Representation, Holistic Defense……..	19
IV.	Public Defense Values……..	64
V.	Baseline Data for Future Outcome Analysis and for Managing by the MAC……..	68
VI.	Recommendations to Ensure Effective Misdemeanor Representation County-Wide for Persons Unable to Afford Counsel; Blueprint for Representation; Creating State Standards……..	109
VII.	Conclusion: Sustain Progress; Make Additional Improvements……..	156
IX.	Appendix……..	a

Table of Contents

I. Executive Summary *1*

1. Introduction: Assessment Pursuant to Consent Decree 1
2. Purpose of Assessment: Evaluation of Misdemeanor Defense Systems 1
3. Importance of Independent, Effective, Client-Centered, Holistic Interdisciplinary Representation of Persons Charged with a Misdemeanor 1
4. National Association for Public Defense Assessment Team 2
5. Methodology 3
6. Summary of Findings and Recommendations: Sustain Progress and Make Additional Improvements 5

II. History *8*

1. The Harris County Criminal Legal System 8
2. *ODonnell v. Harris County* 9
3. Representation at Magistration 12
4. Harris County's Request for TIDC Funding to Establish a Managed Assigned Counsel Program 12
5. Harris County's Requested MAC Staffing 13
6. TIDC MAC Grant Award to Harris County 14
7. Experienced Managed Assigned Counsel Director Hired 14
8. MAC Staffing and Salaries Modified 14
9. MAC Social Workers Reduced from Six to Four 15
10. Additional MAC Positions Added 15
11. The MAC Structure 15
12. Conditions of the TIDC MAC Grant Award 16
13. Harris County Office of Managed Assigned Counsel Plan of Operations 17
14. Felony Case Representation 17
15. Harris County Public Defender Office Increasing Capacity to 50% and Taking Misdemeanor Appointments 17
16. Harris County, Texas Criminal Justice Coordinating Council 18

III. Findings on Data, Appointment of Counsel, Workload, Staffing, Effectiveness of Representation, Holistic Defense *19*

1. General Data 20
2. Representation at Magistration 25
3. Appointment of Counsel 46

4. Workload 47
5. Appointed Attorneys and MAC Staffing 52
6. Effectiveness of Representation 52
7. Holistic Defense 57
IV. Public Defense Values 64
1. Mission and Vision 64
2. Values 64
V. Baseline Data for Future Outcome Analysis and for Managing by the MAC 68
1. Introduction 68
2. General Trends 71
3. Defendant-Based Trends 76
4. Disposition Outcomes 82
5. Comparison of Disposition Outcomes with Retained and Public Defender 84
VI. Recommendations to Ensure Effective Misdemeanor Representation County-Wide for Persons Unable to Afford Counsel; Blueprint for Representation; Creating State Standards 109
1. Continue to Provide Representation at Magistration for All Clients 110
2. Ensure Well-Trained, Competent, Independent, Client-Centered Representation 113
3. Ensure Timely Access to Counsel, Timely Representation and Continuity of Counsel 121
4. Ensure Reasonable Workloads 130
5. Promote and Encourage an Interdisciplinary Representation Model that Includes Social Workers, Investigators and Adequate Support Staff 134
6. Provide Effective Data-Driven Management and Accountability 141
7. Strategically Collect and Analyze Data 144
8. Create a Unified Public Defense Delivery System in Harris County 147
9. TIDC Should Adopt Comprehensive Statewide Policies and Standards for Providing Legal Representation and other Defense Services 153
10. Create and Sustain an Appropriate Culture for the MAC 155
VII. Conclusion: Sustain Progress; Make Additional Improvements 156
VIII. Appendix ..... a
1. Section VII. REPRESENTATION AT BAIL HEARINGS ..... b
2. Quantitative data c
3. Persons interviewed by the Assessment Team (orally or through email) ..... d
4. Documents and videos reviewed ..... f

5. TIDC Statement of Grant Award (September 6, 2019); Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06) grant modification request to extend the grant approved at the June 18, 2020 TIDC board meeting ..... h
6. Office of Managed Assigned Counsel Quarterly Summary, October 2020-March 2021 (April 15th, 2021) ..... gg
7. Additional Data..... jj
8. Harris County Public Defender Office Magistration Interview Form, April 2021 ..... yy
9. Affidavit of Indigency Form ..... aaa
10. Harris County Public Defender Office CLE Programs, 2019-2021 ..... bbb
11. Harris County Prosecutor pre-charge, post-plea diversion programs ..... jjj
12. Forms used by Magistrate at magistration: Article 15.17 hearing; defendant present and not present (12-17-20); ORDER FOR PRETRIAL SUPERVISION & BOND COND (11/03/17) ..... hhhh
13. Harris County Public Defender Office data field on each misdemeanor case ..... nnnn
14. Sample case management policies from Kentucky public defender program ..... rrrr
15. Additional training and implementation recommendations after receipt of final report.. mmmmm
16. NAPD Assessment Team Members and their Professional Experience..... mmmmm

Table of Tables

Table 1: Disposition Rate, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 21
Table 2: Share of Cases Paid to the Top 10% of Attorneys in Harris County, TIDC Fiscal Year 2016 through Fiscal Year 2020 24
Table 3: Share of Cases Paid to the Top 10% of Attorneys in Harris County by Court, TIDC Fiscal Year 2020 24
Table 4: Misdemeanor Magistration Descriptive Metrics 32
Table 5: Misdemeanor Magistration Metrics for Total, Early Present, and Full Magistration Process 33
Table 6: Demographic Information for Clients at Magistration 34
Table 7: Race/Ethnicity for Clients at Magistration 34
Table 8: Rule 9 Applied to the Misdemeanor Magistration Clients 35
Table 9: Mental Health Status as Mentioned at Magistration 35
Table 10: Misdemeanor Magistration Clients with Other Criminal Justice Involvement 36
Table 11: Persons with Bond Revocations or Forfeitures Only or In Additional to New Charges 37
Table 12: Misdemeanor Magistration Clients Asked about County Provided Counsel and then Requesting Counsel 38
Table 13: Clients with a Stated Hold 38
Table 14: Misdemeanor Magistration Clients Released on PR Bond 39
Table 15: Bond Set for Misdemeanor Magistration Clients Released on PR Bond or Not Released on PR Bond 40
Table 16: Frequent Arguments for Misdemeanor Magistration Clients 41
Table 17: Other Arguments for Misdemeanor Magistration Clients 42
Table 18: Misdemeanor Equivalent Weights 48
Table 19: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 49
Table 20: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When All Harris County Appointments are Included, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 49
Table 21: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When Including All Harris Criminal Appointments and All Criminal Appointments in Any County, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 50
Table 22: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When Including All Harris Criminal Appointments and All Criminal Appointments in Any County, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 50
Table 23: Total Harris County Misdemeanor Expenditures by Category, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 51
Table 24: Average Per Case Harris County Misdemeanor Expenditures by Category, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 51
Table 25: Cases Disposed in Courts with Investigative and Expert Witness Expenditures, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 53
Table 26: Average Investigator Time Per Case Using Harris County's Hourly Rate, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 54
Table 27: Disposition Rate for County Courts at Law, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 72
Table 28: Disposition Rate for County Courts at Law, Harris County FY 2016 through FY 2020 75
Table 29: Dismissal Rate for County Courts at Law, Harris County FY 2016 through FY 2020 76
Table 30: Number of Clients, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 77
Table 31: Clients by Type of Cases, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 77
Table 32: Average Number of Cases Disposed per Client and Proportion of Clients with Only One Case at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 78
Table 33: Highest Offense Grade at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 79
Table 34: Highest Offense Type at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 80

Table 35: Average Age and Proportion of Defendants by Sex, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 80
Table 36: Race/Ethnicity of Defendants with Disposed Cases, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 81
Table 37: Number and Proportion of Defendants with a Felony from the Same Event or a Felony Open at Any Time During the Misdemeanor Case(s), Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 82
Table 38: Defendant Disposition Outcomes, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 83
Table 39: Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 83
Table 40: Distribution of Defendants by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 87
Table 41: Distribution of Dispositions by Counsel Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 88
Table 42: Distribution of Cohort Levels by Lawyer Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 89
Table 43: Average Settings to Disposition for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 91
Table 44: Average Settings to Disposition by Counsel and Comparison Cohort, Harris County Fiscal Year 2020 92
Table 45: Time in Days from Filing to Disposition for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 93
Table 46: Time in Days from Case Filing to Disposition by Counsel, Harris County Fiscal Year 2020 93
Table 47: Disposition Outcomes for Assigned Counsel Clients in the LOW Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 94
Table 48: Disposition Outcomes for Clients in the LOW Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020 94
Table 49: Disposition Outcomes for Assigned Counsel Clients in the MODERATE Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 96
Table 50: Dispositions Outcomes for Clients in the MODERATE Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020 96
Table 51: Disposition Outcomes for Assigned Counsel Clients in the HIGH Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 97
Table 52: Dispositions Outcomes for Clients in the HIGH Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020 98
Table 53: Investigator and Expert Witness Expenditures for Harris County Criminal Courts at Law, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 100
Table 54: Number of Misdemeanor Equivalent Appointments Attorneys Taking Misdemeanors in Harris County Received Payment on and the Proportion Over 226 Misdemeanors, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 101
Table 55: Sentence Types by Conviction Likelihood Cohorts for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 102
Table 56: Comparison of Sentence Types by Conviction Likelihood Cohorts by Counsel Type, Harris County Fiscal Year 2020 103
Table 57: Punishment Amount or Length for Clients with Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 103
Table 58: Comparisons Punishment Length by Counsel Type, Harris County Fiscal Year 2020 104
Table 59: Trial Rate and Outcomes for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020 104
Table 60: Trial Rate and Outcomes for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020 105
Table 61: Trial Rate and Acquittal at Trial by Counsel Type, Harris County Fiscal Year 2020 106
Table 62: Number of Motions to Revoke/Motions to Adjudicate Filed and Disposed in Criminal Courts at Law with the Disposition Rate, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 107

Table 63: Number and Proportion of Disposed Motions to Revoke/Motions to Adjudicate Granted and Denied, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 108
Table 64: Proportion of Defendants with Disposed Motions to Revoke/Motions to Adjudicate Granted Represented by Counsel Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 108
Table 65: Trial Rate and Outcomes for Assigned Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2020 115
Table 66: Number of Misdemeanor Equivalent Appointments Attorneys Taking Misdemeanors in Harris County Received Payment on and the Proportion Over 226 Misdemeanors, TIDC Fiscal Year 2016 through Fiscal Year 2020 133
Table 67: Cases Filed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... jj
Table 68: Cases Disposed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... jj
Table 69: Disposition Rate from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... kk
Table 70: Number Dismissed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... kk
Table 71: Retained Counsel Dispositions, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020 ll
Table 72: Appointed Counsel Dispositions from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ll
Table 73: Public Defender Counsel Dispositions from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... mm
Table 74: Retained Counsel Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... mm
Table 75: Appointed Counsel Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... mm
Table 76: HCPD Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... nn
Table 77: Average Settings to Disposition for Retained Counsel, Fiscal Year 2016 through Fiscal Year 2021 ..... nn
Table 78: Average Settings to Disposition for Assigned Counsel, Fiscal Year 2016 through Fiscal Year 2021 ..... nn
Table 79: Average Settings to Disposition for HCPD Counsel, Fiscal Year 2016 through Fiscal Year 2021 ..... nn
Table 80: Time in Days from Case Filing to Disposition for Retained Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021 ..... oo
Table 81: Time in Days from Case Filing to Disposition for Assigned Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021 ..... oo
Table 82: Time in Days from Case Filing to Disposition for HCPD Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021 ..... oo
Table 83: Disposition Outcomes for Retained Counsel Clients in the LOW Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... pp
Table 84: Disposition Outcomes for Assigned Counsel Clients in the LOW Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... pp
Table 85: Disposition Outcomes for HCPD Clients in the LOW Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... qq
Table 86: Disposition Outcomes for Retained Counsel Clients in the MODERATE Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... qq
Table 87: Disposition Outcomes for Assigned Counsel Clients in the MODERATE Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... rr
Table 88: Disposition Outcomes for HCPD Clients in the MODERATE Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... rr
Table 89: Disposition Outcomes for Retained Counsel Clients in the HIGH Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... ss
Table 90: Disposition Outcomes for Assigned Counsel Clients in the HIGH Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... ss
Table 91: Disposition Outcomes for HCPD Clients in the HIGH Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021 ..... tt
Table 92: Sentence Types by Conviction Likelihood Cohorts for Retained Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... tt

Table 93: Sentence Types by Conviction Likelihood Cohorts for Assigned Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... uu
Table 94: Sentence Types by Conviction Likelihood Cohorts for HCPD Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021 ..... uu
Table 95: Punishment Amount or Length for Clients with Retained Counsel, Harris County Fiscal Year 2016 through 2021 vv
Table 96: Punishment Amount or Length for Clients with Assigned Counsel, Harris County Fiscal Year 2016 through 2021 vv
Table 97: Punishment Amount or Length for Clients with HCPD, Harris County Fiscal Year 2016 through 2021 vv
Table 98: Trial Rate and Outcomes for Retained Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... ww
Table 99: Trial Rate and Outcomes for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020 ..... ww
Table 100: Trial Rate and Outcomes for HCPD by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020 xx

Table of Figures

Figure 1: Organization Chart for Harris County Managed Assigned Counsel 16
Figure 2: Cases Pending on End Date of TIDC Fiscal Year, FY 2015 through FY 2020 20
Figure 3: Misdemeanor Cases Filed and Disposed in County Courts at Law, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020....20
Figure 4: Length of Time from Filing to Disposition, TIDC Fiscal Year 2016 through TIDC FY 2020....21
Figure 5: Number of Cases Disposed in Time Categories Reported by Texas Office of Court Administration, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020....22
Figure 6: Proportion of Cases Disposed in Time Categories Reported by Texas Office of Court Administration, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020....22
Figure 7: Felony Cases Filed and Disposed in District Courts, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020 .23
Figure 8: Share of Cases Paid to the Top 10% of Attorneys in Harris County by Court Compared to the 30 Percent Standard, TIDC FY 2020....25
Figure 9: Extrapolation from September 1 – September 7, 2021 to the Full Year 32
Figure 10: Proportion of Misdemeanors with a Finding of Probable Cause....34
Figure 11: Number and Proportion of Appointed Cases Represented by Assigned Counsel and HCPD, TIDC FY 2016 through TIDC FY 2020....47
Figure 12: Histogram Distribution of DWI-Pretrial Fee Collection by Harris County CSCD, 2019....55
Figure 13: Histogram Distribution of DWI-Pretrial Fee Collection by Harris County CSCD, 2020....56
Figure 14: Transtheoretical Model (TTM)....60
Figure 15: Misdemeanor Cases Filed and Disposed in County Courts at Law, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....71
Figure 16: Cases Pending Disposition on the Last Day of the Harris County Fiscal Year 72
Figure 17: Number of Cases Disposed by Time Categories, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....73
Figure 18: Proportion of Cases Disposed by Time Categories, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....74
Figure 19: ROC Curve for Defendants with Original Misdemeanors Disposed, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....86
Figure 20: Distribution of Defendants by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....87
Figure 21: Distribution of Cohort Levels for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021....90
Figure 22: Distribution of Cohort Levels by Lawyer Type, Harris County Fiscal Year 2020 90
Figure 23: Low Likelihood of Conviction Proportion Exiting Criminal Justice System by Counsel Type, Harris County Fiscal Year 2020....95
Figure 24: Moderate Likelihood of Conviction Proportion Exiting Criminal Justice System by Counsel Type, Harris County Fiscal Year 2020 97
Figure 25: High Likelihood of Conviction Proportion Exiting Criminal Justice System by Lawyer Type, Harris County Fiscal Year 2020....98
Figure 26: Clients Represented by Assigned Counsel Proportion Exiting Criminal Justice System by Likelihood of Conviction Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020 99
Figure 27: Total Client Acquittal Rate by Counsel Type, Harris County Fiscal Year 2020 106
Figure 28: Length of Time from Filing to Disposition, TIDC Fiscal Year 2016 through TIDC FY 2020....129

I. Executive Summary

1. Introduction: Assessment Pursuant to Consent Decree

The November 21, 2019 Consent Decree in the *ODonnell* litigation required "Harris County to retain an indigent-defense expert 'to evaluate the County's current misdemeanor indigent defense systems and determine the County's need for essential support staff . . . to promote . . . effective indigent defense.'" Consent Decree, *ODonnell et al v. Harris County*, *Texas* No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019), p. 11.[1]

2. Purpose of Assessment: Evaluation of Misdemeanor Defense Systems

Pursuant to this 2019 Consent Decree requirement, in particular Section VII of the Consent Decree, the National Association for Public Defense (NAPD) was retained by Harris County to
1) evaluate its current misdemeanor indigent defense systems in Harris County, and
2) determine the need for essential support staff and holistic services to promote zealous and effective indigent defense.

The Harris County RFP[2] in particular references the goals and requirements of Section VII of the Consent Decree (found in Appendix at No. 1) and the RFP states: "The report must include recommendations that, at a minimum, address the following:

- Applicable national best practices and professional norms governing the provision of holistic client-centered indigent defense services;
- Determined need for enhanced or additional interdisciplinary indigent defense support staff and services at both bail presentation and subsequent hearings, including the appropriate provision of resources. As defined per Section 17(t) of the Consent Decree, "support staff" refers to social workers, disposition specialists, caseworkers, mitigation specialists, and/or investigators.
- Proposed operational changes to develop more robust systems of holistic indigent defense."

3. Importance of Independent, Effective, Client-Centered, Holistic Interdisciplinary Representation of Persons Charged with a Misdemeanor

Misdemeanors are too often minimized. "The first and most important change in thinking about misdemeanors is to appreciate their importance."[3] A Harris County judge that we interviewed observed that it is "a whole new world for a person when the person crosses over into a misdemeanor conviction." Another judge, who has had remarkably few requests for funding for investigators or experts, said that the area of the misdemeanor process that requires the most improvement is the level of defense representation.

---

[1] *ODonnell et al v. Harris County*, *Texas* No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019) Retrieved from http://jad.harriscountytx.gov/LinkClick.aspx?fileticket=YyTSn7PdR0o%3d&portalid=64

[2] Job Number 200265, approved by Harris County Commissioners Court January 19, 2021.

[3] Alexandra Natapoff, *Punishment Without Crime: How Our massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 214.

Everyone who expressed an opinion on access to defense counsel called for it to be more expedient and for the magistrates and an indigent defense coordinator to be delegated the authority to make prompt appointment of counsel. There is a desire for clients who are charged with both a misdemeanor and a felony to have those cases consolidated and handled by one court and one defense counsel.

Independent, effective representation of persons charged with a misdemeanor who cannot afford counsel is critical to clients, the criminal legal system and the community. Independent, effective representation, through a properly resourced, fair process is essential for valid outcomes that the community can have confidence in when evaluating the work of the criminal legal system.

Interactions with the criminal justice system create a state of crisis in the life of the person charged. Crisis provides a catalyst for behavior change, or, at a minimum, an opportunity to plant the seed for future behavior change as behavior change occurs in stages and cycles.

Criminal behavior is often symptomatic of underlying dynamics at play in the person's life. Those 'underlying dynamics' often drive client behavior. A holistic representation model offers an ecological perspective, recognizing the interaction of legal representation with factors ranging from individual (client) conditions to socio-economic structure and environmental circumstances. Interdisciplinary intervention at this point of crisis provides a real opportunity to address the client's legal needs as well as those personal and environmental issues; educating and empower the client to change behavior and get out of the criminal justice system.

Being arrested, charged with a misdemeanor, having a criminal record is a life changing event for a client with permanent consequences. As reported by one Harris County misdemeanor prosecutor, many of those arrested “have made a mistake, done something stupid as they are going through something bad such as the loss of a job or the loss of a family member or a serious illness.” The prosecutor noted that such behavior in this context is not best responded to with a conviction. According to the prosecutor, it is better served by an alternative disposition as a conviction results in life altering harmful consequences, such as the loss of a job, eviction, being prohibited from being able to attend school, the inability to obtain a loan or firearms ownership. A judge indicated that most prosecutors and judges willingly accept defense-generated alternative sentencing plans.

A full-time defender said that a misdemeanor that seems to be a small matter to many has large, life-long ramifications for clients…everyone matters…everyone one deserves a lawyer who will fight for them…everyone deserves great representation.

4. National Association for Public Defense Assessment Team

A five-member interdisciplinary NAPD Assessment Team conducted this assessment. Members of the NAPD Assessment Team have experience with Harris County’s criminal legal system data, expertise in providing holistic defense to persons accused of misdemeanor offenses, and over 100 years of public defense practice and leadership. The NAPD Team consists of a Ph.D. social worker,

a Texas expert in data collection and analysis, and three attorneys with extensive public defense experience:

- Sarah Buchanan, PhD, LCSW, former Chief social worker in Knoxville Tennessee Public Defender Office, now implementing social worker in public defender offices in Tennessee
- Ed Monahan, former Chief, Kentucky's statewide public defender program
- Mark Stephens, former Chief, Knoxville Tennessee Public Defender Office, pioneer in holistic defense; now in private practice
- Jessy Tyler, Senior Director for Justice Research, Texas Meadows Mental Health Policy Institute, with an extensive background in data analysis and visualization and policymaking
- Doug Wilson, Chief of Aurora (CO) public defender office and former Colorado state chief defender

5. Methodology

The NAPD Assessment Team used the following methodology in conducting this Assessment. The purpose of the Assessment was identified by Harris County through its RFP process. The NAPD Assessment Team members collected and reviewed information relevant to the issues identified to be assessed, made reasonable assumptions, and evaluated, analyzed the information obtained in the context of legal authority, national standards, practices in comparable public defense programs, and the relevant literature, identifying patterns, strengths and deficiencies using our defender and criminal legal experience to render Findings and Recommendations. The NAPD Assessment Team obtained and reviewed the following information:

- Substantial quantitative data from the county's Court Administration Division;
- Qualitative information through over fifty interviews via Zoom, many phone calls and email exchanges;
- Numerous recordings, documents and reports.

The NAPD Assessment Team interviewed and obtained information from:

- Appointed counsel representing persons charged with misdemeanors
- Attorneys providing representation at magistration
- Director, Harris County Justice Administration Department
- Pretrial Release Executive
- Director, Harris County Managed Assigned Counsel Office
- Director, Justice Administration Department Director
- Harris County Texas Court Manager
- Chief Public Defender, Harris County, Texas Public Defender Office and staff
- Community leaders,
- County Court at Law Judges
- Magistrates
- Social Workers and directors of managed assigned counsel social workers
- Misdemeanor Trial Bureau Chief, Office of the Harris County District Attorney
- Texas Indigent Defense Commission Director

- Texas Indigent Defense Commission Director, Public Defense Improvement
- A Harris County Commissioner
- Community leaders
- Ideas42
- Consent Decree Implementation Team
- Houston Police Department, Investigative & Special Operations

Each of the persons we have asked to speak with have been very accessible and have generously provided their time, information and insights based on their experience and perspectives.

The Assessment Team worked with data from the following sources:

- Texas Indigent Defense Commission (TIDC) aggregate data
- Texas Office of Court Administration (OCA) aggregate data
- Harris County Criminal Courts at Law Court Administration magistration digital video recordings
- Harris County Criminal Courts at Law Court Administration case level data
- Texas Department of Public Safety (DPS) individual level data

There are two sources of aggregate quantitative data and four sources for individual level quantitative data.[4] The Texas Office of Court Administration (OCA) receives data from the Harris County Court Clerk on a monthly basis which is used to produce the Misdemeanor Activity Detail Report providing cases filed, disposed, and dismissed by offense type as well time to disposition information. The Texas Indigent Defense Commission provides the number of cases appointed by court by private appointed counsel and the Harris County Public Defender Office as well as cost of investigators, expert witnesses, and 'other' case costs. TIDC is also a source for individual level lawyer data, which was used to calculate number of cases represented by private appointed counsel in Harris County and all Texas counties. All of this information is presented as the TIDC fiscal year (October through September) because TIDC only provides it within those categories. See: TIDC: http://tidc.tamu.edu/public.net/ Fiscal Year 2016 through Fiscal Year 2020.

Harris County Criminal Courts at Law Court Administration staff provided individual level defendant information on cases filed, disposed, type of disposition, bond release information, sentence type and length if applicable, charge and charge level, and lawyer type[5] which was used to build a dataset of defendant disposition by type. The set included a state identification number (SID) that was used to match defendants with their Texas Department of Public Safety (DPS) criminal history file. This provided arrest offense and date and judicial history, how disposed and the applicable sentence type, for each person in the dataset. This combined information was used to create comparison cohorts so the defendant outcomes by lawyer type

[5] Lawyer types: retained (hired); assigned (appointed off the wheel); and HCPD (appointed Harris County Public Defender Misdemeanor MH Division –all misdemeanors are mental health defendants in this period).

would be an apples-to-apples comparison, *i.e.*, the results compare defendants with similar criminal history, charges, and bond status.

The final source of individual level quantitative data is from the Harris County CCL Court Administration which provided the recordings of every magistration hearing from September 1 through September 7, 2020. The data research team viewed every misdemeanor B and higher magistration hearing and hand coded a dataset including arrestee demographics, arrestee criminogenic information (current supervision status, other pending charges, and number of charges presented at this hearing), whether or not probable cause was found, bail amount and type suggested by the defense and prosecutor, and the final amount and type set by the magistrate. See OCA: https://card.txcourts.gov/ FY16-20.

Summary to situate understanding of data:

- COVID-19 started to impact Texas in March 2020.
- Texas Indigent Defense Commission's fiscal year is October through September.
    - The COVID-19 pandemic impacts fiscal year 2020 numbers which runs from October 2019 through September 2020.
- Harris County's fiscal year is March through February.
    - The COVID-19 pandemic impacts fiscal year 2021 numbers and effectively tracks the entirety of Harris County's fiscal year 2021 that runs March 2020 through February 2021.
    - The comparisons of lawyer outcomes highlight the change from fiscal year 2016 to fiscal year 2020 because fiscal year 2020 ends about two weeks before the COVID-19 shut down.

The particular sources of information, people and documents, are listed at Appendix No. 3.

The particular sources of information, people and documents, are listed at Appendix No. 4.

6. Summary of Findings and Recommendations: Sustain Progress and Make Additional Improvements

Effective delivery of public defense services requires professional and politically independent representation of clients. The primary method of ensuring independent representation by a public defense organization is through establishment of a nonpartisan governing board.

In Fiscal Year 2020, there were 46,090 misdemeanors filed, a 68% dismissal rate, and 34 trials. The percentage of clients who had their cases decided at trial ranged from .11% to .22% between FY 2016 and 2020 with the percentage of trials resulting in acquittals during that period ranging from 51% to 67%. Approximately, 14,000 persons went through magistration in 2020.

Private retained counsel represented between 41 and 44 percent of all clients with dispositions between fiscal year 2016 and fiscal year 2020. Appointed counsel represented 54 percent of clients in fiscal year 2016 but decreased in proportion to 50 percent by fiscal year 2020. Harris County Public Defender (HCPD) attorneys represented between five and six percent of clients with dispositions. During all years presented, HCPD exclusively or primarily represented clients with a severe mental health diagnosis who were not charged with a DWI category offense based on county policy.

All who request counsel at magistration are provided representation by full-time staff attorneys from the Harris County Public Defender Office. Private appointed counsel lawyers do not appear at magistration. Over a 5-year period, pending misdemeanor cases have increased, misdemeanor filings decreased, time for disposition of a misdemeanor increased, misdemeanor cases pending on the last day of the fiscal year have increased. The average number of days from filing to disposition is 292.

There must be timely appointment of well-trained, competent, value-driven counsel who have reasonable workloads including appointed and private cases, adequate support staff, and who are committed to client-centered, holistic representation. Performance must be evaluated and supervised. In 2020, 106 attorneys taking misdemeanor appointments in Harris County were appointed to more than the equivalent of 226 misdemeanors when including appointments those attorneys took in other Texas counties.

The appointment and representation must begin promptly. Policies that guide the practice and administrative functioning of the management of appointed counsel are essential. Often clients who are appointed an attorney do not speak to their attorney for 7 or more days after arrest. A client who has a misdemeanor charge and a felony charge is appointed two different attorneys, and the client's cases proceed with different prosecutors in different courts.

Discovery is too often delayed. Requests by appointed counsel for funds for investigators and experts are infrequent. Training specific to appointed counsel's responsibilities is not provided. Diversion is underutilized and has substantial costs for indigents. More appointed counsel should be performing at a higher level.

Complete data must be readily available to appointed counsel, the management of the assigned counsel program, and the public.

The interdisciplinary holistic defense model of representation is vital to effective representation of clients charged with misdemeanors.

The MAC is staffed with 19 positions. It now has four social workers, two less than initially indicated in the original grant request to TIDC. Four social workers are not sufficient.

The MAC governance and quality control committees have not yet become operational. They must be instituted.

After review of the quantitative and qualitative information, our 10 Recommendations are:

1. Continue to provide representation at magistration for all clients
2. Ensure well-trained, competent, independent, client-centered representation
3. Ensure timely access to counsel, timely representation and continuity of counsel
4. Ensure reasonable workloads
5. Promote and encourage an interdisciplinary representation model that includes social workers, investigators and adequate support staff
6. Provide effective data-driven management and accountability
7. Strategically collect and analyze data
8. Create a unified public defense delivery system in Harris County
9. TIDC should adopt comprehensive statewide policies and standards for providing legal representation and other defense services
10. Create and sustain an appropriate culture for the MAC.

In line with national standards of practice, Harris County has made progress in creating and funding value-centered structures to ensure effective county-wide representation of persons charged with a misdemeanor who cannot afford counsel. At the same time, there remain measures critical to realizing the goal of effective client-centered holistic representation across all indigent cases in Harris County that are yet to be accomplished.

II. History

The history and background of Harris County's decision to increase resources for the Harris County Public Defender Office to provide representation of more persons charged with misdemeanors, and to convert its appointed counsel misdemeanor structure into a managed system by creating a Managed Assigned Counsel (MAC) structure for misdemeanor representation significantly informs the Findings and Recommendations.

1. The Harris County Criminal Legal System

Misdemeanor criminal cases are assigned to County Courts at Law randomly.[6]

County Court of Law Judges, the Sheriff, and District Attorney are elected. The Criminal Law Hearing Officers presiding at magistration are appointed. The Harris County Chief Public Defender and the Harris County Managed Assigned Counsel Director are appointed. Cases are prosecuted by deputy prosecutors who are full-time employees of the elected prosecutor. This elected prosecutor, not a judge, decides which full-time prosecutor provides the representation and how that representation is staffed, including investigator staffing.

Historically, public defense representation of adults charged with misdemeanor or felony offenses, and juveniles charged with delinquency offenses, has been provided in Harris County by private attorneys appointed by judges on a case-by-case basis through one of two methods.[7] The appointment process and the appointed attorney compensation are described in the Harris County Local Rules, RULE 24. Alternative Plan for the Appointment of Counsel to Indigent Defendants Under the Fair Defense Act.[8]

Currently, the misdemeanor indigent defense system in Harris County provides representation to persons unable to afford counsel through two structures, a Harris County Public Defender Office and an appointed counsel process with judges appointing defense counsel.
In 2009, Harris County received a grant from TIDC to establish a public defender office that provided representation with full-time staff. The four-year grant contained a requirement that the Harris County Commissioners Court create a governing board that would recommend a chief defender. The County created the Board and the Board recommended Alex Bunin, an experienced public defense leader, as Chief Defender. That was approved by Commissioners Court. On December 6, 2010 Alex Bunin began as Chief Defender.

---

[6] Rule 2, Rules of Court Harris County Criminal Courts at Law. (As amended through April 6, 2020).

[7] "There are two primary methods for indigency appointments: (1) assignments by the individual case or (2) 'term assignments.' The former uses the Fair Defense Act Management System (FDAMS) software and provides courts with ten lawyers' names from an approved list, but courts need not choose any particular one and they are not required to explain their decision." *Justice for All: A Proposal to Expand the Harris County Public Defender's Office and Create a Model Indigent Defense System* (December 8, 2020), p. 6; found at: Justice Administration Department > Research and Reports (harriscountytx.gov) "This is different than what is euphemistically called "the wheel" pursuant to TEX. CODE CRIM. P. ART. 26.4(a), which requires appointing from the next five names on the approved list unless good cause is shown on the record, and then a skipped lawyer goes back to the top of the list. Harris County has what is known as an "alternative program for appointing counsel." TEX. CODE CRIM. P. ART. 26.04(g)." *Id*. at n. 1. "Alternatively, term assignments are agreements between individual courts and attorneys who take multiple cases over set periods of time. Still, these agreements lack the means of assessing the quality of work performed or specifying caseload limits to ensure quality representation is being provided." *Id*. at 6. "A 2016 audit by TIDC found assignments exceeding a week, without formal written, competitively obtained contracts, violate Texas law." *Id*. at n.2.

[8] Found at: https://www.ccl.hctx.net/attorneys/FDA/Rule%2024%20(Alternative%20Plan)%20-%202016.pdf?PlanID=442

The Harris County Public Defender Office's responsibilities include juvenile, misdemeanor mental health, felony, and appellate representation. The Office also provides representation at the 15.17 magistration hearing, representation on post-conviction actions, holistic defense services, and it hosts continuing legal education for its staff that is frequently open to the entire defense community.[9] HCPD provided representation through its full-time attorneys and staff to approximately 15 percent of persons charged with a felony, 20 percent of persons charged with a misdemeanor and 20 percent of juveniles charged in Juvenile court in TIDC's fiscal year 2020 (October 2019 through September 2020).
The Chief Defender decides how full-time attorney representation of an individual client is structured and how the office provides investigative, administrative and social worker assistance through full-time staff.

In March 2021, the Harris County Public Defender Office had 169 employees, 108 are attorneys, 13 are investigators (~10:1), 7 are social workers (~15:1) and 8 are non-attorney advocates (social workers and client advocates combined, still ~9:1). The remainder provide administrative support.

For the remainder of the cases of defendants not represented by HCPD, the public defense delivery system in Harris County uses an appointed counsel system. TIDC's Requirement 5 to "institute a fair, neutral, and nondiscriminatory" attorney selection process typically results in the judge before whom a case is presented appointing an attorney to represent the accused who is unable to afford counsel from a list through an automated random assignment system unless there is a specific reason to skip the attorney at the top, *e.g*., language skills, mental health qualifications, or fugitive/extradition matters. Judges also have discretion in deciding which to select an attorney to work for an agreed upon period of time or "term assignment." Judges review and approve fee vouchers submitted by the attorneys they appoint and the payment to the attorneys. Judges of the County Criminal Courts at Law hear and approve or deny requests by the attorneys they appoint for necessary services of defense including investigators and, experts according to an approved fee schedule. In March 2021, there are approximately 150 attorneys on the misdemeanor appointment list meaning 150 people are qualified and approved to take appointed misdemeanor work in the county. Judges report few requests by appointed counsel have been made for funds to hire an investigator or an expert.

2. *ODonnell v. Harris County*

In 2016, Harris County, Texas was sued in a class action lawsuit, *ODonnell v. Harris County*, Texas for the County's failure to provide set affordable bail for accused defendants pending adjudication prior to trial.

Maranda ODonnell, who lived paycheck to paycheck, was arrested for driving with a suspended license while driving to her mother's house to pick up her four-year-old daughter. Her bail was set according to a bail schedule at $2,500. At this time, the arrestee's first appearance at magistration occurred without the provision of counsel for persons unable to afford counsel.

[9] List of CLEs offered at Appendix No. 10.

During this very brief appearance at magistration, arrestees were not permitted to speak, and there was no inquiry into the ability of the accused to afford bail. During the often very brief appearances at magistration, arrestees were sometimes generally not permitted to speak, and there was no requirement of an inquiry into the ability of the accused to afford bail. *ODonnell v. Harris County, Texas*, 251 F. Supp. 3d 1052, 1062, 1100-01 (S.D. Tex 2017) (No. 16-cv-01414), ECF No. 339.[10]

Representation was rare at bail hearings. A pilot program brought representation by public defenders to some cases beginning in the two-year period before Rule 9 was adopted. These provisions were a change from what occurred previously. For instance, there were no provisions for discovery or public defense at bail hearings and no standard for hearing officers or threshold regarding risk of flight or public safety. Instead, bail schedules were routinely followed by hearing officers and judges.

The federal district court ruled that "Harris County's [bail] policy and practice violates the Equal Protection and Due Process Clauses of the United States Constitution." Memorandum and Order Certifying Class, *ODonnell v. Harris County*, *Texas*, 251 F.Supp.3d 1052, 1059 (S.D. Tex. Apr. 28, 2017).[11]

There was an appeal to the United States Court of Appeals for the Fifth Circuit. *ODonnell v. Harris County, Texas*, 882 F.3d 528, 549 (5th Cir. 2018), *opinion withdrawn and superseded on reh'g sub nom. ODonnell v. Harris County*, *Texas*, 892 F.3d 147 (5th Cir. 2018).[12] The Fifth Circuit affirmed the district court's factual findings and all of its legal conclusions of law except two and remanded to the district court "to craft a revised injunction — one that is narrowly tailored to cure the constitutional deficiencies the district court properly identified." *Id*. at 166-67. On remand, the district court issued a Memorandum and Opinion and an amended preliminary injunction order in June 2018. *ODonnell v. Harris County, Texas*, 321 F. Supp. 3d 763 (S.D. Tex. 2018).[13]

In July 2018, 14 of the 16 County Judges appealed the amended preliminary injunction order. The Fifth Circuit motions panel granted the motion and stayed the challenged provisions pending the appeal. *ODonnell v. Goodhart*, 900 F.3d 220, 223 (5th Cir. 2018).[14]

Subsequent to this appellate litigation and the November 2018 election that resulted in 15 of the 16 County Court at Law Judges named as defendants not seeking reelection or losing their reelection bids and the election of two new Commissioners of the Harris County Commissioners Court, all the County Court at Law Judges requested dismissal of the appeal of the amended preliminary injunction. The Fifth Circuit dismissed the appeal *ODonnell v. Salgado,* 913 F.3d 479,

[10] Found at: ODONNELL v. HARRIS COUNTY | 251 F.Supp.3d 1052 (2017) | 20170512892 | Leagle.com
[11] Found at: Odonnell v. Harris Cnty., 251 F. Supp. 3d 1052 | Casetext Search + Citator
[12] Found at: ODONNELL v. HARRIS COUNTY | 892 F.3d 147 (2018... | 20180601111| Leagle.com
[13] Found at: ODONNELL v. HARRIS COUNTY | 321 F.Supp.3d 763 (2018) | supp3d76361 | Leagle.com
[14] Found at: ODONNELL v. GOODHART | 900 F.3d 220 (2018) | By... | 20180815105| Leagle.com

481 (5th Cir. 2019) (per curiam)[15] but did not withdraw its previous opinion, *ODonnell v. Goodhart*, 900 F.3d 220, 223 (5th Cir. 2018), which remains "binding law of the circuit." On January 25, 2019, the parties presented an amended Local Rule 9 of the Harris County Criminal Courts at Law to the district court. The amended Rule 9 eliminated the bail schedule and created procedures for requiring speedy release under 'General Order Bonds' (GOB) of persons arrested for a misdemeanor. Certain categories of arrestees do not qualify for a GOB. These exceptions were "individuals arrested and charged with domestic violence, violating a protective order in a domestic violence case, or making a terroristic threat against a family or household member; and charged with assault; and charged with a second or subsequent driving-under-the-influence offense; and charged with a new offense while on pretrial release; on a warrant issued after a bond revocation or bond forfeiture; or individuals arrested while on any type of community supervision for a Class A or B misdemeanor or a felony."[16] In 2020, of those released on bond for misdemeanors, 44 percent were released on GOB, 22 percent on cash/surety, and 34 percent on PR bonds, meaning 78 percent were released without payment.[17]

On February 1, 2019, the federal district court approved the amended rule submitted by the parties. The new Rule 9 required procedures were effective February 16, 2019. Memorandum and Opinion at 6-7, *ODonnell et al v. Harris County, Texas*, No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019).[18]

Eventually, the parties proposed a Consent Decree. Over the objection of a number of individuals and organizations, it was approved by the district court on November 21, 2019. Consent Decree, *ODonnell et al v. Harris County*, *Texas* No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019).[19] Now all misdemeanor arrestees, regardless of ability to afford counsel, are represented by a Harris County Public Defender Office attorney at magistration unless they opt out of representation. Before the case is called by the court, that attorney has access to information about the client and the charge and time to interview the clients present at the setting.

---

[15] Found at: Odonnell v. Salgado, 913 F.3d 479 | Casetext Search + Citator

[16] *ODonnell et al v. Harris County, Texas*, No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019). Found at: ODONNELL v. HARRIS COUNTY | Civil Action No. H... | 20191122f53| Leagle.com

Rules of Court Harris County Criminal Courts at Law. (as amended through April 6, 2020),

Rule 9.4. All misdemeanor arrestees must be released on a personal bond or on non-financial conditions as soon as practicable after arrest, except those who fall within the following categories, who may be detained for up to 48 hours for an individualized hearing:

9.4.1 Individuals arrested and charged under Penal Code § 25.07;

9.4.2 Individuals arrested and charged under Penal Code § 22.01, against a person described in Penal Code § 22.01(b)(2), or individuals arrested and charged under Penal Code § 22.07(c)(1) and (§ 22.012);

9.4.3 Individuals arrested and charged under Penal Code § 49.04 and who the State gives notice may be subject to Penal Code § 49.09(a) for a conviction that became final within the past five years;

9.4.4 Individuals arrested and charged with any new offense while on any form of pretrial release;

9.4.5 Individuals arrested on a capias issued after a bond forfeiture or bond revocation; and

9.4.6 Individuals arrested while on any form of community supervision for a Class A or B misdemeanor or a felony offense. Found at: Rules.pdf (hctx.net)

[17] Roy, AJ. "Re: Question for Project - Maybe Easy?" March 23, 2021. Personal Communication.

[18] Found at: Odonnell v. Harris County, Texas et al, No. 4:2016cv01414 – Document 707 (S.D. Tex. 2019) :: Justia

[19] Exhibit 1 Consent Decree.pdf (hctx.net)

3. Representation at Magistration

The Harris County Public Defender's Office (HCPD) with the agreement of Harris County judicial and county officials started providing representation at the first bail hearing, commonly known as the Code of Criminal Procedure's (CCP) "15.17 hearing" through their Bail Division on July 31, 2017. This started via video link in the Inmate Processing Center (IPC). After Hurricane Harvey hit Houston and flooded the courthouse on August 24, 2017, the hearings were moved to the IPC and conducted with the District Attorney (DA) and Magistrate present, although the DA later resumed appearance via video. In February 2019, the hearings moved to the Joint Processing Center (JPC) where misdemeanor arrestees are received and processed, generally within 24 hours or less and felony arrestees within 48 hours or less, as required by law.[20]

The consent decree signed by Harris County officials as part of the settlement of the federal ODonnell pretrial system litigation requires representation at magistration. As stated in Section VII, 37, of the decree: "The Parties agree that zealous and effective representation at bail hearings is important to protecting arrestees' right to pretrial liberty and right against wealth-based detention. The Parties further agree that the availability of adequate time and workspace for defense counsel to confidentially interview misdemeanor arrestees in preparation for bail hearings, as well as access to early and effective support staff to assist defense counsel in gathering and presenting information relevant to the bail decision and appropriate conditions of release, are important to supporting defense counsel's ability to make the best available arguments for release."[21] US District Court for the Southern District of Texas, Houston Division, Case No. 16-cv-01414, *Maranda Lynn ODonnell, et al. vs Harris County, Texas* Consent Decree, August 1, 2019

4. Harris County's Request for TIDC Funding to Establish a Managed Assigned Counsel Program

On May 10, 2019, Harris County submitted a FY2020 Indigent Defense Improvement Grant application to the Texas Indigent Defense Commission (TIDC), seeking financial support for the creation of a Managed Assigned Counsel program in the amount of $2,644,535.20.

This Harris County application to TIDC, 2020 *Harris County Discretionary Grant Application Narrative*, stated, "Between 140 and 160 attorneys are typically certified to accept appointments for misdemeanor indigent defendants in the County Criminal Courts. This number fluctuates in relation to qualification testing that is administered three times per year. This number does not include attorneys working in the Public Defender's Office taking cases requiring mental health expertise in the misdemeanor courts. Managing attorneys[22] could provide a ratio of one attorney per approximately 20 appointed attorneys handling indigent defense. Currently, the average number of indigent defendants on County Criminal Court

[20] *Harris County Public Defender Tenth Year Report* (May 1, 2020) p.13, found at: http://harriscountypublicdefender.org/HCPD%20Tenth%20Year%20Report%205.1.20.pdf

[21] Consent Decree, *ODonnell et al v. Harris County*, Texas No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019, found at: Exhibit 1 Consent Decree.pdf (hctx.net)

[22] At the request of the MAC Director request, TIDC subsequently approved an amendment to the grant to reflect the title of Resource Attorney instead of Managing Attorney.

dockets is 8,573, which have a total of 10,107 active cases pending. Eight (8) Managing Attorneys would each provide management oversight for 1,072 defendants at any given time, or 1,263 cases annually. In State Fiscal Year 2018, appointed attorneys in Harris County disposed of approximately 24,465 cases for indigent defendants. Based on TIDC's Guidelines for Indigent Defense Caseloads, the recommended caseload for Class B misdemeanors is 236 cases, and Class A misdemeanors is 216 cases. Based on a weighted average of Harris County's misdemeanor caseload distribution, a maximum allowable caseload of 224 [*sic*] *misdemeanor* cases per attorney would allow the current pool of appointed attorneys to handle up to 35,840 cases annually."[23]

On August 21, 2019, Harris County provided TIDC with "Supplementary materials for Harris County Indigent Defense Improvement Grant application." It included additional information about staffing, staff responsibilities, the Governing and Oversight Boards, the indigence determination, location, case management system, training, a modified budget proposal of $2,716,069, and a timeline of reporting. It noted, "In the original grant application, the budget request included a total of 23 staff members, including (8) supervising attorneys. The creation of this office will focus on misdemeanor appointments, therefore we are requesting a reduction in the number of supervising attorneys to four (4), which reduces the total number of FTEs to 19."[24]

5. Harris County's Requested MAC Staffing

The Harris County supplemented August 21, 2019 grant request to TIDC was for funds for the following staffing and salaries:

Total Staff: 19
Total Salary Allotment (excluding fringe benefits): $1,810,000

Title	Salary
Executive Director	$160,000
Administrative Assistant	$60,000
Administrative Assistant	$60,000
Technical Support Manager	$70,000
Financial Analyst	$70,000
Misdemeanor Division Chief	$130,000
Supervising Attorney	$110,000
Supervising Attorney	$110,000
Supervising Attorney	$110,000
Supervising Attorney	$110,000
Holistic Defense Supervisor	$130,000
Chief Investigator	$90,000
Social Worker	$85,000
Social Worker	$85,000
Social Worker	$85,000

[23] 2020 Harris County Discretionary Grant Application Narrative, pp. 8-9.
[24] 2020 Harris County Discretionary Grant Application Narrative, p. 13.

Title	Salary
Social Worker	$85,000
Social Worker	$85,000
Social Worker	$85,000
Total Salary Allotment	**$1,810,000**

6. TIDC MAC Grant Award to Harris County

On September 6, 2019, the Texas Indigent Defense Commission awarded Harris County, Texas a FY2020 Multi-Year Improvement Grant in the amount of $2,172,855 for the Managed Assigned Counsel Program. Harris County agreed to comply with the terms of the grant as written in the Request for Applications issued in January 2019, including the rules and documents adopted by reference in the Commission's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.

7. Experienced Managed Assigned Counsel Director Hired

With consulting services provided by the National Association for Pubic Defense and aggressive national recruiting, fourteen applicants applied for the MAC Director position. The Hiring Committee conducted written interviews of eight persons and oral interviews of four persons. On October 13th, 2020, Harris County hired Kenneth Hardin as the MAC Director. He began as Director on November 21, 2020. The newly established MAC will begin to take over responsibility for the appointment process from the judges in July 2021 depending on the ability to recruit and hire the necessary staff and the finalization of operational capacity.

Kenneth Hardin is an experienced public defense advocate. Previously, he served as a supervisor in the New Orleans Public Defender Office and a staff attorney in the Harris County Public Defender Office. He is experienced in the Harris County criminal legal system and in the utilization of a holistic defense representation model.

8. MAC Staffing and Salaries Modified

On December 18, 2020, the MAC Director requested alteration of the staffing and salaries. The original grant had 6 social workers. The modification requested that one social worker position be eliminated to increase all of the salaries to comparative position salaries within Harris County. An additional social worker position was converted to a Program Administrator position.

The Harris County Commissioners on January 5, 2021, approved the following requested modifications:

Total Staff: 18
Total Salary Allotment (excluding fringe benefits): $1,810,000

Application Title	Application Salary	Modified Title	Modified Salary
Executive Director	$160,000	Executive Director	$180,000
		Deputy Defender	$145,000
		Office Administrator	$90,000
		Immigration Attorney	$100,000
Administrative Assistant	$60,000	Administrative Assistant	$55,000
Administrative Assistant	$60,000	Administrative Assistant	$55,000
Technical Support Manager	$70,000	Systems Technician	$80,000
Financial Analyst	$70,000	Program Administrator	$90,000
Misdemeanor Division Chief	$130,000	Misdemeanor Division Chief & Training Director	$135,000
Supervising Attorney	$110,000	Resource Attorney	$115,000
Supervising Attorney	$110,000	Resource Attorney	$115,000
Supervising Attorney	$110,000	Resource Attorney	$115,000
Supervising Attorney	$110,000	Resource Attorney	$115,000
Holistic Defense Supervisor	$130,000		
Chief Investigator	$90,000	Chief Investigator	$90,000
Social Worker	$85,000		
Social Worker	$85,000		
Social Worker	$85,000	Social Worker Supervisor	$90,000
Social Worker	$85,000	Social Worker	$80,000
Social Worker	$85,000	Social Worker	$80,000
Social Worker	$85,000	Social Worker	$80,000
Total Salary Allotment (19)	**$1,810,000**	**Total Salary Allotment (18)**	**$1,810,000**

9. MAC Social Workers Reduced from Six to Four

In the grant request to TIDC, six social workers were proposed. With these modifications, one social worker position was converted to a program administrator and another social worker was eliminated to increase salaries across a variety of positions.

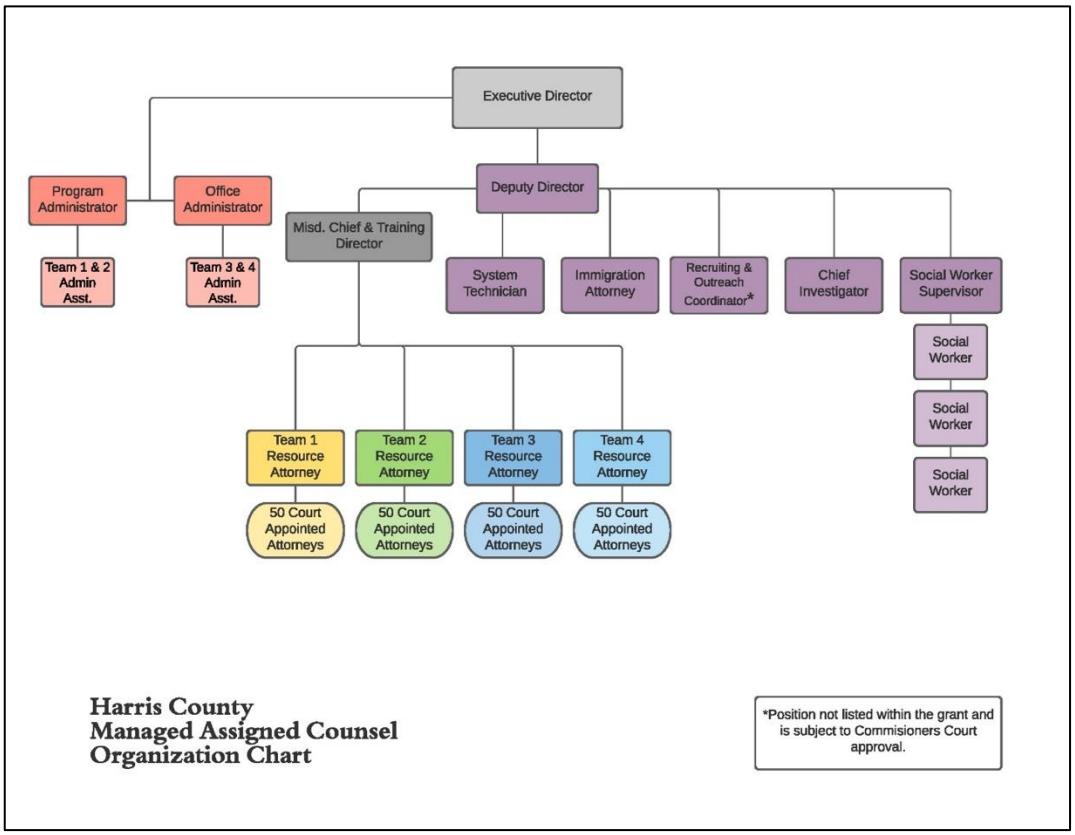
10. Additional MAC Positions Added

On February 9, 2021, at the request of the MAC Director, the County decided to fund one additional position, a Community Engagement & Recruiting Specialist, with additional county funds. On March 9, 2021 an additional county-funded position was awarded, the Juvenile Division Chief and Training Director.

11. The MAC Structure

The MAC Director indicates that the MAC is structured as follows:

Figure 1: Organization Chart for Harris County Managed Assigned Counsel



12. Conditions of the TIDC MAC Grant Award

The Statement of Grant Award was approved at TIDC's August 2019 board meeting and the grant modification request to extend the grant because of the late hiring of a MAC director was approved at the June 18, 2020 TIDC board meeting.[25]

The grant by TIDC to Harris County includes a number of significant conditions. They include:

- Operate a Managed Assigned Counsel Program in accordance with Article 26.047 of the Code of Criminal Procedure.
- Maintain a Managed Assigned Counsel Oversight Board to supervise the operation of this program. The County must submit a written policy on how the members are selected and which details the duties and procedures of the board with the first quarterly progress report. The Oversight Board must meet at least quarterly.
- Develop a written plan of operation as detailed in Article 26.047 of the Code of Criminal Procedure and provide a draft to TIDC with the first quarterly progress

[25] Found at Appendix No. 5.

report. Amendments to the plan of operation must be provided to TIDC with subsequent quarterly progress reports.

- The plan of operation must include caseload standards for each attorney and for the general operation of this program consistent with research-based guidelines published by TIDC. The Director of the Managed Assigned Counsel Program must notify the program's Oversight Board in writing if an exception to the caseload standards is authorized.
- The County must provide to the Commission staff the minimum job requirements and a full job description of the staff positions specified under this project before positions are publicly posted.
- This grant requires quarterly progress reports to document the work performed and impact of the program. The TIDC grants administrator will construct an on-line progress report that reflects the work performed in this program and is consistent with the grant application listed below. The County will be able to request modifications to the on-line report when the performance measures do not accurately reflect the work performed. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.

A first quarterly report reflecting progress between October 2020 and March 2021 was submitted by the MAC to TIDC in an April 15, 2021 letter.[26]

13. Harris County Office of Managed Assigned Counsel Plan of Operations

On May 4, 2021, the MAC Director submitted to TIDC the Harris County Office of Managed Assigned Counsel Plan of Operations pursuant to the TIDC grant conditions and Article Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM.

14. Felony Case Representation

The Harris County Public Defender Office takes felony appointments. Felony cases not assigned to the Harris County Public Defender Office are assigned to private counsel upon appointment by a judge or through a contract assignment made between a lawyer and a court.

15. Harris County Public Defender Office Increasing Capacity to 50% and Taking Misdemeanor Appointments

On June 9, 2020, the Harris County Commissioners Court directed the Public Defender's Office (PDO), in collaboration with the Justice Administration Department (JAD) and the Texas Indigent Defense Commission (TIDC), to develop a plan for the PDO to increase its capacity to provide 50% of the representation for persons unable to hire counsel for felony, misdemeanor, and juvenile cases.

[26] Report found at Appendix No. 6.

The requested plan was published on December 8, 2020 *Justice for All: A Proposal to Expand the Harris County Public Defender's Office and Create a Model Indigent Defense System*.[27]

The plan concluded that the Harris County Public Defender Office "could be expanded to take half of all appointed cases within two years…. The PDO budget will almost double, however the cost per case will be reduced, and there will be a significant cost offset by eliminating many private attorney appointments. This will increase the quality of indigent defense in Harris County. Lawyers consistently get better results for their clients. This reduces incarceration costs to the county and ultimately leads to lower recidivism, which not only reduces those direct costs to the criminal legal system but makes those persons available and eligible for opportunities in education, employment, and other aspects of productive citizenship. Additional reforms that would improve the County's indigent defense system involve expanding the MAC, creating a centralized and uniform indigency determination process, and expanding the County's indigent defense research capabilities."[28]

On October 12, 2020, the Harris County Public Defender Office began accepting appointments for misdemeanor defendants without a mental health diagnosis pursuant to a pilot in some of the courts.

16. Harris County, Texas Criminal Justice Coordinating Council

Harris County has a Criminal Justice Coordinating Council.[29] There are 35 Members.[30] Members include the Harris County Chief Public Defender and a Criminal Defense Bar Representative. It was recently reformed to add community members and criminal legal non-profits with voting privileges. The Harris County Managed Assigned Counsel Director is not a member.

[27] Found at: Justice Administration Department harriscountytx.gov
[28] *Id.* at 22.
[29] See: Criminal Justice Coordinating Council > CJCC Docs (harriscountytx.gov)
[30] See: 3. Proposed Bylaw amendments.pdf (harriscountytx.gov)

III. Findings on Data, Appointment of Counsel, Workload, Staffing, Effectiveness of Representation, Holistic Defense

Our review and analysis on the critical components of a public defense delivery system that provides effective, client-centered interdisciplinary holistic representation according to national and state standards include the following Findings from the information reviewed. In order to provide context, we discuss the Findings under the categories of general data, representation at magistration, appointment of counsel, workload, appointed attorneys and MAC staffing, holistic defense.

We reviewed two sources of aggregate quantitative data and four sources for individual level quantitative data. The Texas Office of Court Administration (OCA) receives data from the Harris County Court Clerk on a monthly basis which is used to produce the Misdemeanor Activity Detail Report providing cases filed, disposed, and dismissed by offense type as well time to disposition information. The Texas Indigent Defense Commission provides the number of cases appointed by court by private appointed counsel and the Harris County Public Defender Office as well as cost of investigators, expert witnesses, and 'other' case costs. TIDC is also a source for individual level lawyer data, which was used to calculate number of cases represented by private appointed counsel in Harris County and all Texas counties. All of this information is presented as the TIDC fiscal year (October through September) because TIDC only provides it within those categories. See: TIDC: http://tidc.tamu.edu/public.net/.

Harris County Criminal Courts at Law Court Administration staff provided individual level defendant information on cases filed, bond release information, disposed, type of disposition, sentence type and length if applicable (except deferred adjudication length - pending), charge and charge level, and lawyer type which was used to build a dataset of defendant disposition by type. The set included a state identification number (SID) that was used to match defendants with their Texas Department of Public Safety (DPS) criminal history file. This provided arrest offense and date and judicial history, how disposed and the applicable sentence type, for each person in the dataset. This combined information was used to create comparison cohorts so the defendant outcomes by lawyer type would be an apples-to-apples comparison, *i.e.,* the results compare defendants with similar criminal history, charges, and bond status.

Data presented by year means TIDC Fiscal Year 2016 to TIDC Fiscal Year 2020, which begins October 1 and ends September 30.

Overriding conclusions

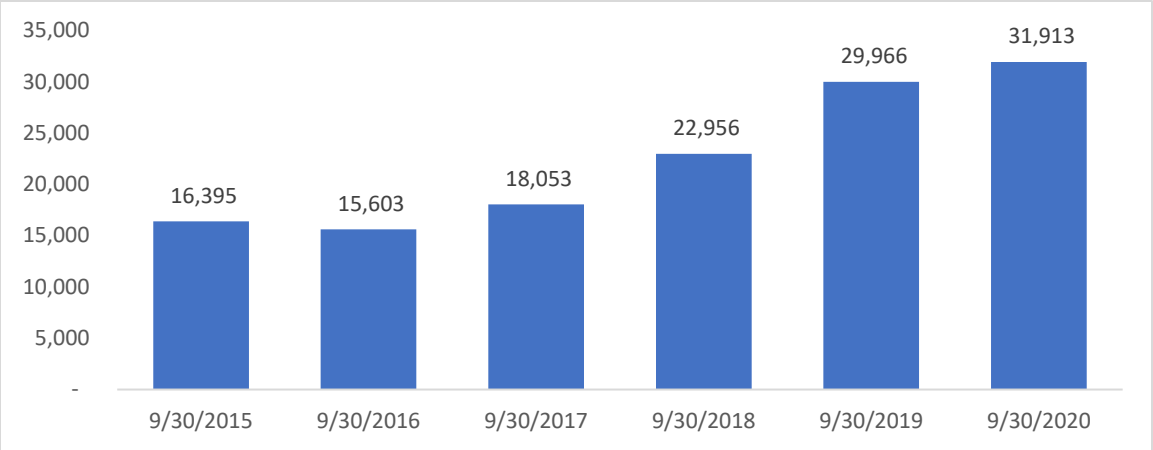
General data

Over a 5-year period, pending misdemeanor cases have increased, misdemeanor filings decreased, time for disposition of a misdemeanor increased, misdemeanor cases pending on the last day of the fiscal year have increased.

1. General Data

Finding 1A: The number of misdemeanor cases pending in Harris County at the end of TIDC FY2020 was 31,913 as compared to 16,395 in 2015.

Figure 2: Cases Pending on End Date of TIDC Fiscal Year, FY 2015 through FY 2020



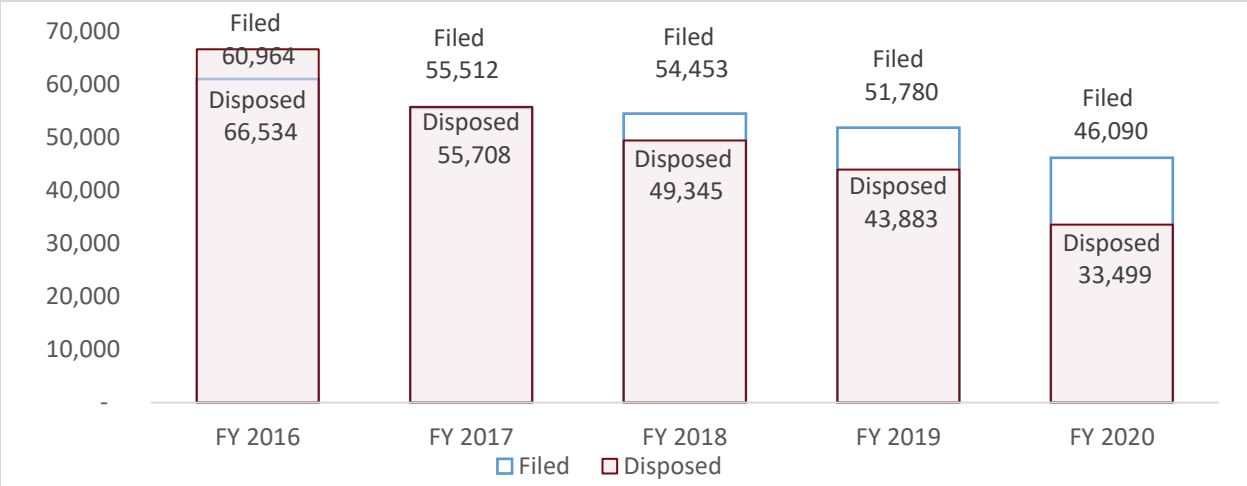
Source 1: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Finding 1B: The number of misdemeanor filings in TIDC's Fiscal Year 2020 was 46,090.

Finding 1C: Misdemeanor filings in County Courts of Law decreased by 14,874 cases from 60,964 in TIDC's Fiscal Year 2016 to 46,090 in TIDC's Fiscal Year 2020, a 24% decline.

Finding 1D: Misdemeanor cases disposed of decreased by 33,035 from 66,534 in TIDC's Fiscal Year 2016 to 33,499 in TIDC's Fiscal Year 2020, a 50% decrease.

Figure 3: Misdemeanor Cases Filed and Disposed in County Courts at Law, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020



Source 2: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Finding 1E: For every 1 case filed in FY 2016 1.1 cases were disposed and by FY 2020 only .73 cases were disposed for every 1 case filed.

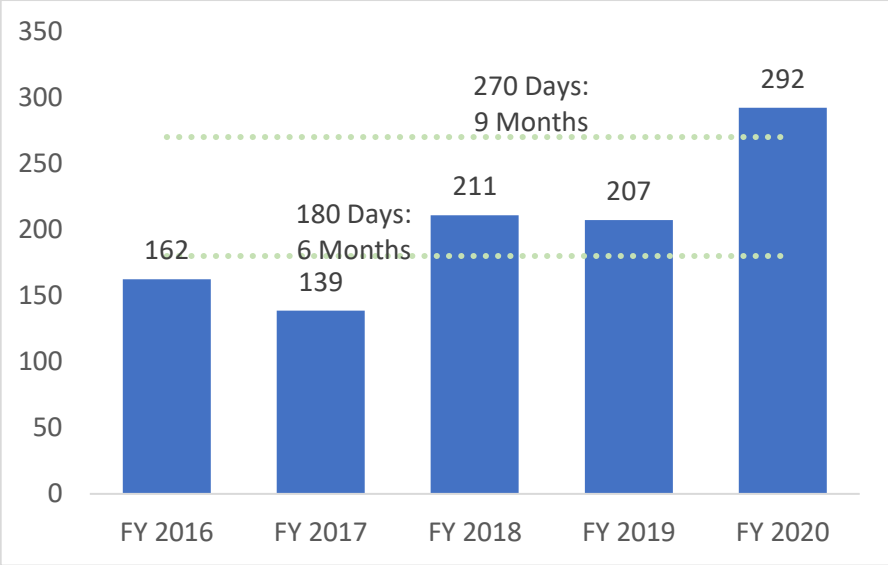
Table 1: Disposition Rate, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	% Changed
Filed	60,964	55,512	54,453	51,780	46,090	-24%
Disposed	66,534	55,708	49,345	43,883	33,499	-50%
Number Disposed for Every 1 Case Filed	1.09	1.00	0.91	0.85	0.73	-33%

Source 3: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Finding 1F: Between 2016 and 2020, the average number of days from filing to disposition substantially increased from 162 to 292.

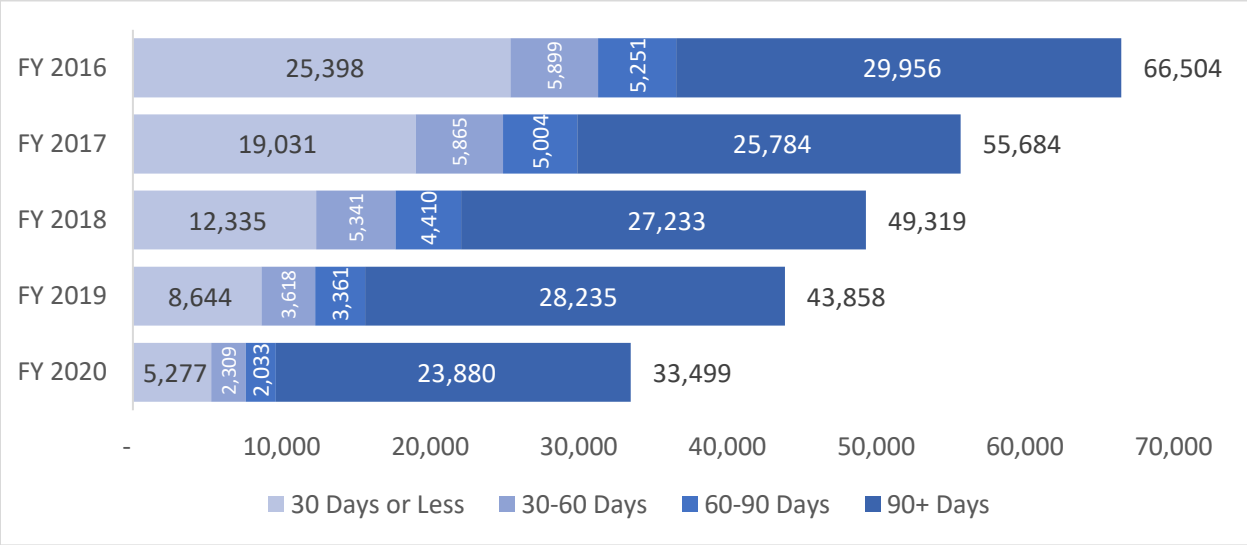
Figure 4: Length of Time from Filing to Disposition, TIDC Fiscal Year 2016 through TIDC FY 2020[31]



[31] This data reflects people, not cases, and are for people with original cases only not revocations due to data's structure. Data reflecting people means that a person with multiple cases disposed on the same date will be counted once so the length to disposition is not weighted by persons with multiple cases.

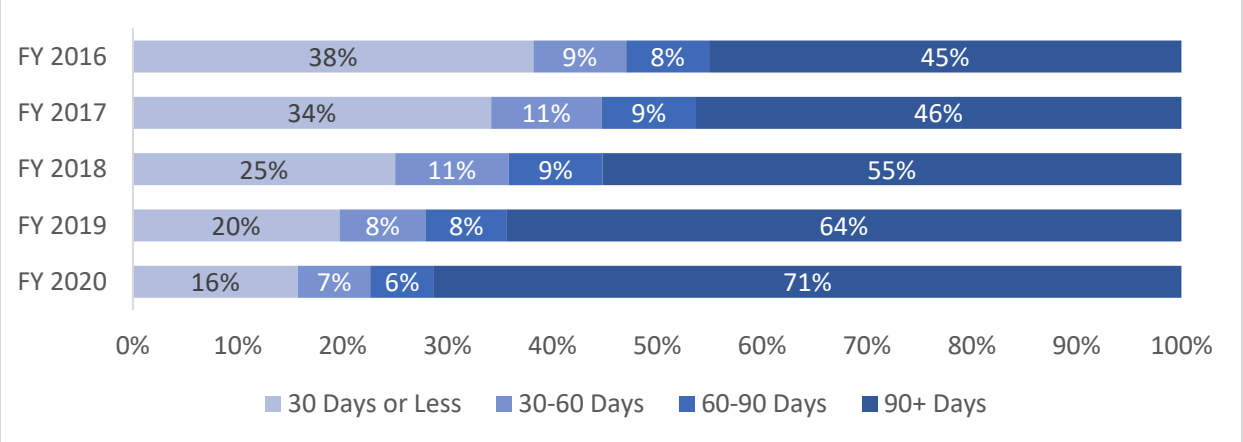
Finding 1G: The time to disposition has slowed significantly with the proportion taking 90 days or more increasing from 45% to 71%.

Figure 5: Number of Cases Disposed in Time Categories Reported by Texas Office of Court Administration, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020



Source 4: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Figure 6: Proportion of Cases Disposed in Time Categories Reported by Texas Office of Court Administration, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020



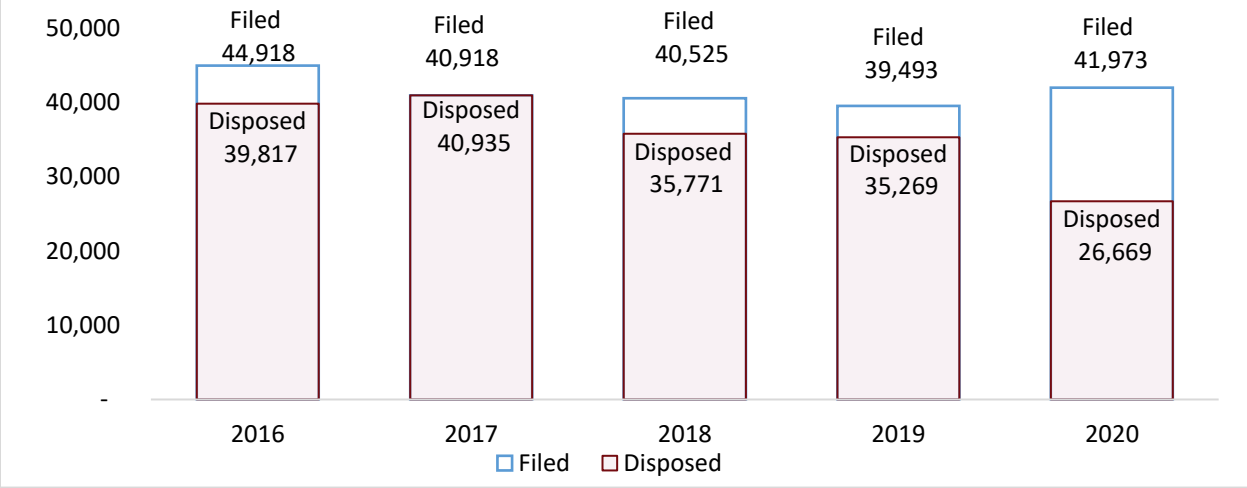
Source 5: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Finding 1H: The delay in resolution of misdemeanor cases of an average of 292 days in 2020 is inordinately long.

Finding 1I: Felony filings in District Courts of Law decreased by 2,945 cases from 44,918 in 2016 to 41,973 in 2020, a 6.6% decrease.

Finding 1J: Felony dispositions in District Courts of Law decreased by 13,148 cases from 39,817 in 2016 to 26,669 in 2020, a 33% decrease.

Figure 7: Felony Cases Filed and Disposed in District Courts, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020



Source 6: Office of Court Administration. District Courts: Felony Activity Detail. Retrieved 12/24/2020 from card.oca.gov

TIDC's policy monitoring standards include a metric to measure distribution of case assignments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share.[32]

Table 2 below shows the calculation for this policy monitoring metric to determine the share of cases paid to the Top 10% of Attorneys in Harris County. The total number of appointed cases for the fiscal year (1) and number of lawyers receiving appointments (3), both exclude Harris County Public Defenders and their cases, are used to calculate what 30% percent of cases were (2) and ten percent of lawyers were (4). Then, the number of cases actually received by the top 10% of lawyers (4) are presented for comparison (5). When the actual number the top 10% receive (5) is less than 30% of total cases (2), then the county is in compliance with this policy monitoring requirement (6). Harris County's County Courts at Law were in compliance for all years reviewed for this project.

[32] Tex. Admin. Code § 174.28 (5)(D) "For assigned counsel and managed assigned counsel systems, the number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review and the percentage share of appointments represented by the top 10% of attorneys accepting appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list. For this analysis, the monitor will include only attorneys who were on an appointment list for the entire time period under review."

Table 2: Share of Cases Paid to the Top 10% of Attorneys in Harris County, TIDC Fiscal Year 2016 through Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
1. Number of Appointments	26,058	20,607	19,116	16,059	13,281
2. 30% of Cases	7,817	6,182	5,735	4,818	3,984
3. Number of Lawyers Appointed	118	128	126	139	150
4. 10% of Lawyers	12	13	13	14	15
5. Number of Cases Represented by Top 10%	**5,176**	**5,146**	**4,295**	**3,491**	**2,828**
6. In Compliance	**Yes**	**Yes**	**Yes**	**Yes**	**Yes**

Looking at misdemeanor assignments across all County Courts at Law may obfuscate intra-court trends. The data review team adapted the top 10% rule to individual courts for fiscal year 2020.

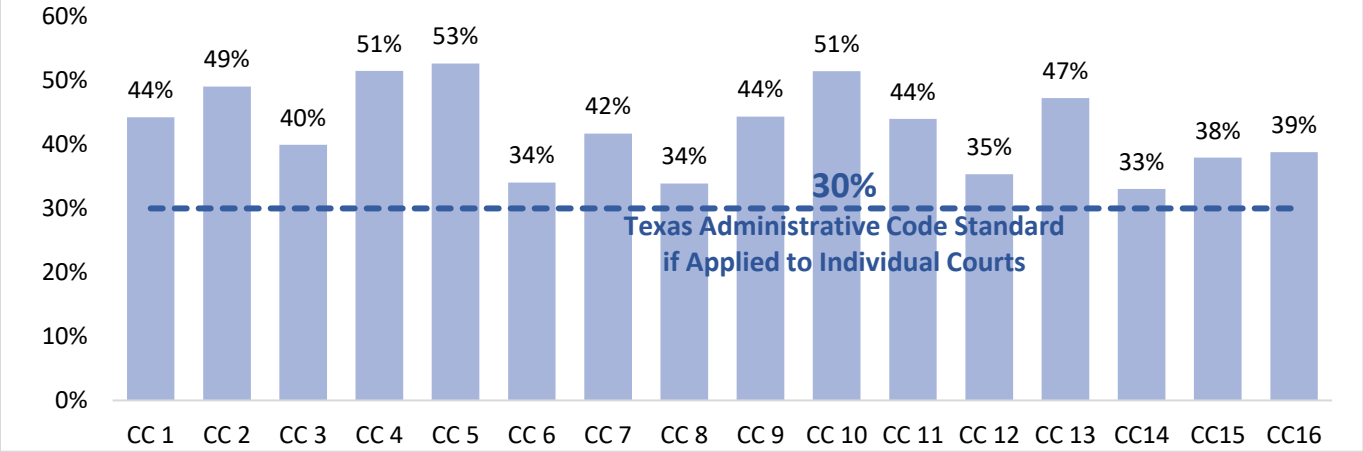
Table 3, below, shows the calculation for this policy monitoring metric to determine the share of cases paid to the Top 10% of Attorneys in Harris County by County Court at Law in fiscal year 2020. This takes the same logic as used above by applies it by court, *e.g.*, (1) County Court at Law 16 had 456 appointments in fiscal year 2020 and (2) 30 percent would be 136.8 appointments. There were (3) 20 lawyers who received appointments in that court so (4) 10 percent would be 2 lawyers. The actual 2 lawyers with the highest number of appointments (5) received 177 appointments or (7) 39 percent of total appointments (177 divided by 456), so the court was not in compliance (6) with the rule. To be fair, the Texas Administrative Code says to apply this to the court *level* so this is not to say that Harris County is out of compliance but more to raise the question of if the county is comfortable with this pattern.

Table 3: Share of Cases Paid to the Top 10% of Attorneys in Harris County by Court, TIDC Fiscal Year 2020

CCL # 2020	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1. Num of Appts	524	619	695	715	1,107	604	556	726	610	756	702	625	652	877	808	456
2. 30% of Cases	157.2	185.7	208.5	214.5	332.1	181.2	166.8	217.8	183	226.8	210.6	187.5	195.6	263.1	242.4	136.8
3. Num of Lawyers Appt'd	33	28	24	22	20	18	18	25	22	27	20	33	25	19	27	20
4. 10% of Lawyers	3.3	2.8	2.4	2.2	2	1.8	1.8	2.5	2.2	2.7	2	3.3	2.5	1.9	2.7	2
5. Cases Rep'd by Top 10%	231.8	303.6	277.6	368.2	583	205.6	231.8	246	270.6	389	309	221	308	290	306.4	177
6. In Compliance	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**	**No**
7. Actual Proportion	44%	49%	40%	51%	53%	34%	42%	34%	44%	51%	44%	35%	47%	33%	38%	39%

Figure 8, below, shows the share of cases appointed to the top 10 percent of lawyers taking appointments by County Court at Law during TIDC's fiscal year 2020 compared to the 30 percent rate. Again, this standard does not apply to individual courts; however, if it did, all the courts would have assigned more than 30 percent of cases to 10 percent of lawyers.

Figure 8: Share of Cases Paid to the Top 10% of Attorneys in Harris County by Court Compared to the 30 Percent Standard, TIDC FY 2020



2. Representation at Magistration

We were asked to do "an evaluation of current misdemeanor indigent defense systems to assess the extent to which current operations best meet the goals of providing effective indigent defense services during the pretrial period. The evaluation must, at a minimum, analyze the following: "… (B)ail hearing characteristics, including number of individualized bail hearings, number of informal requests for bail modification, quality of advocacy provided at bail hearing, and bail hearing outcomes…."[33]

Overriding Conclusion

Almost all defendants magistrated request counsel for the hearing. All who request counsel are provided representation by full-time staff attorneys from the Harris County Public Defender Office. The full-time defenders interview these clients before appearing in court. They also have access to an individual's prior criminal justice involvement and the current arrest before their case is addressed by the magistrate.

Magistration Dockets

There are at most 21 defendants on each of the eight daily magistration dockets, one every three hours, which operate seven days a week. Some of the 21 persons are charged with a misdemeanor, others with a felony, others with both a misdemeanor and a felony. Others face a bond, probation or parole revocation for a violation of a condition of their release.

[33] Job Number 200265, approved by Harris County Commissioners Court January 19, 2021.

The magistrates indicate they have the following information before them when considering a case involving a misdemeanor:

- The defendant's criminal history electronically;
- DIMS (District Attorney Intake Management System) statement describing the offense electronically;
- The public safety assessment (PSA) is not provided on misdemeanors but is provided on felonies by paper copy;
- Financial information of the defendant prepared by Pretrial Services that includes the number of dependents, how long the person has lived at their residence, income, source of income, monthly expenses, cash on hand, employment, employer, length of employment by paper copy. If the affidavit of indigence is filled out, this information is used as a basis to determine the amount of money the arrestee has the ability to pay at the time of the hearing and use for any release conditions that qualify for a waiver. The magistrate also knows if the person is experiencing homelessness because the address will be a shelter; and,
- Indication the arrestee has or is suspected of having a mental health diagnosis from the Texas Commission on Jail Standards screening tool and/or the CCQ match and/or prior Harris County records of a diagnosis.

There are two Article 15.17 forms being used by magistrates, one when a defendant is present and one when a defendant is not present.[34] The magistrates also consider information presented orally by defense counsel and the prosecution.

Representation at Magistration

A person appearing on the magistrate's docket for a misdemeanor offense is presumed to have representation by the Harris County Public Defender Office attorney unless they refuse representation. A person appearing for a felony must indicate they want representation by counsel. In reality, the magistrate asks everyone if they would like the help of the Public Defender at the magistration hearing. If the person indicates they want representation by counsel, regardless of whether indigent or whether they have retained or will retain counsel, they are represented by Harris County Public Defender Office full-time public defenders.

The magistrates' opinion is that the counsel who appear before them on a regular basis are very well prepared and thorough. They make reasoned individualized arguments on behalf of their clients. The magistrates also report they would like defense counsel who do not regularly appear before them to provide more individualized information tailored to the client, they are representing especially in family violence cases or in cases where the client has a criminal history. They also reported the value of hearing information on the client's ability to appear at future proceedings.

[34] Found at Appendix No. 12, Forms used by Magistrate at magistration, Article 15.17 hearing; defendant present; defendant not present.

Harris County Public Defender Office Staffing for Magistration
The Harris County Public Defender Office has a Bail Division that is led by Wade Bainum. He has been practicing law since October 1997 and has been doing criminal defense representation since 2000.

In addition to the Chief, the Bail Division is staffed with ten attorneys and two administrative assistants. As of April 2021, the Bail Division has three attorneys (soon to be two) with more than one year experience in the Bail Division and three attorneys (soon to be four) with six months or less in the Bail Division.

The attorneys in the Bail Division provide representation Monday through Friday. There are three shifts for these attorneys. The first shift is 6:00 a.m. to 2:00 p.m.; the second shift is 2:00 p.m. to 10 p.m.; and the third shift is 10:00 p.m. to 6:00 a.m. On weekends, trial attorneys from the Harris County Public Defender Office provide the representation at magistration. These trial attorneys volunteer to work the weekend shifts and are paid overtime for their work.

The turnover of public defender attorneys providing representation at magistration is significant. As the Public Defender expands its Trial Division, the Bail Division loses staff as they transfer to trial positions.

Appointed Counsel
Attorneys appointed to represent defendants unable to afford counsel for their misdemeanor charges do not appear at magistration.

Magistration Counsel Training
The Harris County Public Defender Office has manuals for use by attorneys doing magistration including NACDL's *The Harris County, Texas Bail Manual* (September 2018), and an internal *Bail Hearing Division Manual*. The attorneys in the Bail Division receive two weeks of training that covers the basics of state law and local policy. It also covers Office practices and expectations including intake, interviewing, and advocacy strategies.

Advocacy at Magistration; Client Interviews; Information Available to Counsel
The benefits of being released pretrial are significant including better case outcomes and fewer collateral consequences. The responsibility of counsel to advocate for pretrial release for clients is a clear responsibility of a criminal defense lawyer.

The Harris County Public Defender Office attorneys providing representation to clients at magistration interview clients prior to the client's appearance[35] using the attached interview form.[36] Information obtained includes ties to the community and work history. The attorney

[35] Texas Code of Criminal Procedure 26.04(b)(3) states that the court must "ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings."
[36] Appendix at No. 8, Harris County Public Defender Office magistration Interview Form, April 2021.

conducting the interview has access to criminal history including TCIC and NCIC information and some information from a pretrial risk assessment, financial information, the DIMS report, and any information supplementing the DIMS. When clients communicate information that is not relevant for the magistration hearing, that information may be recorded in the notes section of the interview form, including family information beyond what is included on the intake form. This information can then be used by subsequent counsel. Full client contact information is not always recorded on HCPD's intake form, nor on documentation accessible to the attorney at magistration and is therefore not always readily available to subsequent counsel.

In April 2021, the Harris County Public Defense Office Bail Division attorneys obtained access to Houston Police Department (HPD) Offense Report and call slips (dispatch logs which show the data entered by the dispatcher who responded to the 911 call) for any HPD arrests. The attorneys at magistration do not receive reports from the Harris County Sheriff Department or any other arresting agency.

The interviewing attorney communicates the nature of the hearing to the client including what is at issue and relevant. The attorney answers client questions and advises the client on what and when to communicate in court. In order to manage client expectations, the interviewing attorney also educates the client on what the hearing is not about. Harris County Public Defenders who do interviewing for magistration report that while some client interviews last 15 to 20 minutes, most interviews last 3 to 7 minutes. The public defenders report that, ideally, they would prefer enough staffing and time to spend 10 to 15 minutes with each client. During the period reviewed which coincided with COVID-19, the interviews were conducted through a phone call to the jail (the Bail Division has returned to the JPC in June 2021). The attorneys spend substantial time on administrative matters seeking to communicate remotely with clients in custody. If a client does not answer when called, the attorneys must call again or ask the location coordinator to find the client who may have been taken to housing. When there is a return to in-person interviews at the Central Processing Center, the Harris County Public Defender Office reports that it will need four booths available for the interviews of clients.

The attorney doing the interview may be, but is not always, different from the attorney representing the client in court. For example, on first shift the Office has Attorney 1, Attorney 2, and Attorney 3. All three attorneys interview clients for the next docket, and one of the three appears in court to represent the clients that he/she has interviewed as well as the clients the other two attorneys have interviewed. While he/she is in court, the other two attorneys conduct interviews and then one of them will provide representation on the next docket. The attorney doing the interview provides the interview information to the attorney who is in court when the client's case is called by the court.

The attorney in court addresses any probable cause matter and advocates for personal recognizance bond or an affordable bond amount. At the conclusion of the hearing, the in-court attorney answers any client questions.

Bond Conditions

The HCPD attorneys also advocate for the least restrictive bond release conditions. Harris County Public Defenders doing in-court representation at magistration report that magistrates usually waive fees for ankle bracelets and other conditions that impose a cost. When not automatically waived by the magistrate, the public defenders seek a waiver. The magistration attorneys report that magistrates are inconsistent in imposing bond conditions and too often impose too many or blanket conditions on their clients.[37]

Availability of Information to Subsequent Counsel Providing Representation

The bail interview information obtained by the HCPD attorney is recorded in the Harris County Public Defender Office case management system. It is available upon request to any defense attorney who provides subsequent representation at the trial stage but only available electronically to other HCPD attorneys. The information taken during bail hearing interviews is available to private attorneys who are subsequently appointed to represent the client if they call the Harris Public Defender Office and request the information. Currently, the Harris County Public Defender Office does not have the means to follow every appointed counsel case, find out who was appointed, and then forward the information. Appointed attorneys have requested this information approximately 15 times in the last year. Currently, there is no way to export the DIMS, HPD Offense Report and the call slips provided by the prosecutor's office into the Harris County case management system for ready access by subsequent counsel.

Interpreters

The Harris County Public Defender Office recently started using LanguageLine, a telephonic interpretation service, that is available 24/7. That service helps the Harris County Public Defender Office with its interviews but does not speed up proceedings for the client in court.

Sometimes when in-person interpreters are not present clients get passed to a later docket, and, depending on the language, can be passed through multiple dockets. There is no reason why telephonic interpreter cannot be used. Delays from interpreter problems are unnecessary. For example, a Swahili speaker arrived at the Joint Processing Center at 11PM and waited through four dockets until 1P the following day (14 hours). A telephonic interpreter would have cut that wait by between 3 (10AM docket) and 12 (1AM docket) hours.[38]

To date, the courts have not allowed telephonic interpretation in court when an interpreter cannot be physically present. If that were to change and the courts used telephonic translation services, that would reduce the number of times a case has to be passed until an interpreter for the particular language can be physically present.

Texas CCP 38.30(a-1) allows for a qualified telephone interpreter to be sworn in to interpret. Public defenders report that currently interpreters in court are not administered the interpreter's oath.

[37] The ORDER FOR PRETRIAL SUPERVISION AND BOND CONDITIONS (11/03/2017) is found at Appendix No. 12.
[38] Bainum, W. 1 July 2021. RE: Interpreter Issue. *Personal Communication*

Immigration Issues
A criminal defense attorney has a responsibility to properly advise a client about the immigration consequences of the client's decisions. Immigration issues are relevant to representation at magistration. The Bail Division has a former immigration attorney on staff, and HCPD has an Immigration Division with two to three lawyers available to any defense lawyer with an immigration question on a Harris County case. Offering competent advice to clients on immigration issues is difficult as the Immigration and Customs Enforcement (ICE) officials in Harris County have not communicated any policies or described their practices. The Harris County Public Defender Office has had immigration CLE's for the general office that are recorded and available for review, but none particularized for issues at the magistration stage. With the change in the administration nationally, the information in those recorded CLE presentations is already dated. The Harris County Bail Division is in communication with the Immigration Division attorneys in the Office and is exploring new approaches to necessary information. ICE holds, as discussed later, impact the type of bond a magistrate is willing to give and the advice HCPD gives defendants because release on GOB or personal bond had resulted in a person being placed in a federal facility, missing court, and a bond revocation. The reviewed recordings occurred in September 2020 and include multiple ICE hold discussions; however, it is reported that as of June 2021, the number of holds has dramatically decreased.

Conflicts and Multiple Defendants
When there are multiple defendants in a single case or a defendant that creates a conflict of interest for other reasons, the Harris County Public Defender Office attorneys provide representation to all arrestees. The Office believes that no ethical issue is presented since the matters before the magistrate only involve pretrial release and probable cause issues. At this stage, attorneys are limited to arguing over the DIMS statement only and Bail Division attorneys are instructed to stay within the confines of the DIMS statement and discuss the reasoning with their clients.

Appointment of Counsel
Magistrates have a financial affidavit of indigency that is used for setting bail and, possibly, waiving fees associated with any conditions. Currently, magistrates do not have authority to appoint counsel for the full case if probable cause is found. This means, although the person is represented at magistration by a Public Defender, the appointment decision for purposes of representation on the charged offense is delayed until the defendant subsequently appears in the County Court of Law, which is a week later for those released on any type of bond.

Confidentiality
Confidential communications with clients are foundational to the ability of an attorney to represent a client, especially when the client is in custody and speaking to his lawyer by phone or through other electronic means.

Separate, Parallel Dockets
The JPC has two courtrooms to hold magistration hearings and currently use only one. There are three possible models of dual courtroom use though they would all require additional

staffing. One option suggested by the magistrates is a separate misdemeanor docket is possible and desired in order to increase efficiency. A second option is to have two fully staffed courtrooms running at parallel times effectively doubling the number of persons per docket. The final option is to create a separate 'exception' docket in which a magistrate could sign warrants, address persons with holds from other jurisdictions, and identify the persons on upcoming dockets who are good "early present" releases, *i.e.*, persons not eligible for general order bonds but released on personal bond with seeing the magistrate. All these options require additional staffing, though the last option requires the fewest additional staff and would be the least disruptive to the current process flow.

Review of Magistration Proceedings

In order to obtain a sample that represents what is being done during magistration, we reviewed the recorded videos of every magistration hearing from September 1 through September 7, 2020. The Assessment data research team viewed every misdemeanor B and higher magistration hearing. For any arrestee with a misdemeanor, the research team hand coded a dataset including arrestee demographics, arrestee criminogenic information (current supervision status, other pending charges, and number of charges presented at this hearing), whether or not probable cause was found, bail amount and type suggested by the defense and prosecutor, and the final amount and type set by the magistrate.[39] Findings from this review include the following:

There were 813 defendants. Of those, 123 were on the misdemeanor C docket, which are city or traffic offenses and do not carry the possibility of jail time if convicted. These were excluded.

There were 55 magistrate dockets with misdemeanor As and Bs and/or felonies. The 689 people magistrated during these dockets include 201 (29%) misdemeanors, 436 felonies (63%), and 52 people with felonies and misdemeanors (8%) in which the misdemeanor was mentioned.

This means 253 (37%) of people were magistated for misdemeanors with help of the Harris County Public Defender and the following information involves those 253 people.

The average amount of time spent on an individual case was just over 5 minutes on misdemeanors and 9 minutes and 20 seconds for those who also had felony charges.[40] The following table summarizes this information.

[39] For people with only felonies, the name and offense was recorded. For people with only misdemeanors, the following was recorded: demographics when clear: sex, race/ethnicity, age, ICE hold (impacts Personal Bond option) and MH if alluded to (MHU, 16.22, etc); Offense type and level; Bond suggested by PD and DA and eventually set by Magistrate (with reasoning); Personal Bond position of PD and DA and eventually set by Magistrate (with reasoning); Time start/stop; Request for Lawyer; Criminogenic: other prior pending cases; if a felony was also filed; if the person was under supervision (parole, probation, bond in Harris Co, bond in another county).

[40] As of February 2021, the DIMS summary is no longer read at magistration, which reduces the amount of time addressing each person's case on the docket.

Table 4: Misdemeanor Magistration Descriptive Metrics

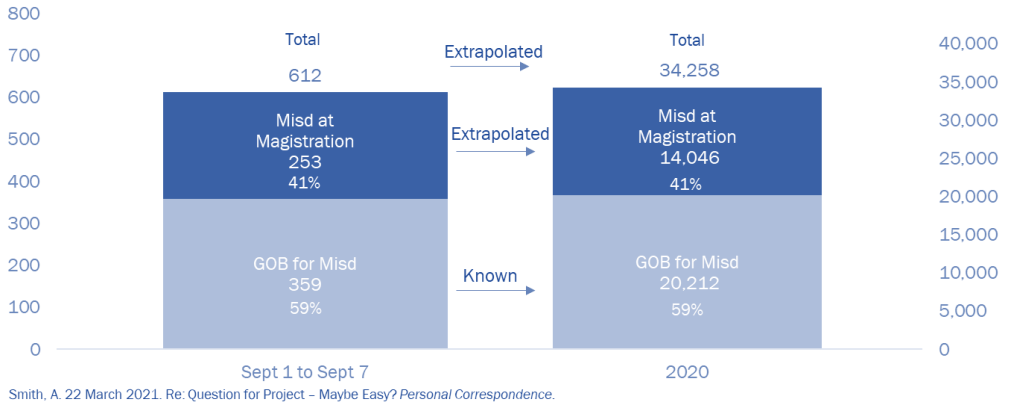
	Misdemeanor Only	Misdemeanor and Felony	Total Misdemeanors
Total	201	52	253
% of Total Misd	79%	21%	100%
Average Misd per Docket	3.7	1.0	4.7
Minimum Misd per Docket	0	0	0
Maximum Misd per Docket	14	4	16
Avg Length of Time a Misd was in Front of the Magistrate	5m 5s	9m 20s	5m 59s

The recordings showed 253 misdemeanor magistration settings from September 1 through September 7, 2020. During this same period, September 1 through September 7, 2020, the Harris County Justice Administration Department indicates that 359 persons who were charged with a misdemeanor were released on a General Order Bond.

There was a total of 612 people during this week with 41% going through magistration and 59% receiving a General Order Bond.[41]

Applying the 41%/59% split from this week in September 2020 suggests, assuming this September 2020 week is representative of the other 51 weeks, about 34,258 people will be processed at the Joint Processing Center for misdemeanors, 14,046 people will go through the magistration process with representation by the Harris County Public Defender Office for misdemeanors, and the known 20,212 people with General Order Bonds will be released without an opportunity to request counsel before release. Again, this assumes the September week is representative and it probably is not as this week included the Labor Day three-day weekend and occurred during the COVID-19 pandemic. Harris County JAD tracks this information thoroughly. This extrapolation is summarized in Figure 9:

Figure 9: Extrapolation from September 1 – September 7, 2021 to the Full Year



Smith, A. 22 March 2021. Re: Question for Project – Maybe Easy? *Personal Correspondence.*

[41] The Harris County Justice Administration Department indicates that during calendar year 2020 a total of 20,212 General Order Bonds were issued for people with misdemeanors processed at the JPC.

Additionally, during this week of review, there were also 79 releases that were "early present" releases.[42] These are arrestees given personal bond by the magistrate upon the facts in the DIMS summary. They are not magistrated with the full process with representation from the Deputy Public Defender nor input from the Assistant District Attorney.[43]

With the "early present" releases removed, the full magistration for misdemeanor process occurred 186 times in the seven-day review period with an average 3.5 arrestees with at least one misdemeanor per docket; however, there were multiple dockets with no misdemeanor arrestees.

The early present arrestees each took about 39 seconds of time during the docket. For these cases, the magistrate notes the name, maybe the charge, and conditions and moves on compared to the full magistration process which took an average 7 minutes and 54 seconds in September 2020. This is likely shorter as of February 2021 because the DIMS summary is no longer being read out loud. This information is summarized in the following table.

Table 5: Misdemeanor Magistration Metrics for Total, Early Present, and Full Magistration Process

	Total Misdemeanors	Early Present	Full Magistration for Misdemeanors
Total	253	67	186
% of Total Misd		26%	74%
Average Misd per Docket	4.7	1.2	3.5
Minimum per Docket	0	0	0
Maximum per Docket	16	9	7
Avg Length of Time a Misd was in Front of the Magistrate	5m 59s	0m 39s	7m 54s

The following table of demographic information is for the 186 people arrested for misdemeanors and going through the full magistration process.[44]

Demographics

The majority of clients were males with an average age of 30. The majority were also US citizens. Not all non-US citizens had ICE Holds.

[42] Of the 79, 67 "early present" releases were assumed to be misdemeanors. It is not clear on the videos what the offense levels are for all these people. The conditions help make qualified guesses and sometimes the magistrate will refer to the offense but for many people, these were guesses. Though it is not definitive that 67 "early present" were misdemeanors, at most 67 were misdemeanors.

[43] The Chief of the HCPDO Bail Division believes the number of "early present" has increased since September 2020 as more magistrates are revieing the DIMs prior to the docket being called and approving release.

[44] The early present are removed because they were never seen on screen, so the only information ever given was sex or implied sex from name. The arrestees with ICE Holds were not considered for personal bond because once release ICE would take them into custody, and they would miss court settings. This was mentioned several times in the recordings as a concern of the ADA and a reason the Deputy Public Defender had no position on personal bond release.

Table 6: Demographic Information for Clients at Magistration

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
Male	123	90%	41	92%	164	88%
Female	13	10%	9	8%	21	12%
Average Age	30		30		30	
US Citizen	119	87%	47	94%	166	89%
Not a US Citizen	17	13%	2	4%	19	10%
ICE Hold (Subset of Not a US Citizen)	11	8%	1	2%	12	6%
Total	**136**		**50**		**186**	

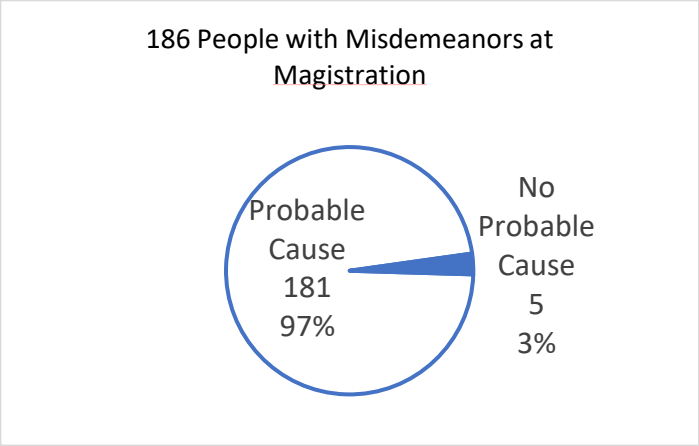
The following additional demographic information is for the 186 people arrested for misdemeanors and going through the full magistration process.[45] Demographics are conjecture from visual image, language, and surname and should not be taken as conclusory.

Table 7: Race/Ethnicity for Clients at Magistration

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
Black / African-American	48	35%	18	36%	66	36%
Latino / Hispanic	46	34%	18	36%	64	34%
White	13	10%	8	16%	21	11%
Other and Unknown	29	21%	6	12%	35	19%
Total	**136**		**50**		**186**	

Of the 186, there were five people, 3%, without probable cause. Assuming that the "early present" all were found to have probable cause for their charge, this is five of 253 or 2% of misdemeanors magistrated. The remaining universe is 181 persons.

Figure 10: Proportion of Misdemeanors with a Finding of Probable Cause



[45] The "early present" are removed because they were never seen on screen, so there is no information on race or ethnicity. Some people were magistrated without being present so even a visual guess of race was not possible.

The following table of information is for the 181 people arrested for misdemeanors and going through the full *magistration* process with probable cause found for the charged offense.[46]

Table 8: Rule 9 Applied to the Misdemeanor Magistration Clients

		Total Misdemeanors	
	Average Number of Charges at Magistration	1.2	
9.4.1	Violation of a Protective Order (Bond Condition)	10	6%
9.4.2	Assault Against Family Member (MA), Terroristic Threat	49	27%
9.4.3	DWI 2nd (enhancement to a MA within 5 years of DWI 1st)	4	2%
9.4.4	New Offense while Old Charge Pending	65	36%
9.4.5	Bond Forfeiture or Bond Revocation	46	25%
9.4.6	Prob, Def, or Parole	29	16%

The following table of mental health information is for the 186 people arrested for misdemeanors and going through the full magistration process. Mental Health was mentioned in a variety of ways by the court for the 9 percent of persons coded as MH Mentioned: the person was in the Mental Health Unit, the person needs or has a 16.22 assessment, and/or the person has an orange sheet [47]

Table 9: Mental Health Status as Mentioned at Magistration

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
MH Mentioned	11	8%	5	10%	16	9%
MH Not Mentioned	121	92%	44	90%	165	91%
Total	**132**		**49**		**181**	

Table 10 presents the number of defendants with bond revocation or forfeiture or revocation of probation or parole out of the 181 people arrested for misdemeanors and going through the full magistration process.[48] These people all have another system player who can impact whether or not they are released prior to adjudication. A person can fall into all of these categories, so the proportions are not cumulative. Unduplicated, there were 125 (69%) people with at least one of these statuses.

[46] The early present are removed because their offenses are not always read. Harris County Local Rule 9 says the following misdemeanors must be seen by the magistrate: persons violating a bond condition; persons charged with Assault Against a Family Member or Terroristic Threat misdemeanors; persons charged with DWI 2nd if that DWI occurs within five years of the first; persons arrested for a new offense while another is pending; bond forfeitures or bond revocations; and those on probation, deferred adjudication, or parole. To do this analysis, all the people who fit into this category were counted; however, a person may fit in more than one or all the categories so the sum will be higher than 181 people with probable cause.

[47] The early present are removed because little information is presented about those releases. Some defendants were referenced to be in MHU at the time they received a personal bond through early presentment but it was as a passing note, *e.g.,* "Ms. X on page 2 is in MHU but she is an early present anyway" as though the magistrate was simply reading personal notes. A 16.22 assessment refers to the CCP 16.22 mental health screening and an orange sheet is a Harris County specific term for a person with a MH need because their name appears in a mental health database, or at one time appeared, on an orange sheet of paper to alert the court. It is possible a person could have a mental health diagnosis or need and not be captured in this cohort.

[48] The early present are removed because their information was not provided and the people without probable cause.

These proportions cannot be ascribed to the totality of arrestees. Rule 9 requires defendants with bond revocations, bond forfeitures, and violation of a protective order must appear before the magistrate so this group of people magistrated on misdemeanors are going to disproportionately represent those on some form of supervision.

There were 46 people who appeared before the magistrate because of a bond revocation or forfeiture on this case meaning they may not have been arrested on a new offense.

There were 67 people (37%) who had bond in another case meaning they had open charges at the time of arrest. The majority of these were in Harris County but some were in surrounding counties (Montgomery and Galveston) or out of state (Louisiana).

The people supervised by Harris County Community Supervision and Corrections Department (CSCD) on probation and deferred and those supervised by the local Parole Division are important to note because their release is contingent upon the actions taken by those agencies.

During the magistration review week dockets, confusion among attorneys and clients regarding when court appearances were set during the COVID-19 period was mentioned a handful of times. This is likely a problem directly related to COVID-19 scheduling uncertainties. The number of bond revocations or bond forfeitures may be artificially high as a result.

Table 10: Misdemeanor Magistration Clients with Other Criminal Justice Involvement

	Misdemeanor Only		**Misd and Felony**		**Total Misdemeanors**	
Bond in this Case: Bond Rev or Bond Forf	32	24%	14	29%	46	25%
Bond in Another Case	44	33%	23	47%	67	37%
Probation/Deferred	13	10%	9	18%	22	12%
Parole	4	3%	3	6%	7	4%
Unduplicated Individuals in at Least 1 of Above	86	65%	39	80%	125	69%
Total	**132**		**49**		**181**	

The table of information that follows, Table 11, shows people with a revocation/forfeiture and separates them into those with only revocation/forfeiture and those with a revocation/forfeiture plus a new offense.

The people with only misdemeanors were slightly more likely to be in front of the magistrate on bond revocation or forfeitures only. The people with misdemeanors and felonies all had a new case in addition to their bond revocation/forfeiture.

The average number of charges at magistration for those with only misdemeanors was 1.3 compared to 3.2 for those with misdemeanors and felonies and 1.9 for all misdemeanors. The number of misdemeanor charges was lower for those with misdemeanors and felonies at 1.7

and total misdemeanors at 1.4. For those with only misdemeanors, these were the same number.

Table 11: Persons with Bond Revocations or Forfeitures Only or In Additional to New Charges

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
Bond in this Case: Bond Rev or Bond Forf	32	24%	14	29%	46	25%
Only Bond Rev or Forf	28	21%	0		28	15%
An Additional Charge	4	3%	14	29%	18	10%
Avg Number of Charges	1.3		3.2		1.9	
Avg Number of Misd Charges	1.3		1.7		1.4	
Total	**132**		**49**		**181**	

The following table of information, Table 12, shows whether the magistrate asked the defendant if they wanted counsel appointed is for the 181 people arrested for misdemeanors and going through the full magistration process. The early present are removed because they are not asked, which means 67 additional defendants will appear in their assigned County Court at Law without counsel at the first setting. This also excludes the five people without probable cause because they will not need a lawyer.

There were times when the magistrate did not ask if the arrestee needed a court appointed lawyer. There might be an appropriate reason that this did not happen, for example there were 32 persons not present and magistrated in absentia. Any of those 32 people would have to ask for a lawyer at their first setting if they would like to request counsel under the current system processes.

There was also an arrestee who was coming through magistration again after a follow up with the arresting officer and the research team assumed that person was asked at the original setting.

The 181 less the one person already asked and the 32 in absentia leaves 148 persons. Of these, five defendants were not asked if they wanted counsel appointed. Three of these defendants were all in bond forfeiture status and two had other pending cases. All five could have had a lawyer type attached to either the original case or the other pending. The magistrate could have copied that information to the input page for this magistration, we know information must be entered to progress to the next screen, but the defendants were not asked. Almost 90 percent of all persons magistrated requested counsel when asked.

Table 12: Misdemeanor Magistration Clients Asked about County Provided Counsel and then Requesting Counsel

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
Total	**132**		**49**		**181**	
Absent/ Already Asked (% of Total)	25	19%	8	16%	33	18%
Requested Counsel	91	85%	37	90%	121	82%
Going to Hire Counsel	11	10%	4	10%	15	10%
Not Asked	5	5%	0	0%	5	3%
Total Present	**107**		**41**		**148**	

There are legal and process issues resulting in holds which impacts who can be released immediately on a bond. Persons with an ICE hold were not considered for no cost bond release in Harris County during the September 2020 settings reviewed. Once released, ICE would take the defendant into custody, they would miss Harris court settings especially if unable to post an ICE bond, and would be considered an FTA. This was mentioned several times in the recordings as a concern of the ADA and a reason the Deputy Public Defender had no position on personal bond release. These restrictions also include persons facing a warrant in another county in Texas who can be held for 10 days in the Harris County jail to give the other county time to pick them up,[49] and probation or parole revocation cases which require input from the supervising agency. Of the 181 cases, the following table provides information on who did and did not have a hold impacting their release options.

Table 13: Clients with a Stated Hold

	Misdemeanor Only		Misd and Felony		Total Misdemeanors	
No Holds	108	81%	38	78%	146	81%
Hold	24	19%	11	22%	35	19%
Total	**132**		**49**		**181**	

Table 14 indicates who was and was not released on personal bond at magistration. Of the 181 cases, for persons facing only misdemeanors and eligible for personal bond, 56 percent were released on a personal bond for all of their cases and 54 percent did not receive a personal bond for any of their cases.[50]

[49] Art. 15.20. DUTY OF SHERIFF RECEIVING NOTICE.

[50] There is a difference of opinion amongst advocates and judges as to whether a magistrate can release certain defendants on a person a personal bond when the person is charged with one of the fourteen types of offenses or when a defendant does not submit to testing for the presence of a controlled substance. However, Texas Code of Criminal Procedure Art. 17.03(b)(1-3) Personal Bond appears to authorize a magistrate to do so. It states: "Only the court before whom the case is pending may release on personal bond a defendant who is charged with an offense" under one of the identified sections of the Penal Code listed or conditions. When a person is before the magistrate, that person's cases is before that court. Until this matter is finally settled in the law, defense counsel has a responsibility to preserve this issue for later review. But see, Office of the Attorney General
State of Texas Letter Opinion No. 97-103 (December 5, 1997).

Of the 181 cases, for persons facing both misdemeanor and felony charges, 11 percent received personal bond on all their cases, 18 percent received personal bond for other the misdemeanor cases, and 71 percent did not get personal bond on any of their cases.

In total, 46 percent of people were released on personal bond for all of their misdemeanor cases (41% on all cases and 5% on only misdemeanors) and 54 percent were not granted any personal bonds.

Table 14: Misdemeanor Magistration Clients Released on PR Bond

	Misdemeanor Only		**Misd and Felony**		**Total Misdemeanors**	
All Cases Released on PBO	56	56%	4	11%	60	41%
All Misds Released on PBO	NA/Same as above		7	18%	7	5%
None	52	44%	27	71%	79	54%
Total Possible	**108**		**38**		**146**	

Table 15 shows bond set on misdemeanors by personal bond status. Note, the people facing misdemeanor and felony charges do not have the felony bond amount included in the calculation for the average. For persons released on personal bonds, the average bond amount set was about $2,500 for defendants with only misdemeanors. The seven people facing misdemeanors and felonies who received personal bonds for all misdemeanors had an average bond set at $2,086. Again, this excludes felonies from the average. In total, these 67 people had an average bond of $2,351. These defendants did not have to pay anything to be released from jail for the misdemeanors.

The average bond for people not receiving a personal bond for their misdemeanor charges was $4,550; however, there were three outliers driving this average cost higher, one at $65,000, one at $50,000, and one at $30,000. The two amounts at $50,000 and above were set by a County Court at Law judge following a bond forfeiture hearing with the magistrate keeping the amounts in place. The $30,000 amount was for a new offense being committed. Without these outliers, the average cost was $2,775 which is in line with the personal bond amounts except people have to pay this amount or work with a bail bond company to pay at minimum $250 or 10% for anything at $2500 or higher.

The defendants who were not eligible for personal bond had an average bond amount set at $1,583. One reason people are ineligible is if they have an ICE Hold; therefore, offenses typically eligible for general order bond (and set very low – like $100) were set at these low levels for persons with ICE holds.

Table 15: Bond Set for Misdemeanor Magistration Clients Released on PR Bond or Not Released on PR Bond

	Misdemeanor Only	Avg Misd Cost	Misdemeanor and Felony	Avg Misd Cost	Total Misdemeanors	Avg Misd Cost
All Cases Released on PBO	56	$2,514	4	$525	60	$2,370
All Misds Released on PBO	NA, Above is the same		7	$2,086	7	$2,086
None	52	$4,292 (without 50k, 30k outliers $2,834)	27	$5,056 (without 65k outlier $2,658)	79	$4,550 (without 3 outliers $2,775)
Not PBO Eligible	24	$1,300	11	$2,274	35	$1,583
Total	**132**	**$3,030 $2,424 w/o outliers**	**49**	**$3,666 $2,303 w/o outlier**	**181**	**$3,202 $2,391 w/o outliers**

Qualitative Assessment of Defense Counsel at Magistration

The research team also noted the arguments made by the Harris County Public Defender at magistration, the number of and opportunities to stop a client from self-incrimination, and the general preparedness at magistration.

For the 149 clients present in the courtroom (181 total minus the 32 not present), Harris County Public Defenders frequently presented information on residence, age, transportation plan for attending future court settings, employment status, and financials. When appropriate or helpful, information on prior FTAs, criminal history, medical including mental health factors, caretaker status, and alternative residency options in case a protective order is issued are presented. Finally, individualized information is presented as appropriate. This concentrates on clients present, because in this sample they all received interviews whereas those not present (discussed later) did not necessarily receive interviews.

Common Factors

The table below shows the number of times the "frequent" factors were mentioned.

- The first sentence spoken by the Harris County Public Defender's lawyer for each client was something like "Mr. Doe is X years old and is a lifelong long Houston, Harris County resident who has been at the same address for Y years where he lives with his parents/girlfriend/roommate." That is why residency, which shows ties to the community, and age appear so frequently.
- Transportation to court was commonly in the next sentence and the lawyer indicated vehicle ownership or access, a household member with a car willing to transport the defendant, *e.g.*, Mr. Doe's mother can give him a ride to court, or willingness and ability

to take the Metro (Houston's public transit option). Transportation is a factor that helps ensure court appearance.

- Employment status was reported for 78 percent of defendants. If the client had a job, the attorney said industry, full or part-time, hourly or weekly pay, and length of employment. For example, "works doing sheetrock contracting and has for about 10 years; business has been slow [due to COVID-19] so doing less than fulltime and makes maybe $390 to $520 a week." If the person was not employed, defense clarified if the person was a fulltime student, unemployed because of COVID-19, or had skills training/certification which would allow them to pursue employment. Employment status shows ties to the community while providing information on ability to pay.
    - Of the 116 arguments including employment 72 people (62% of arguments) were employed or enrolled in high school, college, or a GED prep program.
    - The other 44 were unemployed but 13 (30%) were experiencing unemployment because of COVID-19 shutdowns at their workplaces.
- Financials included information on the amount of money a person had in their property at booking, enrollment in public assistance programs (TANF, SSI), and simply saying the person had no money to put toward bond. For example, "he is homeless and on assistance; he is unemployed and has been." This information speaks to what amount of money would be unduly punitive.

Table 16: Frequent Arguments for Misdemeanor Magistration Clients

	Total Misdemeanor Clients Present	
Harris County Residency	100	67%
Age	92	62%
Transportation to Court	84	56%
Employment Status	116	78%
Financial Information	72	48%
Total	**149**	

Other Factors

The table below shows factors presented when appropriate or helpful.

- Court appearance history was mentioned in three ways for 45 people (30%). First, it was mentioned if there was no history of failing to appear as reassurance the defendant could be trusted to return to court for each setting. Second, it was mentioned if there were explanations as to why a defendant had previously missed court, especially on the current offense. There were instances of court date reset confusion because of COVID-19 scheduling with the courts, some medical reasons including one person who had a stroke, some people who said they were never informed by an entity they expected an update from (lawyer, court coordinator, bail bondsman), and some who were incarcerated in TDCJ or ICE facilities and unable to contact the court. Finally, the information was presented when a person had made it to court and the record was confusing, *e.g.*, "there are signatures on the resets, so he clearly made it to court."

- Criminal history was presented for 50 defendants (34%) and tended to highlight how the persons were not public safety threats, *e.g.*, no criminal history, no felony convictions, no violent convictions, first arrest, no prior incarcerations, etc.
- Medical history likely does not apply to everyone but PTSD, Schizophrenia, a prior stroke, and underlying conditions, especially those making somebody susceptible to COVID, were mentioned for 13 people (10%).
- Likewise, caretaker status is not applicable to everyone but was mentioned to highlight collateral consequences of keeping a person incarcerated with unaffordable bail amounts for 53 (36%) of people. Some caretakers had kids at home or were paying child support for children while others were taking care of aged relatives. One person lived with an "83-year-old grandmother following her stroke, supporting her financially, monitoring her medication, and had called her hourly since being in jail."
- Finally, and as indicated by magistrates as something they would like to hear, alternative residency options were mentioned for 35 people (23%) to speak to community safety. These were either reassurances that the defendant does not live with the complaining witness (6 people) or alternative addresses the defendant could say at while a protective order is active, *e.g.*, parents, friends, or cousins. All people with this information presented were charged with assault of a family member, terroristic threat, and/or retaliation; however, this information is not presented for all with those charges (53) – it is not possible to tell from this information if the retaliation and terroristic threat charges were related to family situations.

Table 17: Other Arguments for Misdemeanor Magistration Clients

	Total Present Misdemeanor Clients	**% of Total Present Misdemeanor Clients**
FTA History	45	30%
Criminal History	50	34%
Medical History	13	9%
Caretaker Status	53	36%
Alternative Residency Options	35	23%
Total	**149**	

Individualized Arguments

All the arguments were individualized based but there were 28 instances (19% of defendants) of additional information outside the categories listed above being presented at magistration. This is very individualized information including military service and honors, ICE status and how it has complicated the case, pregnancy or soon after delivery, homelessness, and any other holds as reasons not to ask for PR Bond. The latter was discussed with the Division Director and the lawyers as reasons not to pass on PR Bond because it allows this case to earn credits with the hold is pending (out of county, parole, ICE, no bond in another case, etc). Finally, there were instances when people were brought to court on warrants for offenses that had been alleged 9 to 18 months prior and HCPD noted the individuals had not had any interaction with the

criminal justice system since that occurrence and were good candidates for PR bond as they had proved not to be a community safety risk.

Magistration in Absentia
The reasons a person was absent from magistration, specifically being in medical, MHU, or housing because they were combative, also made it difficult to interview the person. In these instances, Harris County Public Defender worked with information available from the criminal history, Harris County court history, and from the 16.22 mental health screening when available. They could not provide the same level of in-depth arguments as noted above.

Personal Bond
In every case where PR bond was possible, HCPD requested it unless the person had a hold from a different entity or no bond in another case. They also suggested bond amounts which in most cases were lower than the amount suggested by the prosecutor unless everyone agreed on the amount set by the trial court in warrant cases or bond revocations/forfeitures. And, they presented conditions appropriate to ensure clients would return to court and otherwise be successful on PR bond release, *e.g.*, text notifications of court dates and magistrate's order of emergency protection (MOEP).

Objection to GA-13
HCPD had a running objection to the state's request to deny personal bond release to those with previous convictions for a crime that involves physical violence or the threat of physical violence, or of any person currently arrested for such a crime that is supported by probable cause under Governor's Executive Order 13 from March 29, 2020.[51] The first time GA 13 was mentioned by the prosecutor on each docket, the defense said something like:

> *I would like to make a running objection to GA 13 based arguments on the grounds that is unconstitutional under Texas and Federal Constitutions, a violation of equal protection and due process, the 8th Amendment right to bail, bears no rational relationship to any legitimate government purpose, cruel and unusual under covid 19, constitutes cruel and unusual punishment under COVID-19 crisis, it violates the separation of powers act under the Texas Constitution.*

The above was stated by Mr. Henderson on the September 7th 2AM docket but similar wording was used by all when the state noted GA-13 as an opposition to PR Bond. The magistrates were aware of the running objection, so the Research Team assumes this occurred throughout the lifespan of GA 13 which was issued March 29, 2020 and is still active at the time this was written (May 1, 2021). This shows a running strategy by the Division and implementation across the staff.

[51] Executive Order No. GA-13 https://gov.texas.gov/uploads/files/press/EO-GA-13_jails_and_bail_for_COVID-19_IMAGE_03-29-2020.pdf

Self-Incrimination

One argument for presence of defense counsel at magistration is to stop defendants from self-incriminating. There were 16 instances clients trying to speak during magistration. In 11 instances, defense counsel interrupted the client to stop it; however, in five instances they did not though in two of those instances the judge stopped it from happening first.

The project team has reviewed tapes prior to COVID-19 protocols requiring defense and defendants to be in separate rooms and notes the technology makes quieting clients in danger of self-incrimination more difficult.[52] When in the same courtroom, the lawyers could react immediately with a motion or blocking the conversation with a legal pad.[53] During the review period, the lawyer has to see the client begin to speak on a video screen, push the phone button to talk, and get the client's attention before too much is said.

The lawyers gave a warning to everyone like:

> *When the judge asks questions, I recommend you don't speak. The DA will read the PC affidavit - the police's version of what happened. I understand there is some stuff in there you will not agree with, but this is not your trial. This is not the time to fight those allegations, so please do not make any statements while she is reading the PC affidavit.*

This speech was given to the entire the courtroom over the phone and it was mentioned during qualitative interviews with the Division Director. Additional tape shows a lawyer mentioning "this is why we advise you not to talk, please come to the booth with questions" indicating clients are warned about self-incrimination prior to court. Having seen magistration pre and during COVID, it does seem more challenging to stop people from talking during COVID. Note that in June 2021, defense counsel returned to the JPC and are in the courtroom with the arrestees.

Probable Cause

On misdemeanor charges, the defense lawyer has the option to argue probable cause. This happens infrequently and almost always after the magistrate asks questions about probable cause or has verbal cues there are questions about it. Most lawyers pick up on this and present elements missing in the DIMS report. There was one instance in which the magistrate asked defense if he had an opinion about probable cause and defense stated he did not have consent to represent this person. The magistrate asked again, *so you don't have an opinion* and he replied again, *I have an opinion, I just don't know if I can say anything*. The magistrate seemed perplexed. We mention this to recommend that training or supervisors should clarify for defense counsel whether or not they can intervene when asked a direct question by the magistrate.

[52] See page Appendix-11 of http://harriscountypublicdefender.org/HCPD%20Tenth%20Year%20Report%205.1.20.pdf
[53] *Id.*

Findings

Our interviews of magistrates, public defenders providing representation at magistration, and the Bail Division Chief, our observations of magistration, and the data collected from those observations compared with national best practices as the benchmark are the basis for our Findings and Recommendations.

Findings

Finding 2A: All clients at magistration who indicate they want counsel are represented by Harris County Public Defender Office full-time public defenders who are trained and supervised.

Finding 2B: The Harris County Public Defender Office has a Bail Division that is led by a very experienced attorney with substantial criminal defense experience.

Finding 2C: Harris County Public Defender Office attorneys representing clients at magistration interview the client and have information from the client and information about the arrest and the client, including criminal history, before the client's appearance in court.

Finding 2D: The Harris County Public Defender Office attorneys who provide representation at magistration receive two weeks of training and have access to two pretrial release manuals, NACDL's *The Harris County, Texas Bail Manual* (September 2018) and an internal *Bail Hearing Division Manual.*

Finding 2E: Information obtained by Harris County Public Defender Office attorneys representing clients at magistration is not provided proactively to the appointed (or hired) counsel who actually represents the client on the charged offense and appointed counsel seldom requests that information.

Finding 2F: There is significant turnover of Harris County Public Defender magistrate attorneys with many transferring to become a Harris County Public Defender Office trial attorney.

Finding 2G: There are currently an insufficient number of interview booths at the Central Processing Center available for the in-person interviews of clients by public defenders prior to magistration.

Based on the current staffing for the Harris County Public Defender Office (HCPD) magistration representation, four interview booths are necessary for the HCPD to do its work efficiently and confidentially. HCPD previously had 4 interview booths. One of these four was temporarily given to HCPD by pretrial and then taken back (booth 3). The other was taken by pretrial while HCPD worked in the 1301 during COVID-19 (booth 2). As of June 2021, HCPD has three interview booths. HCPD is seeking a fourth interview booth back (booth 2).

Adequate workspace for defense counsel to interview misdemeanor clients in preparation for bail hearings is required under paragraphs 37, 43, and 44 of the Consent Decree.[54]

The lack of an adequate number of interview booths creates inefficiencies in clients being professionally assisted by the public defenders and delays in the cases being addressed by magistrates.

Finding 2H: Clients represented by a full-time defender at magistration have a different attorney representing them subsequently, either a different Harris County Public Defender attorney or an appointed counsel.

Finding 2I: Appointed counsel do not represent clients at magistration.

3. Appointment of Counsel

Overriding Conclusions
The length of time for there to be an appointment of counsel from arrest for most persons unable to afford counsel has been reduced from as long as a month but many clients do not have counsel appointed for 7 days from arrest. Clients with a misdemeanor and felony charge usually have two different lawyers appointed, one lawyer for the misdemeanor representation, one for the felony representation. An increasing number of persons charged with a misdemeanor have a full-time public defender appointed to represent them.

Finding 3A: In the past, assignment of appointed counsel often did not occur for up to a month after arrest.

Finding 3B: Now, often clients who are appointed an attorney do not speak to their attorney for 7 or more days after arrest.

Finding 3C: A client who has a misdemeanor charge and a felony charge is appointed two different attorneys, and the client's cases proceed with different prosecutors in different courts.

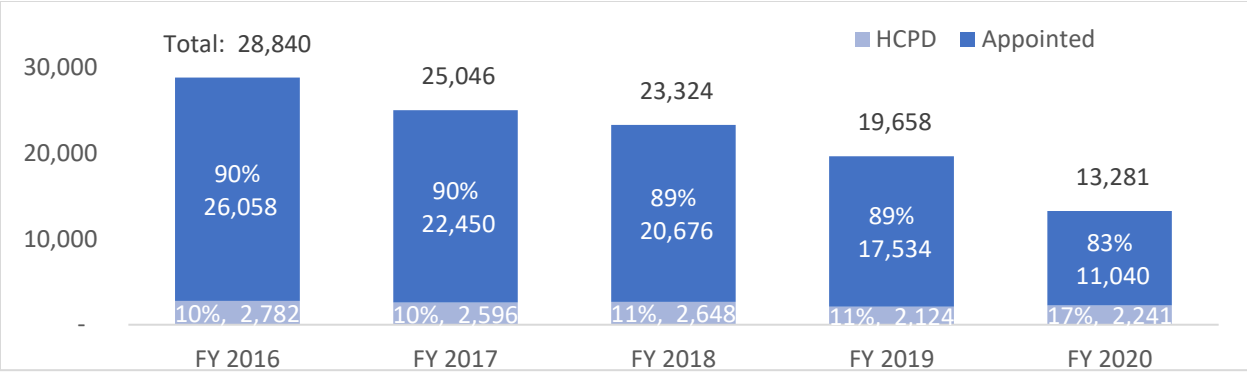
Finding 3D: A client who is charged with a misdemeanor and who is also incarcerated on a parole violation, if appointed an attorney on the parole violation, is appointed an attorney by the state and that attorney is different from the attorney providing the representation on the misdemeanor charge.

Finding 3E: Over the last five years, more clients charged with a misdemeanor are being represented by the full-time public defender office. In TIDC's Fiscal Year 2016, 10 percent of the clients who could not afford counsel and desired a lawyer were represented by a full-time

[54] ODonnell_Consent_Decree_CJ-TX-0010-0025.pdf (harriscountytx.gov), pp. 25-27.

public defender and 90 percent by appointed counsel. In TIDC's Fiscal Year 2020, 17 percent were represented by a full-time defender and 83 percent by appointed counsel.

Figure 11: Number and Proportion of Appointed Cases Represented by Assigned Counsel and HCPD, TIDC FY 2016 through TIDC FY 2020



Source 7: TIDC Data Dashboard

4. Workload

Overriding Conclusions

Out-of-court work by appointed counsel is now being compensated. Term appointments continue and term appointments too often cause attorneys to have more work than can be competently completed. Case maximums have not been created. In 2020, over 100 attorneys taking misdemeanor appointments exceeded TIDC's maximum caseload standard. In 2020, over 30 attorneys did not report retained cases.

Our Findings include information on the workloads of attorneys taking appointments in Harris County. In an effort to accurately report the actual work an attorney taking misdemeanor appointments is doing, our data includes the other work that the appointed attorney is doing in addition to the attorney's Harris County misdemeanor appointments. This other work includes misdemeanor appointments in other counties, felony appointments in Harris County and other counties, and private and appellate work. In order to translate that total work to a "misdemeanor equivalent number,"[55] the following case equivalents established as recommended case maximum by TIDC[56] in its were used to determine misdemeanor equivalent workloads:

[55] A limitation of these numbers results from the fact that these cases only show up in this data base when the lawyer is paid. Therefore, this is the number of cases somebody has been paid for during the Fiscal Year. If Harris County pays more slowly, an attorney could be appointed to a number of cases that show in the data bases as still "open" because payment has been submitted but not yet made.

[56] Public Policy Research Institute Texas A&M University, *Guidelines for Indigent Defense Caseloads A Report to the Texas Indigent Defense Commission* (January 2015), found at: guidelines-for-indigent-defense-caseloads-01222015.pdf (texas.gov)

Table 18: Misdemeanor Equivalent Weights

	Weighted Caseload	1 Case is Equivalent to X Misdemeanors
Misdemeanor	226	1
Felony	128	1.765
Juvenile	168	1.345
Appeal	31	7.290

Finding 4A: Prior to 2018, County Court at Law judges routinely denied billed hours by an appointed attorney for out-of-court work on a case including research, motion development, collecting and reviewing videos. Since 2018, County Court at Law judges routinely approve out-of-court work hours billed by an appointed attorney.

Finding 4B: Term assignments 5 days a week appointing attorneys to 5 cases or more per day assign attorneys more cases than can be competently handled.

Finding 4C: A condition of the TIDC MAC grant to Harris County states, "The plan of operation must include caseload standards for each attorney and for the general operation of this program consistent with research-based guidelines published by TIDC. The Director of the Managed Assigned Counsel Program must notify the program's Oversight Board in writing if an exception to the caseload standards is authorized." To date, the MAC has not adopted case maximum standards.

Finding 4D: The *TIDC Guidelines for Indigent Defense Caseloads* (2015) state "The results indicate for the delivery of reasonably competent and effective representation attorneys should carry an annual full-time equivalent caseload of no more than the following: 236 Class B Misdemeanors; 216 Class A Misdemeanors; 174 State Jail Felonies; 144 Third Degree Felonies; 105 Second Degree Felonies; 77 First Degree Felonies." The aggregate for Class A and B is 226 misdemeanors.[57]

Finding 4E: The number of attorneys taking misdemeanor appointments in Harris County and other counties who were appointed to more than the equivalent of 226 misdemeanor cases across all counties in which they take appointments was 106 in 2020.

Finding 4F: Between 2016 and 2020, the number of appointed counsel assigned to less than 226 misdemeanor cases in Harris County increased from 65 in 2016 to 145 in 2020.

Finding 4G: Between 2016 and 2020, the number of appointed counsel assigned to more than the equivalent of 226 cases In Harris County decreased from 65 in 2016 to 5 in 2020.

[57] TIDC *Guidelines for Indigent Defense Caseloads* (2015) pp. xvii, 30, 34. Found at: http://www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf

Table 19: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

Harris Co Misd Only	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Appointed to 226 or Less	65	95	98	128	145
	50%	63%	68%	81%	97%
Appointed to More than 226	65	55	47	30	5
	50%	37%	32%	19%	3%
Total	**130**	**150**	**145**	**158**	**150**

Source 8: TIDC Data Dashboard

Finding 4H: Between 2016 and 2020, attorneys taking misdemeanor appointments and other criminal case appointments in Harris County assigned to the equivalent of 226 or less misdemeanors increased from 25 in TIDC fiscal year 2016 to 46 in TIDC fiscal year 2020.

Table 20: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When All Harris County Appointments are Included, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

All Harris County Appointments	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Appointed to 226 Equivalent or Less	25	37	36	48	46
	19%	25%	25%	30%	31%
Appointed to More than 226 Equivalent	105	113	109	110	104
	81%	75%	75%	70%	69%
Total	**130**	**150**	**145**	**158**	**150**

Source 9: TIDC Data Dashboard

Finding 4I: Between 2016 and 2020, attorneys taking misdemeanor appointments in Harris County and appointments in other counties appointed to more than the equivalent of 226 misdemeanors in all counties decreased from 109 in 2016 to 106 in 2020.

Table 21: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When Including All Harris Criminal Appointments and All Criminal Appointments in Any County, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

All Counties, All Appointments	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Appointed to 226 Equivalent or Less	21	34	35	45	44
	16%	23%	24%	28%	29%
Appointed to More than 226 Equivalent	109	116	110	113	106
	84%	77%	76%	72%	71%
Total	130	150	145	158	150

Source 10: TIDC Data Dashboard

Finding 4J: In 2020, 117 attorneys taking appointments in Harris County reported paid caseloads; 33 did not report paid caseloads. [58]

Table 22: Number and Proportion of Attorneys Taking Misdemeanor Appointments in Harris County Above the 226 from the Weighted Caseload Standards When Including All Harris Criminal Appointments and All Criminal Appointments in Any County, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Did Not Report	12	20	36	49	33
	9%	13%	25%	31%	22%
Reported	118	130	109	109	117
	91%	87%	75%	69%	78%
Total	**130**	**150**	**145**	**158**	**150**

Source 11: TIDC Data Dashboard

Texas Code of Criminal Procedure 26.04(j) (4) states, “not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's

[58] 24.5.1.17. Agree to report to the Texas Indigent Defense Commission, by October 15th of each year, the percentage of the attorney’s practice time that was dedicated to work based on appointments accepted in Harris County for adult criminal and juvenile delinquency cases for the prior year (term beginning on October 1st and ending September 30th).
Harris County Indigent Defense Plan, 8/15/2016, Harris County CCL – Local Rule 24
http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=442

practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code."

Finding 4K: Since all private counsel do not report their private caseload, it is impossible to fully incorporate those into the analysis of total caseload to determine the number and proportion of lawyers above 226 equivalent misdemeanors when all private and all appointed cases are aggregated.

Finding 4l: Total costs for appointed cases, attorney fees, investigation, experts, increased from $3,321,852 in TIDC Fiscal Year 2016 to $5,023,460 in TIDC Fiscal Year 2020 or 51 percent.

Table 23: Total Harris County Misdemeanor Expenditures by Category, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	% Chg
Attorney Fees	$3,304,989	$3,596,951	$4,741,317	$5,456,833	$4,993,782	+51%
Investigation	$16,113	$21,342	$16,241	$14,512	$22,688	+41%
Expert Witness	$750	$0	$1,200	$2,510	$6,990	+832%
Total	**$3,321,852**	**$3,618,293**	**$4,758,758**	**$5,473,855**	**$5,023,460**	**+51%**

Source 12: TIDC Data Dashboard

Finding 4M: The per case cost increased from $127 in TIDC Fiscal Year 2016 to $455 in TIDC Fiscal Year 2020 or 257 percent.

There are three changes driving this increase: an increase in pay, better record keeping providing more robust data for analysis, and the delivery of service model that pays a lawyer a flat fee for a given time period means these lawyers could bill the same monetary amount but represent people in less cases after a case cap reduction from seven to five cases per day.

Table 24: Average Per Case Harris County Misdemeanor Expenditures by Category, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

Per Case	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	Change
Attorney Fees	$127	$160	$229	$311	$452	**257%**
Investigation	$1	$1	$1	$1	$2	**232%**
Expert Witness	$0.03	$0.0	$0.1	$0.1	$0.6	**2100%**
Total	**$127**	**$161**	**$230**	**$312**	**$455**	**257%**

Source 13: TIDC Data Dashboard

5. Appointed Attorneys and MAC Staffing

Overriding Conclusions
The MAC is staffed with 19 positions. It now has four social workers, two less than initially indicated in the original grant request to TIDC.

Finding 5A: The number of attorneys taking misdemeanor appointments in Harris County is approximately 150.[59]

Finding 5B: The original staffing of the MAC according to its grant application and grant award has been changed with the conversion of 2 social worker positions. One social worker position was eliminated to increase all of the salaries to comparative salaries within Harris County. One social worker position was converted to a Program Administrator position.

Finding 5C: There are 19 MAC staff, one investigator; four social workers; seven attorneys (an executive director, a deputy director, a misdemeanor chief and trains director and four resources attorneys); one immigration attorney; a community engagement & recruiting specialist; five administrative personnel including an IT and program administrator.

6. Effectiveness of Representation

Overriding Conclusions
The governance and quality control committees have not yet become operational. Discovery is too often delayed. Requests by appointed counsel for funds for investigators and experts are less than infrequent. Training specific to appointed counsel's responsibilities is not provided. Diversion is underutilized and has substantial costs for indigents. More appointed counsel should be performing at a higher level.

Finding 6A: The approved TIDC grant requirement of establishment of a governance and a quality control committee has not yet been realized. TIDC provides guidance in its "A Short Guide to Texas Public Defender Oversight Boards."

Finding 6B: Full discovery is too often delayed because of a variety of reasons including the disparate technologies of the body cams, dash cams of the various police agencies that are not easily obtained or uploaded into the portal. Many Houston Police Department videos are being timely uploaded but are not being timely made available to defense counsel.

Finding 6C: Clients are pleading guilty without adequate motion practice and before counsel has secured information through discovery.

Our interviews with judges, appointed counsel and other Harris County criminal law professionals indicate that too many appointed counsel conduct a "volume practice not tied to client needs." This lack of adequate representation was attributed to factors that include high

[59] Communication with MAC Director, March 7, 2021.

caseloads, flat fee billing by settings, not billing by hourly rates, resolution of a case without adequate investigation and too often without full discovery. Interviewees said it was not "a healthy system." It was termed a "plea mill" that did not have incentives for client-centered advocacy. We were told that the appointed counsel culture fails to foster aggressive motion practice. Another interviewee said that appointed counsel should be re-educated to "do good work" for all clients across all cases. We were told that it is "not the rule that there are good appointed counsel throughout the system," and that many appointed counsel must start communicating with clients within 24 hours of appointment. Another professional said there is "not a lot of litigation" being done by appointed counsel. We heard that there should be training that ensures "sufficient skills to advocate for the client," and "DWI trial skills need to be greatly improved on." Additionally, we were told that the representation culture too often is that counsel does not need to "go that extra step."

Finding 6D: The number of requests for funding for investigation are rare, averaging payments per case of $0.97 in 2016 to $2.60 in 2020.

Finding 6E: The number of requests for funding for use of experts are rare, averaging payments per cases of $0.47 in 2016 to $2.17 in 2020.

TIDC presents investigator pay and number of cases by county court at law. Some courts do not have any investigator costs. The number of appointed cases in courts without investigator costs are "cases without investigation" and the number of cases in courts with investigation are the "cases with possible investigation." The total cost for investigation divided by number of cases with possible investigation gives the Average per Case Cost for Possible Investigation. The same logic applies to expert witness.

Table 25: Cases Disposed in Courts with Investigative and Expert Witness Expenditures, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Investigation	Cases without Investigation	9,475	5,596	3,942	4,453	2,322
	Cases with Possible Investigation	16,583	16,881	16,734	13,081	8,718
	% with possible	64%	75%	81%	75%	79%
	Avg per case with possible	$0.97	$1.26	$0.97	$1.11	$2.60
Expert Witness	Cases without EW	24,458	22,477	19,402	15,084	7,953
	Cases with Possible EW	1,600		1,274	2,450	3,087
	% with possible	6%	0%	6%	14%	28%
	Avg per case with possible	$0.47		$0.94	$1.02	$2.17

Source 14: TIDC Data Dashboard

Finding 6F: Time spent on case investigation increased from FY 2016 to FY 2020 by two minutes and eleven seconds, but the amount of time is still quite low when using the $40 per hour investigator rate published by the CCL.

Table 26: Average Investigator Time Per Case Using Harris County's Hourly Rate, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

	FY2016	FY2017	FY2018	FY2019	FY2020	Change
Investigation	$16,113	$21,342	$16,241	$14,512	$22,688	+41%
Number of Hours at $40 Per Hour	403	534	406	363	567	+41%
Number of Cases	26,058	22,450	20,676	17,534	11,040	-58%
Hours per Case	54s	1m 26s	1m 11s	1m 15s	3m 5s	+243%

Finding 6G: Appointed attorneys doing misdemeanor work have not been offered any litigation training specific to their responsibilities as appointed counsel.

Finding 6H: Some appointed counsel provide quality, client-centered representation but there is a disparity in the performance of other appointed counsel.
Finding 6I: Too many judges and defense counsel are not fully familiar with or do not utilize the prosecutor-offered diversion programs.[60]

When discussing diversion programs with judges and defense counsel, they were generally aware of some but not all the diversion programs offered by the prosecution. We collected and placed the description of these programs, their conditions, costs, and frequency of use in the Appendix at No. 11.

Finding 6J: Probation and diversion program supervision fees and costs of monitoring devices that are a condition of probation or diversion are substantial for a person unable to afford the fees.

There are conflicting views about probation and diversion costs and fees. Defense counsel report they serve as barriers to access while prosecutors report broad waiver of fees and costs for anyone demonstrating an inability to pay. The Harris County Community Supervision and Corrections Department (CSCD) reports that no one is turned away from the PTI programs due to their inability to pay. CSCD notes that supplemental funding for indigent justice-involved individuals would allow for more robust programing and monitoring devices. This issue should be thoroughly examined.

DWI PTI costs are considerable. Participating clients complete a DA application form and pay a $300 DA fee (applicants can request a waiver of that fee by filing an indigency form).The DA refers the client for an assessment by CSCD which includes a substance abuse and screening evaluation. The client is charged a $300 assessment fee by CSCD (applicants can request a full or partial waiver). From the CSCD assessment, recommendations are sent to the DA's Office

[60] See Appendix at No. 11 for a description of the prosecution-offered diversion programs, criteria for eligibility, fees and the number of persons who have completed the programs.

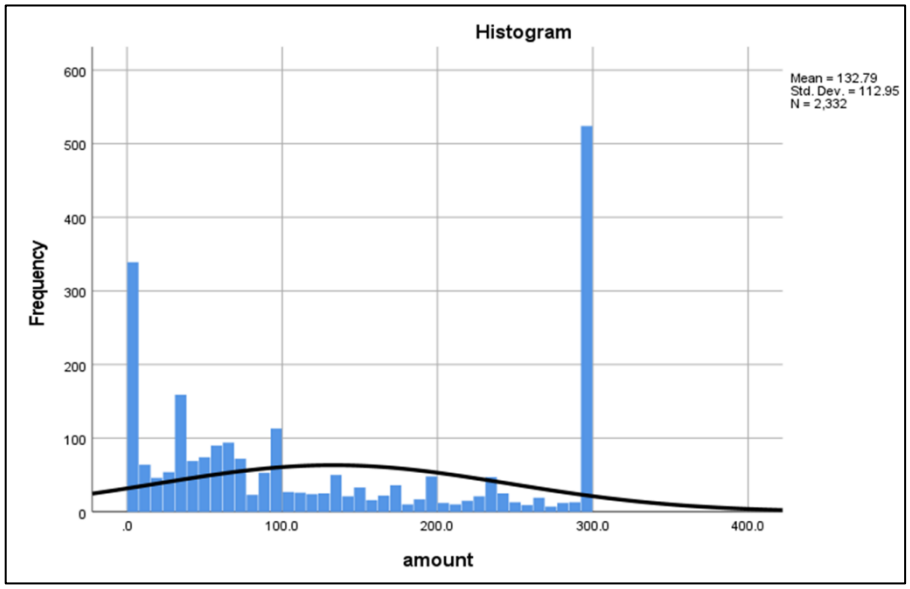
regarding the alcohol monitoring device, level of supervision, and treatment services. After signing an agreement, a monitoring device is installed by a vendor. The participant must pay the vendor for the device. In addition, the participant must pay a $65 monthly fee ($60 supervision and a $5 UAA). Finally, a 'one-time' fee of $12.50 is charged for the participant's ID card.

The Harris County Community Supervision and Corrections Department provides the following data for 2019 and 2020 for the $300 assessment fee.

2019

The average assessment fee collected in 2019 for the 2,332 defendant referrals was $132.79 per defendant (M=$132.79, SD=$112.95), see Figure 12. For 2019, the breakdown of fees collected: 20% of the DWIPTI clients paid the full $300, 10% paid nothing, and the remaining 70% paid on a sliding scale with over half of the defendants paying $100 or less.

Figure 12: Histogram Distribution of DWI-Pretrial Fee Collection by Harris County CSCD, 2019

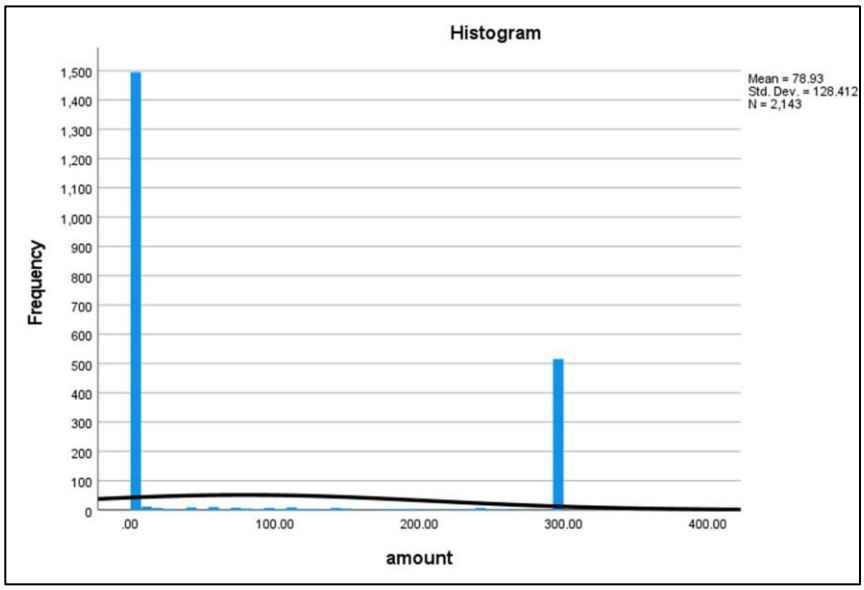


Source 15: Harris County CSCD

2020

Collections for the 2,143 DWI PTI assessments were significantly lower due to COVID-19 (M=$78.93, SD=$128.41) in 2020, see Figure 13. The average collection for DWI PTI assessments dropped to $78 per applicant. More applicants did not pay any portion of the assessment costs in 2020.

Figure 13: Histogram Distribution of DWI-Pretrial Fee Collection by Harris County CSCD, 2020



Source 16: Harris County CSCD

7. Holistic Defense

Overriding conclusions

Social workers are being used by the Harris County Public Defender Office. Appointed counsel are not requesting funds for social workers to assess client needs, assist clients in developing effective, strategic 'life strategies,' develop mitigation and alternative sentence plans.

Justice is a process as well as an outcome. It is important for the Harris County Criminal Justice system to assure the community not only that victims of crime will be afforded justice, but that those charged with having committed a crime will be afforded a fair and just process regarding the determination of their guilt or innocence. A fair and just process includes fair and appropriate punishment. For the community to believe otherwise, the Harris County Criminal Justice System loses credibility, and the rule of law suffers. The involvement of a social worker contributes to a fair and just system regarding the determination of guilt/innocence and the appropriate punishment.

Finding 7A: Social Workers are used by the Harris County Public Defender's Office and are staffed at roughly a 1:10 (social worker to attorney) ratio.

Holistic Representation Defined

It is critical to understand that criminal behavior is often symptomatic of the underlying dynamics at play in a person's life. Of course, not everyone charged with a crime has committed a crime. But for many who have, they made a decision that the circumstances existing in their lives were dire enough that engaging in unlawful behavior was a reasonable response to their current circumstances.

Generally, people function in a state of homeostasis; an effort to maintain internal, psychological stability or equilibrium. Stressors (these previously referred to underlying dynamics) disrupt a person's stability, creating a state of crisis. And while living in a state of crisis generally lowers one's state of equilibrium, leading to bad decision making, this state of crisis leads a person to be more receptive to external help. Criminal charges can serve as the catalyst for change.

Holistic representation embodies the belief that addressing only a client's criminal behavior, and not the consequences of poverty and other risk factors that lead to criminal activity, is shortsighted. Holistic representation can be characterized as an ecological perspective, recognizing the interaction of legal representation with factors ranging from individual conditions to socio-economic structure and environmental circumstances.

Holistic representation encompasses a wide-range of services and practices, so there is no single model; the actual implementation of this approach varies widely from jurisdiction to jurisdiction.[61]

[61] Social Worker Defender Project, Program Manual, October 2020, Urban Institute, page 9, https://michiganidc.gov/wp-content/uploads/2021/03/SWDP-Program-Manual.pdf,

In 2010, the Chair of the American Bar Association's Criminal Justice Section, in setting the Section's priorities for 2011, set holistic representation near the top of the list.

'Holistic' is neither a word nor a concept that started in the indigent defense world, or even the legal profession. 'Holistic' means - according to the dictionary - 'relating to or concerned with wholes or with complete systems rather than with the analysis of, treatment of, or dissection into parts'.

To be sure, holistic representation includes a lot more than lawyers providing criminal defense representation partnering with social services. The Bronx Defenders web site defines "real holistic defense" as providing clients with access to other legal services (other than quality criminal defense representation) such as attorneys specializing in family, immigration, housing, and employment law. It also includes providing the client with parent advocates, investigators, civil advocates and team administrators working collaboratively to identify and address a client's needs.[62]

Client-Centered Representation Defined

An office can provide "client-centered representation" but not be "holistic." It has been explained that "client-centered representation" refers to the power, ability and right of the client to decide what direction s/he wants to take once given the information s/he needs. It means that the lawyer attempts to understand the situation from the client's point of view, respecting the client's right to choose the course to pursue.

Some lawyers believe that they know what is best for the client. They "tell" the client how s/he should resolve their case, or, as some do not like that characterization, they "strongly" (and sometimes rudely) suggest the "right" choice. Appointed lawyers and public defenders represent a person and we should respect the client's right to make decisions as to how their case should be resolved ... even when we believe that decision is the wrong one. Rather than insisting the client follow the lawyer's advice, a lawyer who practices "client-centered representation" spends his or her time and energy rethinking his or her advice - in the context of the client's situation - and if still convinced s/he is offering the client the best advice, develops a different strategy and approach to get the client to understand where the lawyer is coming from. But at the end of the day, the client makes decisions and is afforded the respect, courtesy, cooperation, and support of the lawyer.

For the public defender/court-appointed lawyer, client-centered representation is a difficult challenge, in part because client-centered representation is grounded in trust. Building trust takes time with the client that public defenders and court-appointed lawyers do not always have. In addition, clients represented by a public defender or court-appointed attorney often enter the lawyer/client relationship with a good deal of cynicism about the criminal justice system generally, but also about the lawyer specifically. Clients often do not believe public

[62] https://bronxdefenders.org

defender/court appointed lawyers are competent; committed to the client and the client's needs. They often question the lawyer's abilities and loyalties.

Holistic representation includes, at a minimum, lawyers with social service providers (social workers), investigators, and adequate support staff available to address both the legal issues confronting the client, as well as those 'other' factors that serve as barriers to the client's functioning in the community and achieving life goals. Using a client-centered approach, the individual's legal problems, as well as personal and environmental issues, are addressed, a plan of action is developed, and together the client and his legal team begin the process of implementing the plan for change.

	TRADITIONAL MODEL	CLIENT-CENTERED, HOLISTIC MODEL
Scope of Issues Addressed	Narrow; Legal issues only	Broad, including socio-economic and psychological factors
Relationship	Authoritarian	Authoritative
Attorney Role	Active	Active
Client Role	Passive	Active

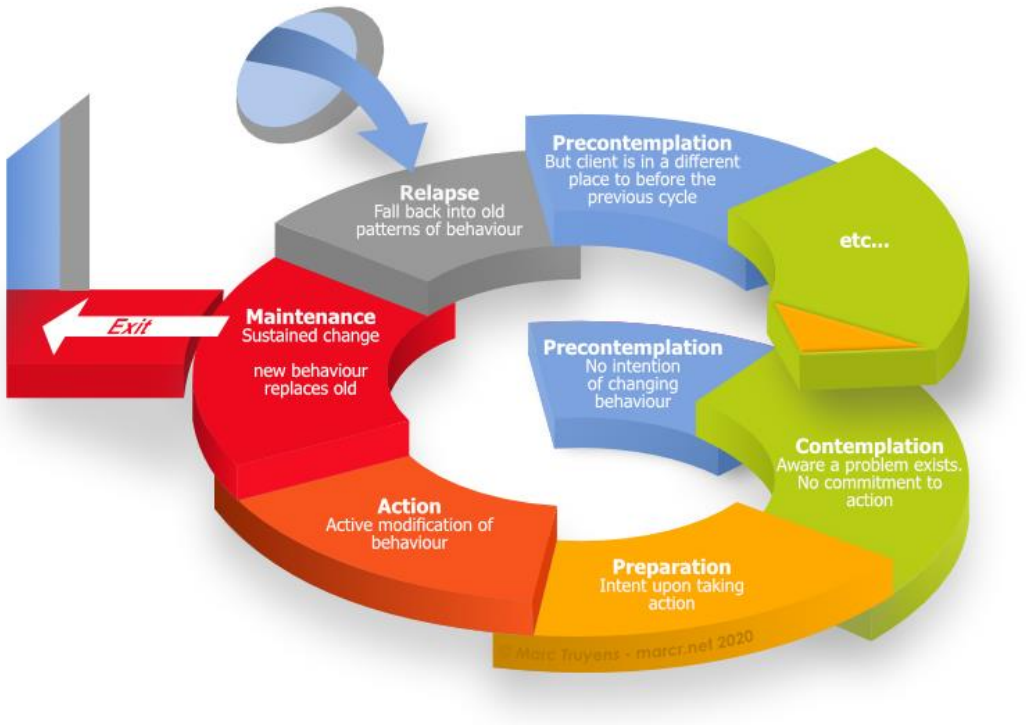
Foundational Underpinnings in Support of a Holistic Representation Model

When a person is arrested and interacts with the criminal justice system, the crisis injected into that person's life serves as an opportunity to address behavior change in that client's life. Properly motivated, a client facing a criminal charge is afforded an opportunity for contemplative reflection regarding behavior change. With the proper coaching or counseling, a client can become highly motivated to change behaviors responsible for the introduction of the crisis in that person's life. A highly motivated client, armed with a workable plan for change that the client has helped create and, consequently endorses, can successfully eliminate bad behaviors.

Behavior change does not occur over night, but rather in stages and cycles. Psychologists James Prochaska and Carlo DiClemente formulated the steps clients go through when implementing change in their life. The stages of change model, referred to as the Transtheoretical Model (TTM), describes 5 (6 if there is a return to old behaviors) stages clients go through to implement change: Precontemplative, Contemplative, Preparation, Action, Maintenance, and Relapse.[63]

[63] https://marcr.net/marcr-for-career-professionals/career-theory/career-theories-and-theorists/stages-of-change-model-prochaska-and-diclemente/

Figure 14: Transtheoretical Model (TTM)



The client in the ***Precontemplative*** stage is reluctant to see that change needs to happen. They are resigned to their current state, while clients in the ***Contemplative*** stage are ambivalent, frustrated with their present state, but not committed to change or taking the steps necessary to implementing change. Clients in the ***Preparation*** stage are committed to action, though there will likely be remnants of ambivalence. Clients in the ***Action*** stage are participating in the formulation of a plan for change and have taken ownership of the process of change. Clients in the ***Maintenance*** stage have successfully executing their plan for change. Finally, the client in the ***Relapse*** stage has returned to old behaviors. He/she may have engaged in new criminal activity. These clients reenter the model at the Precontemplative stage, but hopefully at a different place than when they initially entered.

Prochaska/DiClemente stages of change is discussed as it serves as the catalysts for the implementation of a client-centered, holistic representation model. Clients interacting with the criminal justice system are in a state of crisis. Many are reflective, contemplating the impact and consequences of their behavior. Many find themselves in the Precontemplative - if not the Action - stage of change. Intervention in that client's life by an empathic social worker, effectively utilizing a FRAMES motivational strategy[64] and motivational interviewing techniques[65] can help the client realize real and lasting behavior change. Lawyers have not

[64] The elements of the FRAMES approach include, **F**eedback regarding personal risk, **R**esponsibility for change placed directly on client, **A**dvice about changing, **M**enus of self-directed change options, **E**mpathic counseling, and **S**elf-efficacy or optimistic empowerment. See: https://methoide.fcm.arizona.edu/infocenter/index.cfm?stid=242

[65] William Miller, Ph.D.; https://williamrmiller.net/

received training in these techniques. Consequently, a lawyer can address the client's legal issues, but cannot effect change in his or her clients' behaviors, reducing the chances that they will do anything but engage in the same or similar behaviors when returning to the same environment.

Research indicates:

- People are more likely to undertake and persist in an action when they perceive that they have personally chosen to engage in that action.
- Direct, confrontational discipline styles (implemented by probation departments, law enforcement agencies, and courts) tend to increase client resistance.
- Opposing resistance tends to entrench it.
- Clients are more committed to a plan of action that they perceive as their own, specifically addressing their personal concerns.
- Freedom of choice, even incorrectly perceived, lowers resistance.

Lawyers at the MAC won't always have the best relationships with their clients, but they and their associated social workers will have a better relationship than the officer who arrested the client, the district attorney who prosecuted the client, the sheriff who jailed the client, the probation officer who supervised - and possibly imposed sanctions - on the client, or the court who found the client guilty and sentenced the client to jail or to a term of probation. The MAC is the agency with the best opportunity to address behavior change in the clients they represent. Social workers are poised to assist in providing real and lasting change through motivational strategies and the development of comprehensive alternative sentencing plans that address needs and disrupt patterns of repeat offending.

Benefits to Adopting a Client-Centered, Holistic Representation Model at the MAC

A client-centered, holistic model of representation, combining quality legal representation and comprehensive social services, has been shown to reduce criminal activity and recidivism by offering individuals solutions to debilitating problems in clients' lives.

Implementing a client-centered, holistic representation model will allow the MAC to achieve significant primary goals:

- Preventing crime;
- Reducing recidivism;
- Providing solutions to debilitating problems facing clients;
- Empowering clients to live positive, productive and meaningful lives;
- Increasing community involvement in the criminal justice system;
- Demonstrating an effective, and cost-efficient service model.

In achieving these primary goals, the MAC model will produce secondary cost savings to include:

- Reducing judicial administration costs by decreasing the number of people offending

and, consequently, decreasing the number of cases initiated in the jurisdiction;
- Reducing the average length of sentences by producing meaningful and productive alternatives to incarceration, thereby reducing jail costs associated with pre-trial and post-trial detention;
- Reducing law enforcement costs associated with crime prevention and detection as the number, frequency, and severity of offenders and offenses are reduced.

Client-Centered Holistic Representation Works

There are few studies of holistic defense. Historically, indigent defense systems have lacked resources to collect meaningful and comprehensive client specific data connected to specific charge(s)/case(s) and their outcomes for significant periods of time to measure the effects of the model. But there is emerging interest in evaluating its impact and promising evidence. Until then, we are left the few studies that exist and anecdotal evidence that this model works.

A study by Professor Paul Heaton and his co-authors along with the RAND Corporation[66] compared holistic representation – wherein an interdisciplinary team that includes a lawyer working alongside other advocates such as a social worker, housing advocate, investigator, etc. addresses the wider needs of the client enmeshed in the criminal justice system – to the more traditional public defense model focused around criminal attorneys and criminal case advocacy. They found that the holistic approach reduced the likelihood of a prison sentence by 16 percent, and actual prison sentence length by 24 percent.

These impacts translated to big savings for taxpayers. Over the decade covered by the study, holistic representation of clients prevented more than one million days of incarceration, saving New York taxpayers an estimated $165 million. And despite an appreciably higher release rate, in a follow-up spanning up to ten years after case resolution, defendants who received holistic defense services were shown to commit no more crime than those incarcerated for longer periods.

“Communities across the country are grappling with ways to address the problem of mass incarceration while preserving public safety,” said Heaton. “This study demonstrates that strengthening indigent defense deserves a prominent place in those conversations.”

Dr. Sarah Buchanan in her study of holistic representation[67] compared clients who received social work services to clients who solely received legal representation. She found that clients charged with misdemeanor offenses were statistically significantly more likely to be in the social work group, suggesting that lawyers recognized the need for these clients to receive assistance.

She found that the number of misdemeanor charges incurred during a two-year time period were lower for clients who received social work services. The social work clients also had a

[66] Madison, James M., "The Effects of Holistic Defense on Criminal Justice Outcomes." https://harvardlawreview.org/wp-content/uploads/2019/01/819-893_Online.pdf

[67] Buchanan, Sarah Beck, "Social Work Practice in Public Defense. " PhD diss., University of Tennessee, 2017.

lower probability of incurring a new misdemeanor charge, specifically a lower probability of incurring new Misdemeanor A charges. Dr. Buchanan's work should inform the Harris County MAC moving forward as her findings regarding effective social work strategies for clients charged with misdemeanor offenses is particularly impactful.

IV. Public Defense Values

1. Mission and Vision

Mission statements communicate an organization's reason for being, and how it aims to serve its key stakeholders. In the Harris County MAC, the stakeholders are the clients. Arguably, there exists secondary stakeholders: the greater community, courts, prosecutors, law enforcement, and probation but clients are unquestionably the primary stakeholder.

Vision statements tend to be longer and tend to include a summation of the firm's values. Vision statements are future-oriented declarations of the organization's purpose and aspirations.

An organization's mission statement lays out the organization's "purpose for being," while the vision statement reflects, "based on that purpose, this is what we want to become." The strategy should flow directly from the vision, since the strategy is intended to achieve the vision and thus satisfy the organization's mission.

2. Values

Organizational values are the code of ethics of an organization**.** These values define what the organization believes in and how people in the organization are expected to behave - with each other, with clients, and with secondary stakeholders. Organizational core values are the beliefs of the organization, in which organizational members are emotionally invested.

The leader of an organization cannot just create organizational value and expect them to be embraced and followed. Organizational values must be organic, and once endorsed by the organizational members, they should be reinforced at all levels of the organization and used to guide attitudes and actions.

Organizations with strong values remain true to those values, even when disregarding them may be more expedient.

Institutional defender offices utilizing a client-centered holistic representation model tend to have similar mission statements and shared core values. Client-centered holistic offices emphasize the clients, putting them first above all else. They seek justice and demand that their clients be afforded dignity and respect. They speak of client empowerment and self-sufficiency. They involve the community, and seek client reintegration into that community.

The Harris County MAC should elect to adopt a client-centered holistic representation model. The organization should consider the following values:[68]

[68] References to MAC staff include MAC wheel attorneys.

Justice

Staff will actively pursue justice for all clients. Employees, including those on contract, at the MAC should understand that justice is not just an outcome, but is equally a process.

Dignity and Worth of Person

The MAC will practice client-centered representation. Staff and wheel attorneys will respect MAC clients and their family members and loved ones.

MAC staff will listen to their clients, taking them, and their situation, seriously.

MAC staff recognize and afford the client a meaningful role in the representation and welcome their contribution.

MAC staff will never bully a client into accepting a plea bargain.

MAC staff are courteous to the client and are not unfairly dismissive of a client's concerns, questions or suggestions about their case.

MAC staff accept that they have an obligation to fully inform the client regarding all aspects of the client's case. Further, MAC attorneys understand their obligation to advise the client as to what they - the attorney - believes to be the appropriate choice to make in the case. However, client-centered attorneys respect the client's right to choose the ultimate strategy to pursue in his or her case. Once the client chooses the case strategy, the MAC attorney will pursue that strategy with the same enthusiasm and desire to succeed as if the attorney had chosen the strategy.

MAC attorneys will not belittle or lecture clients in person, or in the client's absence. So-called "gallows humor" directed at clients is never acceptable.

Effective-Empathic Communication

The MAC facilitates close, open communication with clients in an empathic manner.

MAC staff maintain appropriate empathy for our clients, client's family and loved ones.

MAC staff effectively communicate with our clients.

MAC attorneys conduct thorough interviews with clients prior to the client's first court appearance. Further, they meet with their client prior to all subsequent court appearances.

MAC attorneys provide each client with a business card or contact information, explaining how they can be reached.

MAC attorneys and staff promptly return all client phone calls and respond to letters promptly.

MAC staff attempt to communicate with each client in a manner that the client can understand, and take the necessary steps to make sure the client understands what is being communicated to him/her.

Integrity

MAC staff behave and maintain a strong adherence to professional ethics and conduct.

Competent Representation

Client representation by MAC staff demonstrates adherence to high standards of proactive and ongoing commitment to professional development.

MAC staff are thorough and prepared.

MAC staff investigate all the relevant facts of the case.

MAC staff gather all relevant social history information about our clients that could be relevant to guilt/innocence issues as well as mitigation.

MAC staff know the law relevant to our client's case.

MAC staff will not rely on someone else to tell them what the law is.

MAC staff identify and research potential legal challenges that can be made in case.

MAC staff evaluate each client's sentencing exposure as early as possible in the case.

MAC staff stay current on developments in the law, including statutory changes as well as current case decisions.

MAC staff attorneys refresh their knowledge of a case before taking, or recommending any action in the case, *i.e*., negotiations, court hearings, client meetings, investigation, to ensure the attorney's grasp of the facts and case posture is sufficient to allow the attorney to be effective.

MAC staff appear for court on time, with appropriate paperwork/court files, and resources, knowledgeable about their client's case.

MAC lawyers anticipate, research the law, and where necessary seeks expert assistance to address all the potential consequences that might flow from any disposition of the client's case.

MAC lawyers interact with the client's loved ones in a respectful manner to the extent authorized by the client and without disclosing client confidences.

MAC lawyers protect the attorney/client privilege by ensuring that all conversations do not involve third parties. They do not share client confidences with anyone outside the Office. They advise every client during the initial interview regarding the privilege, and that his/her communications with others are not privileged. They advise jail clients during the initial interview that calls from the jail could be recorded and monitored and made available to the DA in his/her case. Finally, they advise jail clients during the initial interview that incoming and outgoing mail could be monitored and made available to the DA in his/her case.

MAC lawyers do not disclose information about a client to anyone if that disclosure could potentially harm the client. If the MAC lawyer has a concern that disclosure of certain information is required by the rules of ethics, they will immediately - and prior to disclosure - discuss the situation with management at the MAC office.

MAC lawyers will continue to assist their clients when able even after his/her case has been resolved. This includes the obligation to respond to client questions about jail credit, sentence calculation, probation conditions/problems, suspended sentence motions, etc. The fact that a judgment has been entered in a case does not mean that the MAC lawyer's relationship with the client necessarily ends.

The MAC lawyer preserves client information and case events by documenting all case events, actions, client communications, etc. Additionally, the MAC lawyer always is sure to share that information with other staff members whose actions could be impacted by the case developments.

Client Loyalty

MAC staff subordinate all other professional relationships and pledge unwavering loyalty to their client.

V. Baseline Data for Future Outcome Analysis and for Managing by the MAC

1. Introduction

Purpose

The purpose this analysis is twofold. First, this analysis sets the baseline for any future outcome evaluation of Harris County's new Office of Managed Assigned Counsel (MAC). The MAC was started with grant funding from the Texas Indigent Defense Commission (TIDC) and will be required to report on various outcome metrics as part of the grant conditions. A baseline is necessary to determine later the impact of the MAC on outcomes. Second, this analysis provides an analytical framework for the MAC's executive leadership to consider while developing data-driven management practices in the future.

Study Period

The report analyzes indigent defense and court disposition data in from Harris County fiscal year 2016 through Harris County fiscal year 2021. The Harris County fiscal year runs from March 1st to the last day of the following February. In the following tables, the percent change is calculated as the change from fiscal year 2016 to fiscal year 2020, because the COVID-19 pandemic began impacting the state at the onset of fiscal year 2021 (March 2020). The change between any year and fiscal year 2021 trends is impacted by process alterations to mitigate the impact COVID-19 pandemic and must be considered in any present and future analysis of trends in Harris County. Additionally, the Harris County disposition data for the Criminal Courts at Law does not include the entirety of fiscal year 2021; it includes cases disposed from the first day of March 2020 through February 24, 2021. Fiscal year 2021 is presented for reference.

Data

Aggregate data were collected from the Texas Office of Court Administration's (OCA) Court Activity Reporting and Directory System (CARD)[69] for each of Harris County's fiscal years 2016 through 2021. This system provides data by month and the user can select the start and end dates based on need.

Aggregate data were also collected from the Indigent Defense Data for Texas[70] dashboard hosted by the Texas Indigent Defense Commission (TIDC). The TIDC fiscal year runs from October 1st through the end September. When the TIDC data are presented in this report, they reflect the state's fiscal year 2016 through fiscal year 2020. These data are the only data not normed to the Harris County fiscal year.

Court Administration from the County Courts at Law provided case level data for all filings and dispositions in Harris County from March 1, 2015 through February 24, 2021. This provides data for the full Harris County fiscal year 2016 through 2020 and all but two days of fiscal year 2021 dispositions (February 27 and 28 was a weekend).

[69] https://card.txcourts.gov/
[70] http://tidc.tamu.edu/public.net/

The datasets were transformed from case level to defendant level data by collapsing all cases with a shared disposition date, court, and state identification number (SID) into a client level record. The number of cases disposed per defendant remained stable at 1.2 each year (presented later in Table 32). With a client level record, the full outcome of a defendant's disposition is evident. A client can have multiple cases disposed with different outcomes, for example, one person with four cases may have three dismissals and a guilty plea; this person will consume county resources when sentenced on the offense with a guilty plea. Case level analysis would not tell the full outcome story.

The most severe charge and the most severe punishment were used to assign the defendants to specific offense categories and punishment outcomes. The most severe charge categorized the client level record, *e.g.* one person with a misdemeanor A family violence assault and a misdemeanor B trespassing is discussed under the misdemeanor A family violence charge. Then, the outcomes are taken together to form the following outcomes:

- Acquittal All: client acquitted at trial on all disposed on the same disposition date;
- Dismissed All: client had all charges dismissed on the same disposition date;
- Deferred Adjudication: client received deferred adjudication on one or more charges;
- Guilty Some, Dismissed Some: client faced at least two charges one of which was dismissed (or the client got an acquittal) and the other was a plea or finding of guilt; and,
- Guilty All: client plead or was found guilty on all charges disposed on the same date, this includes pleas of no contest.

A similar approach occurred with punishments. For all clients with an outcome of deferred adjudication, guilty some/dismissed some, and guilty all the most severe punishment was assigned. Most to least severe ranking is: jail time, community supervision (probation plus deferred adjudication), and fine only. If punished for multiple offenses, the time was assumed to be concurrent and longest sentence was applied; however, the fine only dispositions were assumed to be cumulative, so the sum of all fines is given.

Multiple tables provided the elements necessary to construct a dataset with all the information needed for these analyses. This dataset included the Texas Department of Public Safety (DPS) State Identification Number (SID) which is a unique identifier to track a person's statewide arrest and disposition data for the person's lifetime. DPS records every arrest, prosecution, and disposition in Texas attached to a unique identifier called a SID. The DPS set also provides demographics like date of birth, sex, race, and ethnicity so the records without these observations were supplemented with DPS information. The process provides context that county level court records cannot, especially when arrests and prosecutions happen in the other 253 counties in the state. The arrest, prosecutorial, and sentencing history were matched to the defendant level data from Harris County Court Administration for analysis.

Systemic Changes in Harris County Fiscal Year 2016 through Fiscal Year 2020
Harris County underwent a variety of system, policy, and practice changes during the period studied that impact defendant outcomes. Understanding how these changes may impact the defendant outcomes is important when the MAC assesses itself against the baseline information presented here. These systemic changes may impact the trend in case outcomes regardless of counsel type or work. These changes will be identified throughout the report using the heading "s*ystemic change note*" with a discussion of the potential impacts.

For example, time to case dispositions slowed down and number of dispositions decreased during the period analyzed here. Harris County had Hurricane Harvey in August 2017 and the Labor Day floods in September 2019. The entire state reacted to COVID-19 beginning in March 2020 and most of the state lost a week in mid-February 2021 due to winter storm Uri. In the future, it is possible the time to disposition will decrease and probably would not be due to counsel type or presence of a MAC. These disasters occurred during the implementation of *ODonnell* updated Rule 9 (discussed in earlier in the report), which increased the number of releases from jail during the preadjudicative period. This trend, therefore, cannot be attributed to the impact of counsel working with specific defendants.

Judge Rosenthal's opinion in *ODonnell* noted "prosecutors routinely offer, and County Judges routinely accept, guilty pleas at first setting and sentence the misdemeanor defendants to time served, releasing them from detention within a day of pleading guilty." *ODonnell v. Harris Cnty.*, 251 F. Supp. 3d 1052, 1131 (S.D. Tex. 2017). This is a further explanation for the change in case disposition timelines. As more people are released prior to adjudication, there is less system pressure for defendants to plea at the first criminal court at law setting. This change in policy may also impact the increase in case dismissals and may not reflect the impact of work by counsel on specific cases.

Interviewed defense counsel has also noted the length of time to obtain and review discovery increased partially because of the number of body camera and dashcam videos for each arrest. This could inflate the length of time a case is open from filing to disposition.

The District Attorney's Office during the period analyzed here put in place an array of diversion programs, which are clearly impacting a number of filings, length of time to disposition, and dismissal rates. There is a Misdemeanor Marijuana Diversion Program, which probably explains the drop in drug possession filings, that allows a person with a misdemeanor amount of marijuana (less than four ounces) to avoid arrest, jail, and criminal filings.[71] The Driving While License Invalid or Suspended Intervention allows defense attorneys to reset the case until the client restores their license, which means these cases likely have far more settings and a high dismissal rate, see Table 28 below, regardless of lawyer type, and the Retail Theft Pretrial Intervention where a client completes a 90 day program and then receive a dismissal for misdemeanor B retail theft.[72] Finally, there is the one year DWI Pretrial Intervention[73] for DWI

[71] HC DAO. Programs & Diversion. https://app.dao.hctx.net/about-hcdao/programs-diversion
[72] *Id.*
[73] *Id.*

1st, which means the case is filed and open for a year until the person successfully discharges the program. If the person fails the conditions, then the case is adjudicated. This means DWI Pretrial Intervention cases are open for at least a year if the participant is successful and might be open longer than a year depending on when the defendant unsuccessfully discharges the program.

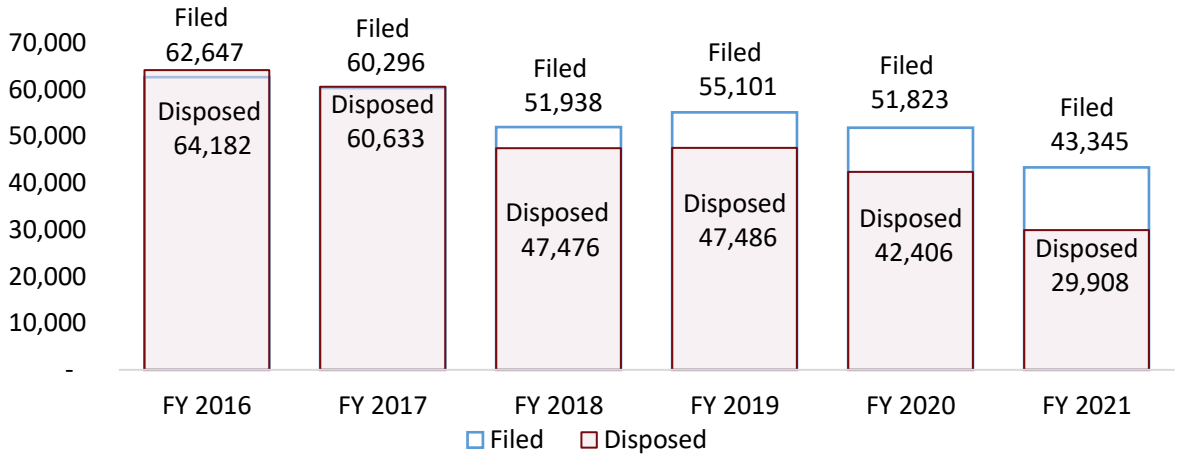
Again, these systemic changes will be identified throughout this section using the heading "*systemic change note*" with a discussion of the potential impacts.

2. General Trends

The data from OCA were used to explore general trends. These trends are case, not client/defendant, based. The fiscal years presented refer to the Harris County fiscal year.

Figure 15 presents the number of case filings and dispositions for Harris County fiscal year 2016 through 2021. The number of cases filed in the County Courts at Law (misdemeanors) decreased by 31 percent compared to a 17 percent decline for cases disposed from fiscal year 2016 through fiscal year 2020. This pattern emerged prior to fiscal year 2021's COVID emergency. Filed cases have outpaced disposed cases since fiscal year 2018. The change from fiscal year 2016 to fiscal year 2020 was a 17 percent decline in filings with a 34 percent decline in dispositions.

Figure 15: Misdemeanor Cases Filed and Disposed in County Courts at Law, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021



Source 17: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Table 27 shows the disposition rate, the number of cases disposed for every one case filed, dropping from fiscal year 2016 through fiscal year 2021. In fiscal year 2016, the County Courts at Law were disposing 1.02 cases for every 1 case filed, meaning more cases were disposed than filed. This reversed in fiscal 2018 when .91 cases were disposed for every case filed and then dropped to 0.82 cases disposed for every 1 filed by fiscal year 2020.

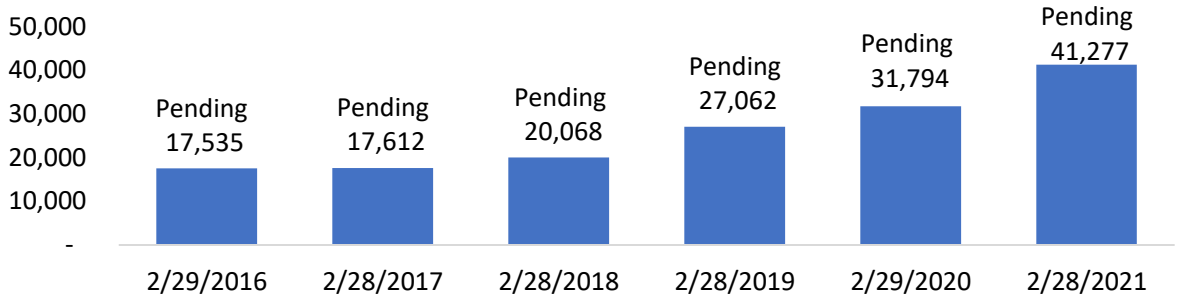
Table 27: Disposition Rate for County Courts at Law, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Filed	62,647	60,296	51,938	55,101	51,823	43,345
Disposed	64,182	60,633	47,476	47,486	42,406	29,908
Disposition Rate: For Every One Case Filed X Cases Disposed	1.02	1.01	0.91	0.86	0.82	0.69

Source 18: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Though both filings and dispositions declined, the dispositions declined faster than filings, which is why there is a growing backlog of cases on the last day of the fiscal years as seen in Figure 16. This presents the number of cases that are carried to the next fiscal. The courts will need to dispose these cases as well as all the new cases filed in that fiscal year. For example, on February 29, 2016 there were 17,535 new and active cases pending so in fiscal year 2017, the County Courts at Law needed to dispose these 17,535 plus the 60,296 cases filed that year (see Figure 1) to have a clear docket. Clearly, some of the new cases filed would not be disposed within the same fiscal year, but the increase in the number of pending cases and the decrease in dispositions seen above show a slowdown occurred. This trend emerged prior to the COVID-19 shutdown with the number pending at the end of fiscal 2020 (31,794) being 81 percent higher than the number pending on February 29, 2016 (17,535).

Figure 16: Cases Pending Disposition on the Last Day of the Harris County Fiscal Year



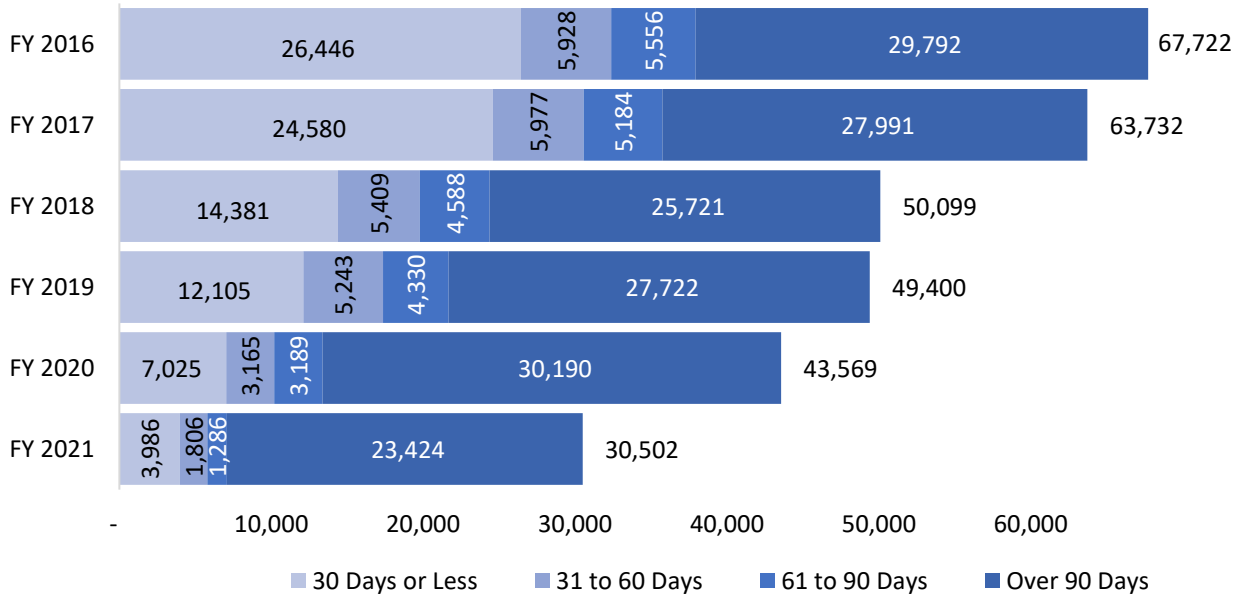
Source 19: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Figure 17 shows the number of cases disposed and the time to disposition. The trend indicates an increasing amount of time necessary to resolve cases. Fiscal years 2016 and 2017 show a bifurcated distribution with about as many cases being resolved within 30 days as being resolved after 90 which is not present from 2018 through 2021. Between fiscal year 2016 and fiscal year 2020, the year ending right before COVID hit Harris County, the cases disposed in 30 days decreased by 73 (26,446 to 7,025) percent which was double the overall 36 percent decrease in case dispositions. The slower decrease means it did not occur only as the result of an overall decrease because if that were the case these numbers would decrease at the same

or a similar rate. Cases disposed in more than 90 days increased by one percent, which was the only category showing an increase, from 29,792 to 30,190.

S*ystemic change note*: Average time from filing to disposition may decrease if the county successfully addresses the backlog or continue to increase if the backlog continues growing. If this change occurs, increase or decrease, it should not be inappropriately attributed to the implementation of a MAC.

Figure 17: Number of Cases Disposed by Time Categories, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

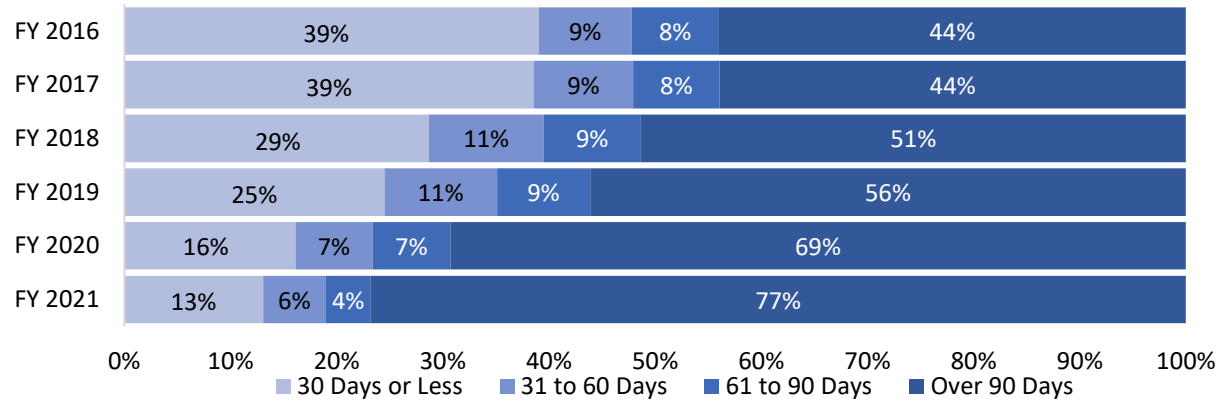


Source 20: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Figure 18 shows the proportion of cases disposed within the time categories presented above. The bifurcation mentioned in 2016 and 2017 is clear with 39 percent disposed in 30 days or less and 44 percent disposed in more than 90 days. The increase in time to disposition is also evident as the proportion taking more than 90 days increased from 44 percent of total dispositions to over half in 2018 (51%) to over two-thirds (69%) in 2020 to over three-quarters in 2021 (77%).

S*ystemic change note*: Average time from filing to disposition may decrease if the county successfully starts to address the backlog. This will decrease the proportion of cases taking more than 90 days to dispose. Similarly, the county could increase the time from filing to disposition increasing the proportion of cases taking over 90 days to dispose. If this change occurs, increase or decrease, it should not be inappropriately attributed to the implementation of a MAC.

Figure 18: Proportion of Cases Disposed by Time Categories, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021



Source 21: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Table 28 shows the cases filed and disposed in fiscal year 2016 and fiscal year 2020 by type of offense. The type of cases being filed has also changed during the last five years. Harris County fiscal year 2020 was chosen because it ended right before the COVID-19 statewide shutdowns started so it is a more appropriate comparison. The trend shows the number of filings for DWI 1st, DWI 2nd, Family Violence Assault, and Assault increased; however, the DWI 1st, DWI 2nd, and Assault dispositions all decreased. As a result, the disposition rate for DWI 1st is 0.66 cases disposed for each case filed, for DWI 2nd it is 0.62 cases disposed for each filed and for Assault it is 0.77 disposed for each case filed. For Family Violence Assault, the number disposed is slightly higher in 2020 but dispositions did not keep pace with filings and the disposition rate is 0.80 cases disposed for each filed. All other offense types had filings decrease but only Possession of Marijuana and Driving While License Suspended had dispositions keep pace or even increase, so these are the only two types of offenses with disposition rates above 1, *i.e.* one case disposed for each filed. This is likely tied to changes in filing practices and diversion program opportunities.

S*ystemic change note*: The number of filings for certain charges increased and these cases seem to take longer to dispose than offenses with decreased filings. The decrease in DWI 1st dispositions may be explained by the diversion program mentioned in the introduction. Any changes to diversion opportunities or changes in practice related to arrest and/or filing will impact overall disposition rates in a way that should not be attributed to the MAC program.

Table 28: Disposition Rate for County Courts at Law, Harris County FY 2016 through FY 2020

	2016 Filed	2016 Disposed	2016 Disposition Rate	2020 Filed	2020 Disposed	2020 Disposition Rate
Growth in Filings	**15,755**	**15,947**	**1.01**	**22,129**	**15,505**	**0.70**
DWI 1st	8,031	8,044	1	11,932	7,842	0.66
DWI 2nd	1,696	1,632	0.96	2,397	1,479	0.62
Fam Vio Assault	4,083	4,344	1.06	5,704	4,564	0.80
Assault	1,945	1,927	0.99	2,096	1,620	0.77
Reduction in Filings	**46,892**	**48,087**	**1.03**	**29,694**	**26,435**	**0.89**
Theft & Theft by Check	9,369	10,232	1.09	5,820	4,644	0.80
Poss. Marijuana	7,698	8,200	1.07	554	1,692	3.05
Other Drug Offense	700	677	0.97	327	286	0.87
Driving While Lic Susp	4,673	4,644	0.99	1,834	2,268	1.24
All Other Misd	24,452	24,334	1	21,159	17,545	0.83
Total Filings	**62,647**	**64,034**	**1.02**	**51,823**	**41,940**	**0.82**

Source 22: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Table 29 shows the dismissal rates by offense type in 2016 and 2020. As predicted the Driving While License Suspended cases dismissed increased from 39 percent to 86 percent; the theft, which does not separate the misdemeanor Class B –Theft (Retail Only -$100-$750) allowed in the DA's program from other thefts, also increased from 40 percent to 67 percent; and the DWI 1st increased from 19 percent to 45 percent. All case types saw increases in dismissal rates, including Assault (39% to 70%) and Family Violence Assault (42% to 76%). The implementation of diversion programs discussed above for marijuana, DWI, and driving with a suspended license may not explain the entirety of the slowdown or the dismissal rate increase. For all offenses with increased filings, the dismissal rate doubled from 27 to 55 percent as they did for cases with a decreased number of filings which increased from 37 to 76 percent. Of all cases disposed in 2016, 35 percent were dismissed and in 2020, 68 percent of the total cases disposed were disposed with a dismissal.

S*ystemic change note*: Dismissal rates increased but not all of these increases are related to diversion programs. A new diversion program could increase dismissals as could an indigence waiver allowing more people to participate in some of these programs. If the dismissals are a response to the growing backlog, a reduced backlog could decrease the number of dismissals as could the elimination of a program. In the future, the changes in selection and participation protocols for these programs, if any, would have to be considered in an evaluation of the MAC program outcomes. Assigned lawyers seeking and being granted waivers to enroll their clients in diversion programs with associated costs may cause case outcome changes attributable to the MAC program, while other may be the result of program changes not impacted by the performance of counsel.

Table 29: Dismissal Rate for County Courts at Law, Harris County FY 2016 through FY 2020

	2016 Disposed	2016 Dism	2016 Dismissal Rate	2020 Disposed	2020 Dism	2020 Dismissal Rate
Growth in Filings	**15,947**	**4,316**	**27%**	**15,505**	**8,503**	**55%**
DWI 1st	8,044	1,563	19%	7,842	3,522	45%
DWI 2nd	1,632	165	10%	1,479	394	27%
Fam Vio Assault	4,344	1,836	42%	4,564	3,448	76%
Assault	1,927	752	39%	1,620	1,139	70%
Reduction in Filings	**48,087**	**17,832**	**37%**	**26,435**	**20,102**	**76%**
Theft & Theft by Check	10,232	4,097	40%	4,644	3,117	67%
Poss. Marijuana	8,200	3,158	39%	1,692	1,543	91%
Other Drug Offense	677	303	45%	286	240	84%
Driving While Lic Susp	4,644	1,806	39%	2,268	1,956	86%
All Other Misd	24,334	8,468	35%	17,545	13,246	75%
Total Filings	**64,034**	**22,148**	**35%**	**41,940**	**28,605**	**68%**

Source 23: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

3. Defendant-Based Trends

Patterns seen in case level data are expected in the client/defendant level data analysis. These include longer time to disposition, which probably means more settings, higher proportions of people released prior to adjudication, and higher dismissal rates. These may vary by type of attorney, but all attorney types may show increases.

The data used for the following analysis is the client level record created from the CCL data tables provided by Harris County Court Administration. This presents information on fiscal years 2016 through 2021 and presents the proportional change from 2016 to 2020 to avoid presenting changes driven by COVID-19.

Client Overview

Table 30 shows the total number of defendants in the study period, by fiscal year. The number of clients at disposition during the study period dropped just as the number of cases disposed dropped as seen in Table 4 below. Table 1 above showed the number of dispositions dropped by 33 percent between 2016's 64,182 and 2020's 42,406 compared to the number of clients with original filings drop of 30 percent between the same dates. This happens because clients have more than one charge at disposition (the average client had 1.2 charges at disposition).

Table 30: Number of Clients, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Total Defendants
FY 2016	44,837
FY 2017	43,814
FY 2018	33,230
FY 2019	33,874
FY 2020	31,177
FY 2021	19,098
Change FY 2016-2021	-57%
Change FY 2016-2020	**-30%**

Additionally, as seen in Table 31, clients have different case types at disposition. The majority had only original files in the years reviewed (96 to 99 percent). A minimal amount had a mix of motion to revoke/adjudicate and new cases dropped faster. These declined by 68 percent from 2016 through 2020. Finally, between four and one percent had only motion to revoke/adjudicate. This type of case declined the most with 78 percent less in 2020 than 2016 but remained proportionately higher than those with a mix of case types (supervision failure and new cases).

Table 31: Clients by Type of Cases, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Clients with Only Original Cases Disposed		Clients with Original Filings & Motion to Revoke/ Adjudicate		Only Motion to Revoke/ Adjudicate		Total Clients
FY 2016	42,990	96%	479	1%	1,368	3%	44,837
FY 2017	42,058	96%	475	1%	1,281	3%	43,814
FY 2018	31,707	95%	356	1%	1,167	4%	33,230
FY 2019	32,822	97%	298	1%	754	2%	33,874
FY 2020	30,723	99%	154	0%	300	1%	31,177
FY 2021	18,941	99%	46	0%	111	1%	19,098
Change FY 2016-2021	-56%		-90%		-92%		-57%
Change FY 2016-2020	**-29%**		**-68%**		**-78%**		**-30%**

Table 32 shows the number and proportion of clients with at least one original disposition, which is the sum of the first two columns in Table 31, the average number of cases disposed, and the proportion of defendants with only one case at disposition. The number of cases disposed and the number of unique defendant/disposition date combinations both declined by 29 percent from 2016 through 2020 while the average number of cases disposition remained the same. Qualitative interviews with justice officials conducted as part of this study shows that these officials believe clients have more charges than what the data show. Also, the number of charges disposed per disposition date is numerically unchanged and the proportion of clients with only one charge remained stable.

S*ystemic change note*: The average number of cases per defendant during this period was stable. If the number of cases per defendant increases in the future, the client outcomes may change because there are more charges for which a guilty plea or finding could occur. This should be examined in any future evaluation of the MAC.

Table 32: Average Number of Cases Disposed per Client and Proportion of Clients with Only One Case at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Number of Cases Disposed	Number of Unique Clients	Average Number of Cases	Number & Percent of Clients with Only One Case Disposed	
FY 2016	50,477	43,469	1.2	37,488	86%
FY 2017	50,128	42,533	1.2	36,126	85%
FY 2018	37,532	32,063	1.2	27,544	86%
FY 2019	39,043	33,120	1.2	28,483	86%
FY 2020	35,867	30,877	1.2	26,960	87%
FY 2021	22,067	18,987	1.2	16,622	88%
Change FY 2016-2021	-56%	-56%	0%	-56%	
Change FY 2016-2020	**-29%**	**-29%**	**0%**	**-28%**	

Table 33 shows the highest offense grade at disposition during the study period. Client top level charge shifted from majority misdemeanor B in fiscal year 2016 (62%) to majority misdemeanor A in 2020 (50%) as seen in Table 7. As noted previously, the District Attorney does not file on possession of marijuana cases if people opt into a diversion program; there was a large drop in the number of cases filed in County Courts at Law (misdemeanors) in the data reported to OCA and the majority of possession cases are misdemeanor B. The decrease in number of defendants was driven by the 44 percent decrease in clients (about 11,700 less clients) with misdemeanor B as the highest charge. The actual number of clients with misdemeanor A as the highest charge decreased by six percent from 2016 to 2020, which was about 1,000 less clients, while the total number of defendants decreased by 29 percent. Ungraded misdemeanors look to have a large increase; however, this is an artifact of working with very low numbers. The increase was 204 additional people.

S*ystemic change note:* Policies and practices related to charging decisions, especially related to the diversion for possession of marijuana, have decreased the proportion of misdemeanor B filings. The current District Attorney's marijuana diversion program does not include a filing but if the program changes to include a filing or the program is eliminated, the distribution of offense level will change, the disposition types may change, and the number of dispositions will change as a result. Changes in program selection and participation protocols should be documented in any future evaluation of the MAC.

Table 33: Highest Offense Grade at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Misdemeanor A		Misdemeanor B		Misdemeanor *		Total Defendants
FY 2016	16,553	38%	26,905	62%	11	0.0%	43,469
FY 2017	16,784	39%	25,619	60%	130	0.3%	42,533
FY 2018	14,351	45%	17,531	55%	181	0.6%	32,063
FY 2019	15,799	48%	17,147	52%	174	0.5%	33,120
FY 2020	15,479	50%	15,183	49%	215	0.7%	30,877
FY 2021	9,967	52%	8,896	47%	124	0.7%	18,987
Change FY 2016-2021	-66%		-202%		91%		-129%
Change FY 2016-2020	**-6%**		**-44%**		**1855%**		**-29%**

Table 34 shows the highest offense type for clients at disposition. Violent offenses and DWI offenses, the two offense types not given a general order bond, increased from 2016 to 2020. Violent offenses increased by 18 percent from 4,530 to 5,362 and DWI by five percent from 8,148 to 8,561. Houston has, according to the *Houston Chronicle*, high traffic fatalities impacted by combination of confusing infrastructure and illegal behavior[74] specifically Driving While Intoxicated. The county had more drunk and drugged driving fatal crashes over the reporting period than any other metro area and the reporting led Sheriff Ed Gonzalez to create a regional taskforce to patrol the roads in January 2019.[75] Some of the increase may be related to that though the numbers other than fiscal year 2018 also simply look steady and it is only by virtue of the decrease in total defendants that the proportion increased. Property, drug, sex, and other offenses all declined. The proportion of clients with property and sex offenses remained about the same year over year but drug and other offenses dropped as a proportion. Again, the possession of marijuana diversion program had a large impact on drug offenses moving clients with clients with drug as the top offense at disposition from 16 percent of the total to seven percent.

S*ystemic change note*: Changes in charging decisions especially related to possession of marijuana, as discussed above, and the increase in filings for violent offenses have impacted the distribution of offense level, the disposition types, and the number of dispositions will over time. Changes in charging and filing decisions should be documented in any future evaluation of the MAC.

[74] Begley, D. and Barned-Smith, S. 2018. Out of Control – A Six Part Series. *Houston Chronicle. https://www.houstonchronicle.com/local/investigations/out-of-control/*

[75] Barned-Smith, S. 26 January 2019. New taskforce targets unsafe drives on Houston roads. *Houston* Chronicle. https://www.houstonchronicle.com/news/houston-texas/houston/article/New-taskforce-targets-unsafe-drivers-on-Houston-13564239.php

Table 34: Highest Offense Type at Disposition, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Violent		Property		Drug		Sex		Other		DWI		Total Clients
FY 2016	4,530	10%	6,946	16%	6,976	16%	1,492	3%	15,377	35%	8,148	19%	43,469
FY 2017	4,783	11%	6,216	15%	5,971	14%	1,676	4%	15,610	37%	8,277	19%	42,533
FY 2018	3,821	12%	4,422	14%	3,108	10%	1,386	4%	11,899	37%	7,427	23%	32,063
FY 2019	5,074	15%	4,239	13%	2,934	9%	1,199	4%	11,243	34%	8,431	25%	33,120
FY 2020	5,362	17%	4,189	14%	2,099	7%	1,051	3%	9,615	31%	8,561	28%	30,877
FY 2021	3,887	20%	2,024	11%	471	2%	628	3%	4,672	25%	7,305	38%	18,987
Change FY 2016-2021	-17%		-243%		-1381%		-138%		-229%		-12%		-129%
Change FY 2016-2020	**18%**		**-40%**		**-70%**		**-30%**		**-37%**		**5%**		**-29%**

Table 35 shows the average age and proportion of defendants by sex during the study period. The ratio of male to female remained steady at just above three-quarters male and just below one quarter female though male did decrease somewhat from 79 to 76 percent. The average age showed minimal variation and most people are about 33 years of age.

Table 35: Average Age and Proportion of Defendants by Sex, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Male			Female			Total Def	
Year of Disposition	**N**	**Avg Age**	**% Total**	**N**	**Avg Age**	**% Total**	**N**	**Avg Age**
FY 2016	34,233	32	79%	9,236	32	21%	43,469	32
FY 2017	33,532	32	79%	9,001	32	21%	42,533	32
FY 2018	25,152	33	78%	6,911	32	22%	32,063	33
FY 2019	25,378	33	77%	7,742	33	23%	33,120	33
FY 2020	23,500	34	76%	7,377	33	24%	30,877	34
FY 2021	14,371	35	76%	4,616	33	24%	18,987	34
Change FY 2016-2021	-58%	9%		-50%	3%		-56%	6%
Change FY 2016-2020	**-31%**	**6%**		**-20%**	**3%**		**-29%**	**6%**

Table 36 shows the race/ethnicity of defendants with disposed cases during the study period. This client level data reflects what is collected in the county and supplemented by the Department of Public Safety records. In 2019, Harris County's demographic makeup of people aged 17 and older was 39 percent Latino/Hispanic, 32 percent Non-Hispanic White, 19 percent Black/African American, eight percent Asian, and two percent Other according to the State Demographer.[76] The proportion of Asian, Native American/Indigenous, and unknown clients remained the same over time. Black/African American clients were about 40 percent of dispositions every year and dropped to 38 percent in fiscal year 2020 with a numerical decrease of 33 percent from 17,414 in fiscal year 2016 to 11,737 in fiscal year 2020. This was a larger

[76] Texas Demographic Center. 2019 Total Population Age, Sex, and Race/Ethnicity for State and Counties. Retrieved from https://demographics.texas.gov/data/tpepp/estimates/

decrease than the 29 percent overall reduction. Latino/Hispanic[77] clients decreased by 33 percent and dropped from 14 to 13 percent of total defendants with a disposition. Non-Hispanic White clients also decreased by 25 percent, which was a smaller decrease than the 29 percent overall, as they moved from 43 to 46 percent of total dispositions in 2020.

S*ystemic change note*: The Latino/Hispanic variable is not well captured. This issue is well known to the county and has come up in previous studies including the MacArthur Foundations Safety + Justice Challenge. If the Safety + Justice Challenge's goal to "better collect data on Latino and Hispanic individuals in the justice system" is met, then racial distribution specifically between Latino/Hispanic and White Non-Hispanic will change even if practices do not change.[78]

Table 36: Race/Ethnicity of Defendants with Disposed Cases, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Asian		Black/ African American		Latino/ Hispanic		Native American/ Indigenous		Unknown		White Non-Hispanic		Total Clients
FY 2016	836	2%	17,414	40%	6,117	14%	38	.1%	280	1%	18,784	43%	43,469
FY 2017	811	2%	16,930	40%	6,141	14%	56	.1%	264	1%	18,331	43%	42,533
FY 2018	633	2%	12,305	38%	4,437	14%	42	.1%	205	1%	14,441	45%	32,063
FY 2019	705	2%	13,118	40%	4,281	13%	53	.2%	216	1%	14,747	45%	33,120
FY 2020	715	2%	11,737	38%	4,096	13%	47	.2%	190	1%	14,092	46%	30,877
FY 2021	525	3%	6,564	35%	2,519	13%	32	.2%	126	1%	9,221	49%	18,987
Change FY 2016-2021	-37%		-62%		-59%		-16%		-55%		-51%		-56%
Change FY 2016-2020	**-14%**		**-33%**		**-33%**		**24%**		**-32%**		**-25%**		**-29%**

Table 37 shows the number and proportion of clients disposed for misdemeanors with felony cases including those with felonies filed from the same arrest event, felonies not from the same arrest event, and those with felonies ever during the misdemeanor (open before or after the misdemeanor and from a different arrest event). The number with a felony ever includes those with a felony from the same event, an event prior to the misdemeanor, or an event after the misdemeanor. Persons arrested for felonies go through the full magistration process (unless they are released on an early presentment which is an option that began during fiscal year 2021). The number of people with a felony from the same event increased by 14 percent from fiscal year 2016 to fiscal year 2020. Proportionately, these clients increased from 3.6 percent to 5.9 percent of total defendants. Those also facing felony charges from a different arrest event – an event that may have occurred before or after the misdemeanor arrest – increased by 223

[77] Latino/Hispanic is a constructed variable requiring an entry for *ethnicity*. The entry options are N (non), H (Latino/Hispanic), and blank. This proportion feels like an underreport, which effects both Latino/Hispanic and Non-Hispanic White proportions.

[78] [Collecting data on Latino/Hispanic] has posed a challenge because current systems in Harris County were designed around race demographics rather than the nuance of race and ethnicity. Smith, Vernon. 13 August 2018. Safety And Justice Challenge Featured Jurisdiction: Harris County, Texas. Retrieved from https://www.safetyandjusticechallenge.org/2018/08/safety-and-justice-challenge-featured-jurisdiction-harris-county-texas/

percent; however, this proportion is an increase of only 444 people and the proportion of total defendants increased from 0.6 percent to 2.1 percent.

S*ystemic change note:* There has been an increase in proportion of clients with a felony case pending at some point during lifecycle of the misdemeanor case. Taken together, 4.1 percent of clients with dispositions in fiscal year 2016 had a felony open at any point during the misdemeanor adjudication process and this doubled to 8 percent in fiscal year 2020. This may reflect charging decisions and different approaches to intake. A new District Attorney came into office in January 2017 so fiscal years 2016 and 2017 (March 2015 through February 2017) reflect the prior administration. During those two years, about four percent of persons with misdemeanors had felonies cases from the same arrest event. In fiscal year 2018 this percentage started to increase.

Table 37: Number and Proportion of Defendants with a Felony from the Same Event or a Felony Open at Any Time During the Misdemeanor Case(s), Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Felony from Same Event		Number with Felonies NOT from Same Arrest Event During Misdemeanor		Felony Open at Any Time During Misdemeanor Filed to Disposition Dates		Total Defendants
FY 2016	1,586	3.6%	199	0.5%	1,785	4.1%	43,469
FY 2017	1,737	4.1%	240	0.6%	1,977	4.6%	42,533
FY 2018	1,707	5.3%	375	1.2%	2,082	6.5%	32,063
FY 2019	1,770	5.3%	582	1.8%	2,352	7.1%	33,120
FY 2020	1,813	5.9%	643	2.1%	2,456	8.0%	30,877
FY 2021	1,424	7.5%	411	2.2%	1,835	9.7%	18,987
Change FY 2016-2021	-10%		107%		3%		-129%
Change FY 2016-2020	**14%**		**223%**		**38%**		**-29%**

4. Disposition Outcomes

General results

Table 38 shows disposition outcomes for defendants (as opposed to cases) during the study period. The same trend of increased dismissals noted from the aggregate case level data is reflected in the client level data. The proportion of dismissals increased from 23 from fiscal year 2016 to 62 percent in 2020. The proportion acquitted on all charges, receiving a deferred adjudication, or having at least one charge dismissed and one charge with a finding of guilt all stayed about the same proportionately year over year. Clients found or pleading guilty on all charges decreased from 68 percent in fiscal year 2016 to 30 percent in fiscal year 2020, so the increase in clients with all charges faced dismissed happened because of the reduction in clients with guilty findings or pleadings in all cases. Numerically, all the categories decreased over time because there were less defendants in total.

Table 38: Defendant Disposition Outcomes, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Acquittal All		Dismissal All		Deferred		Guilty Some, Dism Some		Guilty on All		Total Clients
FY 2016	119	0.3%	9,843	23%	1,156	3%	2,849	7%	29,502	68%	43,469
FY 2017	91	0.2%	10,540	25%	1,089	3%	3,290	8%	27,523	65%	42,533
FY 2018	47	0.1%	11,854	37%	539	2%	2,534	8%	17,089	53%	32,063
FY 2019	51	0.2%	14,107	43%	384	1%	2,890	9%	15,688	47%	33,120
FY 2020	67	0.2%	19,116	62%	452	1%	2,100	7%	9,142	30%	30,877
FY 2021	10	0.1%	12,839	68%	546	3%	1,171	6%	4,421	23%	18,987
Change FY 2016-2021	-92%		30%		-53%		-59%		-85%		-56%
Change FY 2016-2020	**-44%**		**94%**		**-61%**		**-26%**		**-69%**		**-29%**

Table 39 show the punishment outcomes for defendants during the study period. Clients with the outcomes deferred, guilty some/dismissed some, and guilty on all, face a sentence which can be a fine only, community supervision which all getting deferred adjudication get, or a jail sentence. Overwhelmingly, these sentences were to jail with about 86 percent receiving a jail sentence every year. The number of jail sentences decreased at the same rate as the total number of sentences given – 66 percent decrease from fiscal year 2016 through 2020. The proportion of fine only sentences decreased from 0.1 percent to effectively none over the same period though this was always a low proportion. Community supervision sentences increased slightly during this period moving from 13 to 15 percent proportionately; however, these remained effectively flat. Community Supervision did become a more favored option in fiscal year 2021 with 27 percent of sentences being to community supervision, which is the year that began as COVID-19 began impacting the county.

Table 39: Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Fine Only		Community Supervision		Jail		Total
FY 2016	50	0.1%	4,340	13%	29,051	87%	33,441
FY 2017	22	0.1%	4,288	13%	27,510	86%	31,820
FY 2018	37	0.2%	2,982	15%	17,073	85%	20,092
FY 2019	19	0.1%	2,568	14%	16,342	86%	18,929
FY 2020	2	0.0%	1,725	15%	9,974	85%	11,701
FY 2021	3	0.0%	1,636	27%	4,497	73%	6,136
Change FY16-21	-94%		-62%		-85%		-82%
Change FY16-20	**-96%**		**-60%**		**-66%**		**-65%**

5. Comparison of Disposition Outcomes with Retained and Public Defender

Comparisons

As this Assessment's goal is an investigation of private appointed lawyers for people qualifying for state provided counsel, there is an obvious tendency to try to compare private assigned counsel's results at disposition to both other types of counsel and to prior work by private assigned counsel. There is no perfect way to do a comparison study over time or across lawyer type. Random assignment studies are gold standard; however, they are costly and may raise ethical questions in a real court setting and would not have helped with the intra-counsel type comparisons.

As a result, this Assessment implemented a methodological rule to compensate for the difficulties in drawing comparisons. This research uses statistical techniques to create "cohorts" of clients "controlling" for the number and type of charges, bond status, and defendant criminal history. As discussed previously, the SID number in the initial data files were submitted to DPS to match records with the Texas Department of Public Safety (DPS) Computerized Criminal History System (CCH). This allowed the research team to match records and acquire the full criminal history of the defendants included in the study. The defendants' criminal histories matter for outcomes because a defendant with no criminal history and a defendant with a long criminal history, depending on their offense severity, will be seen differently at the punishment stage if found guilty. Also, clients with prior incarcerations and convictions may be more likely to take favorable plea offers because they already have criminal records and face the collateral consequences associated with said record. The study of outcomes of defendants represented by hired, appointed private bar, and appointed HCPD must consider criminal histories of their clients.

The Assessment research team used the criminal history of the defendants to create a cohort comparison matrix to "equalize" the adult defendants along key prior criminal history characteristics statistically related to the outcome for a defendant. The Assessment research team has historical data on the defendant outcomes and correlated those outcomes static and dynamic factors. The following metrics were used:

1. Settings to disposition with more settings correlated with lower likelihood of conviction.
2. Total charges with more charges correlated with higher likelihood of conviction.
3. Offense type with Harris County categories of theft/fraud, offenses against public administration, and drug offenses correlated with higher likelihood of conviction.
4. Age at filing with younger defendants less likely to be convicted.
5. Bond status with defendants released on bond once, and only once, less likely to be convicted that those never released or released multiple times on the same offense.
6. Prior incarcerations, especially TDCJ incarcerations on violent felonies, correlated with a higher likelihood of conviction; and,
7. Prior conviction correlated with a higher likelihood of conviction.

Based on these correlations, “weights” are given to each of the factors to categorize the defendants into cohorts of low, moderate, and high criminogenic characteristics that correlated with dispositions of guilty or deferred adjudication (dispositions with an attached punishment). This metric is only for comparison purposes so when comparing one counsel type over time or across counsel type at a given time, defendants who look the same can be examined together. As noted above, the offense types filed (Table 2) and disposed (Table 8) have changed since fiscal year 2016. This is only for disposition comparison purposes and should not be used for any other purpose, nor is it a reflection of the defendant beyond his/her statistical likelihood to be convicted of “this” offense.

Explaining ROC Curve Methodology

The Receiver Operating Characteristic Curve (ROC curve) shows the overlap of false and true positive rates. The ROC is a statistical technique that allows researchers to determine how much a model is capable of distinguishing between classes. The closer the model is to 1, the better is the measure of separability and the strongest the robustness of the model.[79]

The graph below in Figure 176 plots the ratio of sensitivity. This refers to all true dispositions of guilt or deferred adjudication divided by everyone the comparison matrix predicts as likely to have a disposition of guilt or deferred adjudication, to sensitivity, which is all true dispositions of dismissal or acquittal divided by everyone the comparison matrix predicts as likely to have a disposition of dismissal or acquittal. When looking at the following ROC curves, a true positive (closer to 1) is if the comparison matrix predicts a finding of guilt or deferred adjudication and the defendant receives a finding of guilt or a deferred adjudication. A false positive (closer to 0) occurs if the comparison matrix predicts a finding of guilt or a deferred adjudication and the defendant receives an acquittal or a dismissal for all charges at disposition.

Figure 19 shows area for the comparison matrix is 0.729. The cohorts in the comparison matrix are predictive at 72.9 percent compared to chance’s 50 percent predictive rate. The asymptotic significance in the model is 0.000, so the model is statistically significant, and the comparison matrix should be considered better than chance as an appropriate way to divide the defendants to compare outcomes by counsel type.

[79] For a simple explanation see: https://towardsdatascience.com/understanding-auc-roc-curve-68b2303cc9c5

Figure 19: ROC Curve for Defendants with Original Misdemeanors Disposed, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

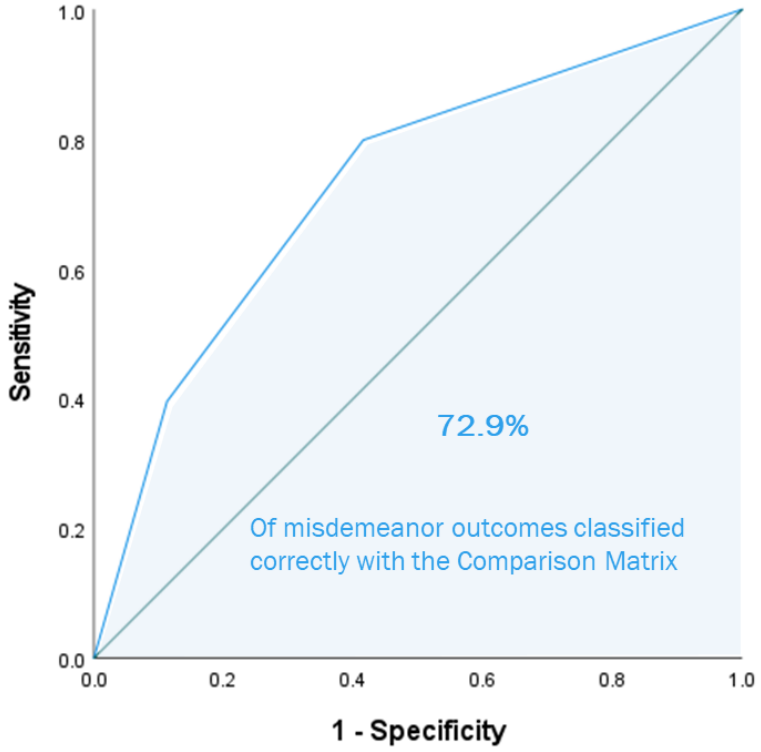


Table 40 shows the distribution of defendants by comparison cohort for the study period. The number of defendants in the low likelihood cohort stayed about the same from fiscal year 2016 through fiscal year 2020 with only a two percent decline; however, since the other categories saw declines in number of defendants during the same period (moderate decreased by 34% and high by 51%), the proportion of all defendants in a given year categorized as low increased from 31 percent in fiscal year 2016 to 43 percent in fiscal year 2020. The proportion considered moderate decreased slightly from 39 to 36 percent and the proportion considered high decreased from 29 to 20 percent in the respective years. Figure 6 below shows depicts this change graphically.

S*ystemic change note*: During the study period there were changes in the defendant backgrounds, which can change in the future and impact the likelihood of conviction. Returning to the factors used to place people in these categories offers some explanation as to why the proportions changes. As stated above, the types of offenses filed changed, specifically the county was not pursing possession of marijuana offenses. Having a drug charge was correlated with higher likelihood of conviction but now there are less drug offenses in the observations. Similarly, there were less theft charges due in part to a diversion program and these offenses were also more likely to be correlated with a conviction. Other factors included age at filing, which as Table 35 showed did not change during this period. Cases took longer to dispose, as

seen in Figure 15, so they had more settings which led to more settings which was correlated with a lower likelihood of conviction (number of settings did increase as seen later in Table 17). Finally, more people were released prior to adjudication because of process changes related to Rule 9. Bond release, when a person was successful on the bond, was also associated with a lower likelihood of conviction. Monitoring the changing profile of the population is important in any future evaluation of the MAC.

Table 40: Distribution of Defendants by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Low		Moderate		High		Total Defendants
FY 2016	13,604	31%	17,095	39%	12,770	29%	43,469
FY 2017	11,152	26%	13,839	33%	17,542	41%	42,533
FY 2018	10,837	34%	11,629	36%	9,597	30%	32,063
FY 2019	11,935	36%	12,111	37%	9,074	27%	33,120
FY 2020	13,365	43%	11,239	36%	6,273	20%	30,877
FY 2021	9,911	52%	6,144	32%	2,932	15%	18,987
Change FY 2016-2021	-27%		-64%		-77%		-56%
Change FY 2016-2020	**-2%**		**-34%**		**-51%**		**-29%**

As mentioned, Figure 20 shows the distribution of defendants by comparison cohorts during the study period. Less fiscal year 2017, it shows a decrease in the proportion of defendants in the high likelihood of conviction, a somewhat steady proportion in the moderate risk cohort, and a growing proportion in the low-risk cohort. As stated above, elements associated with a lower likelihood of conviction that changed include increase in bond releases, decrease in drug charges, and a decrease in some theft/property offenses with the retail theft diversion program.

Figure 20: Distribution of Defendants by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

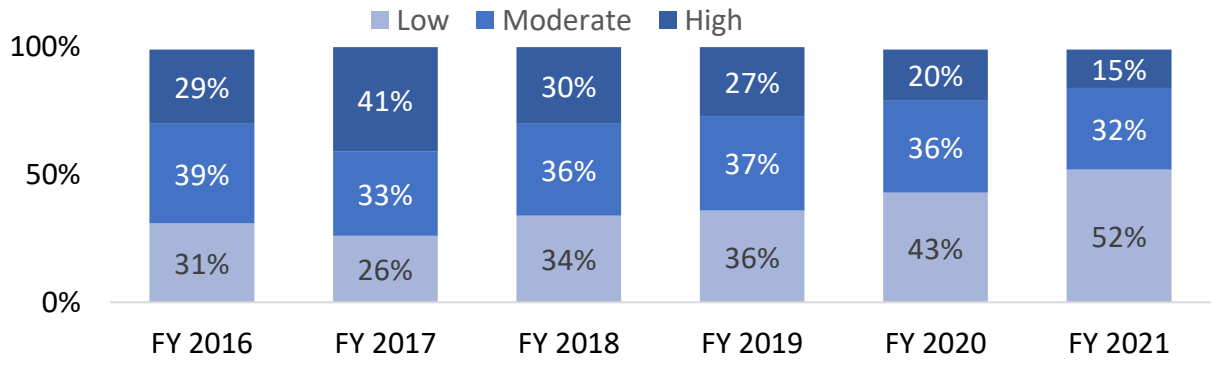


Table 41 shows the distribution of dispositions by lawyer type during the study period. Private retained counsel represented between 41 and 44 percent of all clients with dispositions between fiscal year 2016 and fiscal year 2020. Assigned counsel represented 54 percent of clients in fiscal year 2016 but decreased in proportion to 50 percent by fiscal year 2020. Harris County Public Defender (HCPD) represented between five and six percent of clients with dispositions. Note, during all years presented, HCPD exclusively or primarily represented clients with a severe mental health diagnosis who were not charged with a DWI category offense based on county policy.

S*ystemic change note*: There are currently changes in the proportion of cases HCPD receives and the type of cases HCPD receives. Recently, Harris County Public Defender Office began taking misdemeanors for clients without a mental health flag and the clients without mental health flags are not subject to exclusionary offense criteria. This will impact the number and proportion of cases represented by assigned counsel.

Table 41: Distribution of Dispositions by Counsel Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Private Retained		Assigned		HCPD		Total
FY 2016	18,024	41%	23,271	54%	2,174	5%	43,469
FY 2017	17,344	41%	22,801	54%	2,388	6%	42,533
FY 2018	14,006	44%	16,197	51%	1,860	6%	32,063
FY 2019	13,477	41%	17,856	54%	1,787	5%	33,120
FY 2020	13,671	44%	15,493	50%	1,713	6%	30,877
FY 2021	9,939	52%	7,895	42%	1,153	6%	18,987
Change FY 2016-2021	-45%		-66%		-47%		-56%
Change FY 2016-2020	**-24%**		**-33%**		**-21%**		**-29%**

Table 42 shows the number and proportion of clients by comparison cohort for each lawyer type over the past six years. For example, in fiscal year 2020 assigned counsel had 15,493 clients dispose cases and of that 5,445 were in the low likelihood comparison cohort which was 35 percent of total clients. The number and proportion of low likelihood for conviction clients increased numerically and proportionally for assigned counsel. The number increased by 39 percent doubling the proportion of total clients from 17 to 35 percent between 2016 and 2020. The same pattern held for HCPD which increased numerically by 124 percent tripling the proportion from 3 to 9 percent. Retained counsel had a smaller proportional increase from 53 to 57 percent but an overall numerical decreased of 19 percent from 9,629 to 7,768. The clients considered a moderate likelihood of conviction remained consistent for all three counsel types, with HCPD seeing the most variation, while high likelihood decreased for assigned and HCPD. The proportion of high likelihood defendants represented by retained counsel remained about the same and was always quite low.

Systemic change note: Defendant backgrounds have changed over time impacting the distribution within a conviction likely cohort, which can change in the future and impact the likelihood of conviction and the overall conviction rate. Analyzing outcomes without controlling for conviction likelihood factors may show a difference in conviction rate by counsel type when

it is really reflecting a change in the background and current offense faced by the clients. Monitoring the changing profile of the population is important in any future evaluation of the MAC.

Table 42: Distribution of Cohort Levels by Lawyer Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Retained				Assigned				HCPD			
	Low	**Mod**	**High**	**Total**	**Low**	**Mod**	**High**	**Total**	**Low**	**Mod**	**High**	**Total**
FY 2016	9,629	6,900	1,495	18,024	3,907	9,496	9,868	23,271	68	699	1,407	2,174
	53%	38%	8%		17%	41%	42%		3%	32%	65%	
FY 2017	7,684	7,399	2,261	17,344	3,405	6,145	13,251	22,801	63	295	2,030	2,388
	44%	43%	13%		15%	27%	58%		3%	12%	85%	
FY 2018	6,890	5,538	1,578	14,006	3,870	5,705	6,622	16,197	77	386	1,397	1,860
	49%	40%	11%		24%	35%	41%		4%	21%	75%	
FY 2019	7,131	5,071	1,275	13,477	4,719	6,619	6,518	17,856	85	421	1,281	1,787
	53%	38%	9%		26%	37%	37%		5%	24%	72%	
FY 2020	7,768	4,824	1,079	13,671	5,445	5,884	4,164	15,493	152	531	1,030	1,713
	57%	35%	8%		35%	38%	27%		9%	31%	60%	
FY 2021	6,449	2,889	601	9,939	3,319	2,889	1,687	7,895	143	366	644	1,153
	65%	29%	6%		42%	37%	21%		12%	32%	56%	
Chg FY16-21	-33%	-58%	-60%	-45%	-15%	-70%	-83%	-66%	110%	-48%	-54%	-47%
Chg FY16-20	**-19%**	**-30%**	**-28%**	**-24%**	**39%**	**-38%**	**-58%**	**-33%**	**124%**	**-24%**	**-27%**	**-21%**

The RFP for this Assessment requested a look at appointed counsel for the purposes of both studying indigent defense delivery and creating a baseline for the new Managed Assigned Counsel to use for data driven management and future comparison purposes. The comparisons to accomplish this goal and used for the rest of the section: (1) An historical view of assigned counsel is shown from fiscal year 2016 through fiscal year 2021 with proportional changes from 2016 to 2020 calculated and (2) total outcomes for fiscal year 2020 are presented by comparison cohort and counsel type for fiscal year 2020 to account for COVID and the lack of a full year for 2021 by two days. The entirety of the comparisons by lawyer, overtime, and by cohort are presented in Appendix No 7.

The comparison cohort level for Assigned Counsel is shown in Figure 21. The same pattern seen for total cases holds here with the proportion of defendants in the low likelihood of conviction doubling from 17 percent in fiscal year 2016 to 35 percent in fiscal year 2020. The proportion considered moderate likelihood, less fiscal year 2017, remained at an average 38 percent and the proportion in the high likelihood decreased from 42 percent to 27 percent in fiscal 2020 in the respective years. The proportion of defendants in the high likelihood category in fiscal year 2017 was 58%, higher that the trend for the year before and after. The Assessment research team cannot explain why this was the case.

Systemic change note: Defendant backgrounds have changed over time impacting the distribution within a conviction likely cohort, which can change in the future and impact the likelihood of conviction and the overall conviction rate. Analyzing outcomes without controlling for conviction likelihood factors may show a difference in conviction rate for appointed counsel over time when it is really reflecting a change in the background and current offense faced by the clients. Monitoring the changing profile of the population is important in any future evaluation of the MAC.

Figure 21: Distribution of Cohort Levels for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

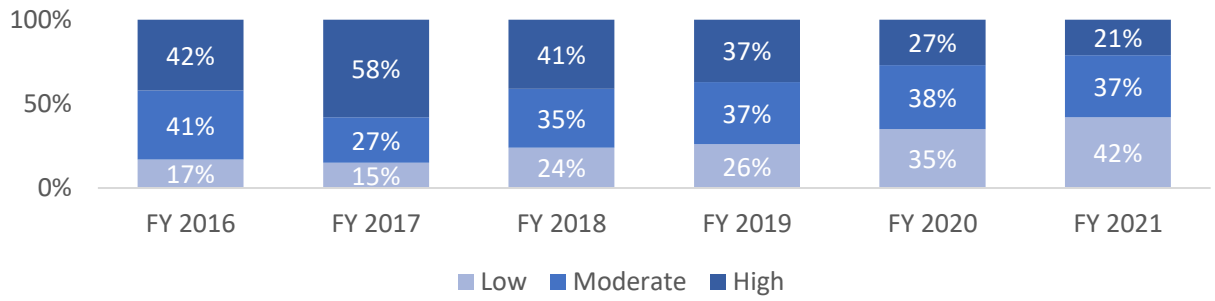
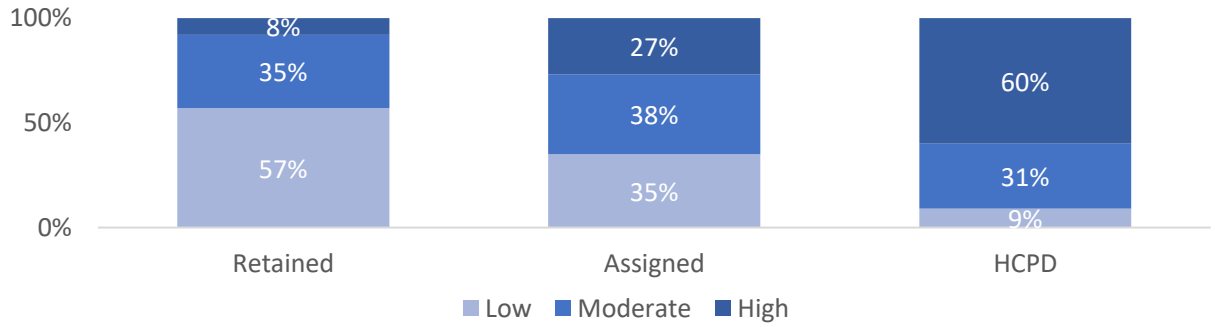


Figure 22 shows the distribution of cohorts by lawyer type during the study period. In FY 202 retained counsel had only eight percent of clients considered high likelihood of conviction compared to assigned with 27 percent and HCPD with 60 percent. The clients considered moderate were about the same proportionately with retained having 35 percent classified as such, assigned having 38 percent, and HCPD having less with 31 percent of clients considered moderate. HCPD had the lowest proportion of low likelihood of conviction clients with only nine percent classified as such compared to 35 percent of assigned and 57 percent of retained. This is unsurprisingly as the defendant assignment algorithm for HCPD resulted in clients with severe mental health needs, longer criminal histories, and offenses ineligible for pretrial diversion programs. Selection excluded offenses involving vehicles so HCPD did not represent anyone high volume diversion offenses like DWI (one year diversion program leading to dismissal) or Driving While License Invalid/Suspended (reset the case until license reinstated).

Figure 22: Distribution of Cohort Levels by Lawyer Type, Harris County Fiscal Year 2020



Results at Disposition by Counsel Type

Table 43 shows the average number of settings to dispositions for assigned counsel during the study period. The average number of settings doubled between fiscal year 2016 and fiscal year 2020. There are less pleas at first settings, which were likely disproportionately clients with assigned counsel. These clients could not afford bail so it stands to reason they could not afford counsel. It is likely the longer from filing to disposition, the more settings a case will have. Magistration counts as the first setting for a case and there was a decrease in the number of persons going through a full magistration process from July 2017 through the end of the study period.[80]

S*ystemic change note:* There has been an increase in the number of court settings over time, which are attributable to additional releases prior to adjudication and increasing time from filing to disposition among other factors. Any changes in policies or practices, *e.g.* who gets release prior to adjudication, clearing the backlog of cases, related to how long a case is open will impact the number of settings to disposition. These changes may look like they were impacted by the change to a MAC but will simply reflect systemic changes. Monitoring the changing profile of the population is important in any future evaluation of the MAC.

Table 43: Average Settings to Disposition for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Total
FY 2016	5.9	4.0	2.1	3.1
FY 2017	6.0	4.1	2.2	3.3
FY 2018	5.9	4.7	3.1	4.3
FY 2019	6.1	5.2	4.2	5.1
FY 2020	6.8	6.1	5.3	6.2
FY 2021	8.8	8.9	8.3	8.7
Change FY 2016-2021	+49%	+123%	+295%	+181%
Change FY 2016-2020	**+15%**	**+53%**	**+152%**	**+100%**

Table 44 shows the average number of setting to disposition by counsel and comparison cohort during the study period. HCPD clients had the least number of settings to disposition with 5.4 though assigned counsel is lower than the average of 6.9 with 6.2 settings. The 7.9 settings it takes for retained counsel drove the average number of settings. When sorted by comparison cohort, there was little differentiation between HCPD and assigned counsel for those with low or moderate likelihood of conviction and both had less settings than retained counsel. For those with high likelihood of conviction, retained counsel had 7.6 settings to disposition, assigned counsel had 5.3, and HCPD had 4.8.

[80] https://www.ccl.hctx.net/attorneys/rules/rules.pdf See 4.1.1

Table 44: Average Settings to Disposition by Counsel and Comparison Cohort, Harris County Fiscal Year 2020

Year of Disposition	Average Settings to Disposition for Retained Lawyer	Average Settings to Disposition for Assigned Counsel	Average Settings to Disposition for HCPD	Average Settings to Disposition for All Defendants
Low	8.2	6.8	7.0	7.6
Moderate	7.4	6.1	6.0	7.7
High	7.6	5.3	4.8	5.7
FY 2020	**7.9**	**6.2**	**5.4**	**6.9**

Table 45 shows the time from filing to disposition for assigned counsel and by comparison cohort during the study period. The length of time from filing to disposition tripled for assigned counsel 67 days in fiscal year 2016 to 205 days in fiscal year 2020 or just over two months to just under seven months. The increase occurred across all comparison cohorts. One notable increase occurred for high likelihood of conviction clients which increased by 532 percent from 25 days to 158 days. As Figure 4 shows, the proportion of cases taking less than 30 days to disposed decreased from 39 percent in fiscal year 2016 to 16 percent in fiscal year 2020 and as releases prior to adjudication increased the pressure to take a plea at the first appearance, as noted by Judge Rosenthal,[81] decreased resulting in a longer time to disposition. This reflects what was seen in Table 16 regarding number of settings to disposition increasing and, again, magistration counts as the first setting, so the increase of General Order Bonds resulted in a slower increase in number of settings to disposition than in time to disposition, and the second setting occurs on the next business day for those incarcerated.[82] The clients Judge Rosenthal talked about would have had about 2 settings if they pled at the first setting in the assigned Criminal Court at Law – 1 for magistration and 1 for the CCL plea. Far less of these clients exist increasing the average.

S*ystemic change note:* There has been an increase in the length of time a case is open from filing to disposition over time some of which was due to court shutdowns from Hurricane Harvey and the Labor Day floods. A future decrease may look like it was impacted by the change to a MAC but may reflect changes such as clearing the backlog. Monitoring the changing profile of the population is important in any future evaluation of the MAC.

[81] *ODonnell v. Harris Cnty.*, 251 F. Supp. 3d 1052, 1131 (S.D. Tex. 2017)
[82] https://www.ccl.hctx.net/attorneys/rules/rules.pdf see 4.3.1

Table 45: Time in Days from Filing to Disposition for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Average Days to Disposition for Assigned Counsel
FY 2016	170	153	25	67
FY 2017	156	90	30	65
FY 2018	170	119	55	105
FY 2019	197	161	103	149
FY 2020	244	202	158	205
FY 2021	392	385	309	372
Change FY 2016-2021	131%	152%	1136%	+455%
Change FY 2016-2020	**44%**	**32%**	**532%**	**+206%**

Table 46 shows time from case filing to disposition during the study period. HCPD, in addition to the least settings, also had the shortest time from filing to disposition in fiscal year 2020 at 125 days or about four months. The average for all types of counsel was 247 or about eight months. Assigned counsel took an average 205 days or seven months and retained counsel had cases open for 310 days or a little over 10 months. Again, this may also depend on charge especially since the diversion programs require 365 days of compliance after some period from arrest to placement in the program.

Table 46: Time in Days from Case Filing to Disposition by Counsel, Harris County Fiscal Year 2020

Year of Disposition	Average Days to Disposition for Retained Lawyer	Average Days to Disposition for Assigned Counsel	Average Days to Disposition for HCPD	Average Days to Disposition for All Defendants
Low	336	244	190	296
Moderate	276	202	154	232
High	271	158	102	169
FY 2020	**310**	**205**	**125**	**247**

Table 47 shows case outcomes for assigned counsel in the low likelihood of conviction categories during the study period. For clients with assigned counsel in the low likelihood of conviction comparison cohort, there was an increase in clients who had all cases dismissed. The number increased by 218 percent from 1,384 in fiscal year 2016 to 4,407 in fiscal year 2020. The proportion of dismissals of all cases each year increased from 35 percent of total in fiscal year 2016 to 81 percent in fiscal year 2020. The proportion deferred or dismissed some/guilty some both decreased slightly in the same period but were always low proportions. The number

of clients in total increased by 39 percent but the number of clients disposed as guilty on all decreased by 60 percent from 2,333 (60% of total) to 925 (17% of total).

Table 47: Disposition Outcomes for Assigned Counsel Clients in the **LOW** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

LOW	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	10	1,384	166	14	2,333	3,907
	0.3%	35%	4%	0.4%	60%	
FY 2017	9	1,697	164	13	1,522	3,405
	0.3%	50%	5%	0.4%	45%	
FY 2018	15	2,285	101	10	1,459	3,870
	0.4%	59%	3%	0.3%	38%	
FY 2019	5	2,991	65	13	1,645	4,719
	0.1%	63%	1%	0.3%	35%	
FY 2020	8	4,407	86	19	925	5,445
	0.1%	81%	2%	0.3%	17%	
FY 2021	2	2,565	160	15	577	3,319
	0.1%	77%	5%	0.5%	17%	
Change FY 2016-2021	-80%	85%	-4%	7%	-75%	-15%
Change FY 2016-2020	**-20%**	**218%**	**-48%**	**36%**	**-60%**	**+39%**

Table 48 shows disposition outcomes for clients in the low likelihood comparison cohort by counsel type for fiscal year 2020. Dispositions for assigned counsel were comparable to retained on proportion dismissed all (81%), deferred (2%), and guilty on all (17%), as seen in Table 48. Retained counsel received acquittals for 0.4 percent of their clients compared to 0.1 percent for assigned and 0.7 percent for HCPD; however, all of these numbers are so small that any comparison says more about the outcomes for these clients than it says something systemwide beyond there is a low proportion of acquittals (and trials, as discussed below).

Table 48: Disposition Outcomes for Clients in the **LOW** Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020

Low	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
Retained Counsel	29	6,292	78	10	1,359	7,768
	0.4%	81%	2%	0.1%	17%	
Assigned Counsel	8	4,407	86	19	925	5,445
	0.1%	81%	2%	0.3%	17%	
HCPD	1	124	2	1	24	152
	0.7%	82%	1%	0.7%	16%	
FY 2020	38	10,823	166	30	2,308	13,365
	0.3%	**81%**	**1.2%**	**0.2%**	**17%**	**0.3%**

Figure 23 shows the proportion of defendants in the low likelihood of conviction exiting the criminal justice system by counsel type for the study period. The category of "exit criminal justice system" is the sum of acquittal all and dismissed all and "deferred + convicted" is the balance of people who are subject to a sentence and a criminal record. Retained and assigned counsel both have 81 percent of clients exiting the criminal justice system after disposition compared to 83 percent of HCPD's clients. Again, HCPD even with the comparison cohort model to normalize comparisons has defendants who have severe mental health diagnoses and may be view differently by the courts.

Figure 23: **Low** Likelihood of Conviction Proportion Exiting Criminal Justice System by Counsel Type, Harris County Fiscal Year 2020

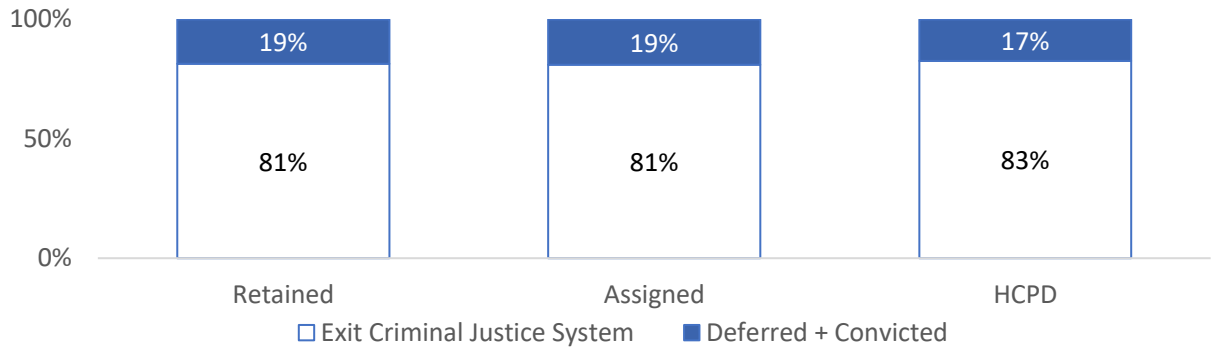


Table 49 shows case outcomes for assigned counsel in the moderate likelihood of conviction categories during the study period. For clients with assigned counsel in the moderate likelihood of conviction comparison cohort, there was an increase in clients who had all cases dismissed. Clients with dismissals for all cases increased by 202 percent from 1,025 in fiscal year 2016 to 3,096 in fiscal year 2020 at a time when total clients decreased by 38 percent from 9,496 to 5,884. Clients with a deferred sentence (2%) or an acquittal (0.1%) remained about the same over the five year period. Assigned counsel clients were more likely to get dismissed for some charges, guilty for some charges over time. This outcome was 3.7 percent of total dispositions in fiscal year 2016 and 5.8 percent in fiscal year 2020. Clients with guilty on all was the only category to decrease in proportion over time with 83 percent of clients having this outcome in fiscal year 2016 and 39 percent having this outcome in fiscal year 2020. This was a 71 percent reduction from 2016 with 7,884 clients guilty on all charges to 2,321 guilty on all in 2020.

Table 49: Disposition Outcomes for Assigned Counsel Clients in the **MODERATE** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Moderate	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	11	1,025	228	348	7,884	9,496
	0.1%	11%	2%	3.7%	83%	
FY 2017	7	986	236	332	4,584	6,145
	0.1%	16%	4%	5.4%	75%	
FY 2018	3	1,565	133	330	3,674	5,705
	0.1%	27%	2%	5.8%	64%	
FY 2019	4	2,024	110	422	4,059	6,619
	0.1%	31%	2%	6.4%	61%	
FY 2020	8	3,096	120	339	2,321	5,884
	0.1%	53%	2%	5.8%	39%	
FY 2021	0	1,688	115	181	905	2,889
	0.0%	58%	4%	6.3%	31%	
Change FY 2016-2021	-100%	65%	-50%	-48%	-89%	-70%
Change FY 2016-2020	**-27%**	**202%**	**-47%**	**-3%**	**-71%**	**-38%**

Table 50 shows disposition outcomes for clients in the moderate likelihood comparison cohort by counsel type for fiscal year 2020. Assigned and retained counsel had comparable rates for all client outcomes in fiscal year 2020. HCPD had proportionately more acquittals, though again numerically this is low for all types of counsel, and dismissals for the moderate likelihood cohort.

Table 50: Dispositions Outcomes for Clients in the **MODERATE** Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020

Moderate	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
Retained Counsel	15	2,524	62	270	1,953	4,824
	0.3%	52%	1%	5.6%	40%	
Assigned Counsel	8	3096	120	339	2,321	5,884
	0.1%	53%	2%	5.8%	39%	
HCPD	2	330	10	20	169	531
	0.4%	62%	2%	3.8%	32%	
FY 2020	25	5,950	192	629	4,443	11,239
	0.2%	**54%**	**1.7%**	**6%**	**40%**	

Figure 24 shows the proportion of defendants in the moderate likelihood of conviction exiting the criminal justice system by counsel type for fiscal year 2020. The proportion exiting the criminal justice system was equivalent for retained (52%) and assigned counsel (53%) in fiscal year 2020. HCPD had 62 percent of clients leave the criminal justice system after disposition.

Again, HCPD even with the comparison cohort model to normalize comparisons has defendants who have severe mental health diagnoses and may be view differently by the courts.

Figure 24: **Moderate** Likelihood of Conviction Proportion Exiting Criminal Justice System by Counsel Type, Harris County Fiscal Year 2020

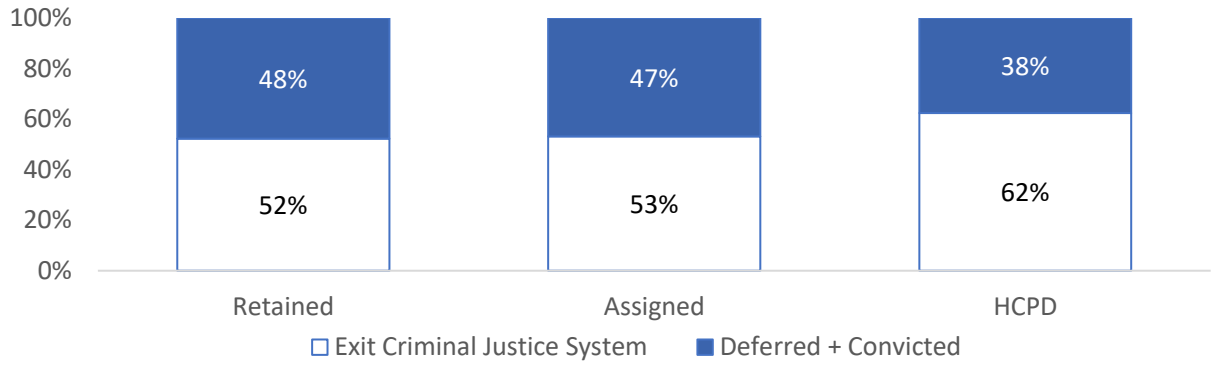


Table 51 shows case outcomes for assigned counsel in the high likelihood of conviction categories during the study period. The number of clients in the high likelihood for conviction clients represented by assigned counsel decreased by 58 percent from fiscal year 2016 to 2020. The number of clients receiving dismissals for every charged faced increased by 279 percent from 391 to 1,481; this group made up only 4 percent of client outcomes in fiscal year 2016 but 36 percent in 2020 which was a ninefold increase proportionately. Clients getting at least one dismissal also increased from 13 to 22 percent of total client outcomes during this period. As a result, the proportion guilty on all charges halved when it decreased from 82 in fiscal year 2016 to 41 percent in fiscal year 2020.

Table 51: Disposition Outcomes for Assigned Counsel Clients in the **HIGH** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

High	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	3	391	96	1,248	8,130	9,868
	0.0%	4%	1%	13%	82%	
FY 2017	2	680	148	1,525	10,896	13,251
	0.0%	5%	1%	12%	82%	
FY 2018	2	742	59	1,106	4,713	6,622
	0.0%	11%	1%	17%	71%	
FY 2019	4	1,001	56	1,535	3,922	6,518
	0.1%	15%	1%	24%	60%	
FY 2020	2	1,481	68	924	1,689	4,164
	0.0%	36%	2%	22%	41%	
FY 2021	2	711	33	415	526	1,687
	0.1%	42%	2%	25%	31%	
Change FY 2016-2021	-33%	82%	-66%	-67%	-94%	-83%
Change FY 2016-2020	**-33%**	**279%**	**-29%**	**-26%**	**-79%**	**-58%**

Table 52 shows disposition outcomes for clients in the high likelihood comparison cohort by counsel type for fiscal year 2020. Assigned counsel had 36 percent of clients with all charges dismissed compared to 33 percent of retained. HCPD had 48 percent of clients get all charges dismissed. Assigned counsel's clients had the lowest proportion of dismissed some/guilty some with 22 percent compared to 23 percent for HCPD and 28 percent for retained counsel. Assigned counsel also had the highest proportion of clients found guilty on all charges with 41 percent of clients getting this outcome compared to 37 percent of retained and 29 percent of HCPD.

Table 52: Dispositions Outcomes for Clients in the **HIGH** Likelihood Comparison Cohort by Counsel Type, Harris County Fiscal Year 2020

High	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
Retained Counsel	2	359	18	303	397	1,097
	0.2%	33%	2%	28%	37%	
Assigned Counsel	2	1,481	68	924	1,689	4,164
	0.0%	36%	2%	22%	41%	
HCPD	0	503	8	241	305	1,057
	0%	**48%**	**1%**	**23%**	**29%**	
FY 2020	4	2343	94	1,468	2,391	6,318
	0.1%	**37%**	**1.5%**	**23%**	**38%**	

Figure 25 shows the proportion of defendants in the high likelihood of conviction exiting the criminal justice system by lawyer type for fiscal year 2020. Figure 11 shows assigned counsel had 36 percent of their clients leave the criminal justice system without a record (sum of acquittal all and dismissed all) compared to 33 percent for retained and 48 percent for HCPD. Again, HCPD even with the comparison cohort model to normalize comparisons has defendants who have severe mental health diagnoses and may be view differently by the courts.

Figure 25: **High** Likelihood of Conviction Proportion Exiting Criminal Justice System by Lawyer Type, Harris County Fiscal Year 2020

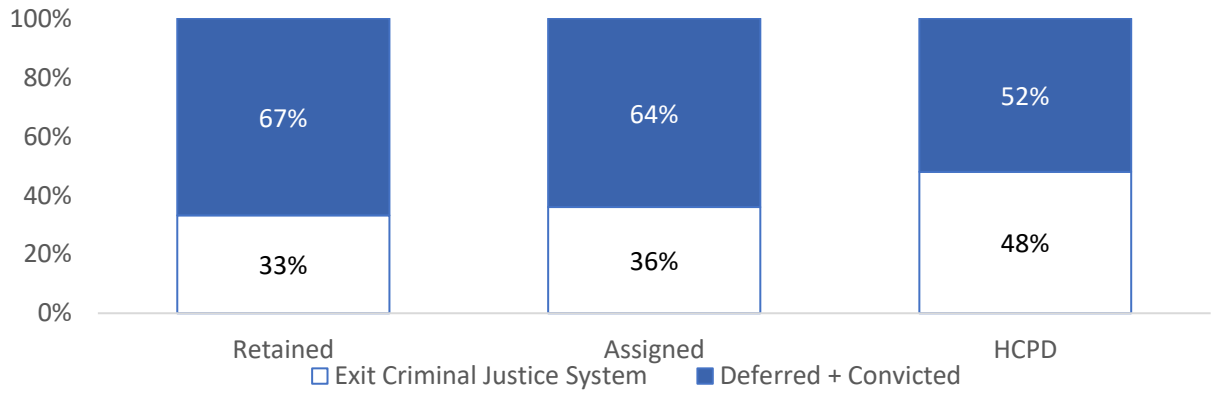


Figure 26 shows the clients represented by assigned counsel proportion exiting criminal justice system by likelihood of conviction cohort during the study period. For all likelihood of conviction comparison cohorts, the proportion of assigned counsel's clients exiting the criminal justice system increased while those convicted or deferred on at least one charge decreased. Appendix No. 7 shows the same time series presentation for retained and HCPD clients. As the change occurs across counsel type without a notable change in inputs like investigators or expert witness use (see subsequent Table 53) or workload (see subsequent Table 54), this suggests a change in policy, practice, and/or philosophy by the county's criminal justice system players. Previously, Table 11 also showed a growing proportion of clients who at disposition had also faced felony charges at some point during the lifespan of the misdemeanor and it is possible the misdemeanors are dismissed as part of a plea on those felonies especially if the felony sentence was incarcerative. Using a likelihood cohort model allows better intra-counsel comparisons because it holds static and dynamic client factors constant allowing one to assume the clients within the likelihood cohorts have not changed much at least across the factors used.

Figure 26: Clients Represented by Assigned Counsel Proportion Exiting Criminal Justice System by Likelihood of Conviction Cohort, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020

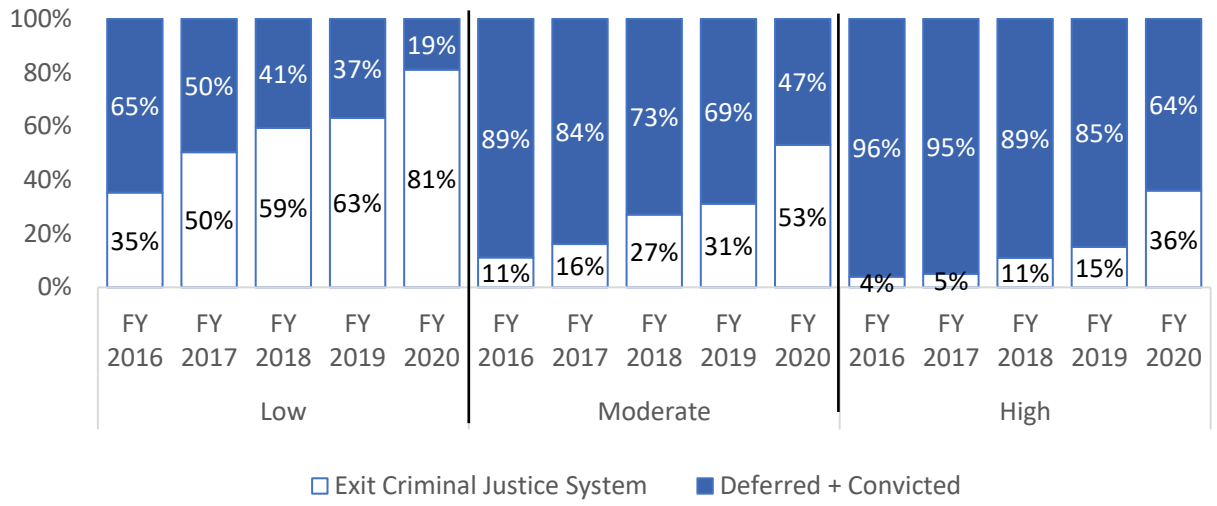


Table 53 shows investigator and expert witness expenditures for Harris County Criminal Courts at Law by TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020. The county reports these as aggregate figures to the TIDC by court so the dollar figure is not tied to a specific case let alone a specific defendant. The closest analysis possible is to determine the number of cases in courts without investigation or expert witness expenses, subtract that from the total to find the number of cases with possible investigation or expert witness payments, and then divided the total cost by the number of cases to compute the average per case cost. For example, in TIDC's fiscal year 2019 (October 1, 2018 through September 30, 2019) there were 17,534 cases with private assigned counsel in total; 4,453 cases occurred in county criminal courts at law without

any expenditures for investigators leaving 13,081 cases with payments for investigators (75% of cases); the total cost was $14,512, so if each case had an investigator, they would have received an average $1.11 worth of investigator's time. An investigator makes $40 per hour according to county rules[83], so this is 1 minute and 40 seconds worth of investigation. Although the total expenditures for investigators and experts increased over a period with the number of cases decreasing, the changes are not enough to conclude assigned counsel is approaching these cases differently. Additionally, it is asinine to believe each case receives $1.11 for investigation and $1.02 for expert witnesses and far more likely a few cases are responsible for the entirety of the expenditures which may also be *Ake Motion* expenditures by retained counsel for expert witnesses.[84]

Table 53: Investigator and Expert Witness Expenditures for Harris County Criminal Courts at Law, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Investigation	Cases without Investigation	9,475	5,596	3,942	4,453	2,322
	Cases with Possible Investigation	16,583	16,881	16,734	13,081	8,718
	% of Cases in Courts with Investigation Expenses	64%	75%	81%	75%	79%
	Total Investigation Expenditures	$16,113	$21,342	$16,241	$14,512	$22,688
	Avg Expenditure Per Case for Cases in Courts with Expenses	$0.97	$1.26	$0.97	$1.11	$2.60
	Total	**26,058**	**22,450**	**20,676**	**17,534**	**11,040**
Expert Witness	Cases without Expert Witness	24,458	22,477	19,402	15,084	7,953
	Cases with Possible Expert Witness	1,600		1,274	2,450	3,087
	% of Cases in Courts with Expert Witness Expenses	6%	0%	6%	14%	28%
	Total Expert Witness Expenditures	$750	$0	$1,200	$2,510	$6,990
	Avg Expenditure Per Cases in Courts with Expenses	$0.47		$0.94	$1.02	$2.17
	Total	**26,058**	**22,450**	**20,676**	**17,534**	**11,040**

Table 54 shows the number of misdemeanor equivalent appointments attorneys taking misdemeanors in Harris County received payment on and the proportion over 226 misdemeanors for TIDC fiscal year 2016 through fiscal year 2020. TIDC's fiscal year runs from October 1st through September of the following year. Over 226 misdemeanors refer to a full caseload as explained below. The majority of attorneys taking misdemeanor appointments also received more appointments than what the TIDC published as an appropriate caseload in the *Guidelines for Indigent Defense Caseloads*[85] and its subsequent *Juvenile Addendum*[86] and

[83] Harris County Criminal Courts at Law. 9 April 2021. Rules of Court. Retrieved from https://www.ccl.hctx.net/attorneys/rules/Rules.pdf
[84] The expert witness reports in the IDER include Ake Motions, which can be filed when the accused cannot afford an expert witness regardless of counsel type (hired or appointed) per *Ake v. Oklahoma*, 470 U.S. 68 (1985). Therefore, one cannot assume the cost of expert witnesses included in this analysis is a reflection of use by appointed counsel.
[85] PPRI. 20 December 2015. Guidelines for Indigent Defense Caseloads. www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf
[86] PPRI. December 2016. Juvenile Addendum: Guidelines for Indigent Defense Caseloads. www.tidc.texas.gov/media/8d85e69f9226ef2/guidelines-for-indigent-defense-caseloads-juvenile-addendum-12142016.pdf

Appellate Addendum[87], see Table 28 below. These reports note a full caseload is 226 misdemeanors, 128 felonies, 168 juvenile cases, or 31 appellate cases. These cases can be normed to misdemeanor equivalent, *e.g.*, 1 felony case is the same workload as 1.765 misdemeanors; 1 juvenile case is the same workload as 1.345 misdemeanors; and 1 appeal is the equivalent to 7.29 misdemeanors. Applying these weights to the reported cases for the lawyers taking misdemeanor appointments in Harris County to all appointed cases, in all counties they received appointments shows a decreasing proportion of lawyers with more than 226 misdemeanor/misdemeanor equivalent cases but still a majority. In fiscal year 2016, there were 130 lawyers paid for misdemeanor cases in Harris County of which 109 (84%) received enough appointments across case type they were over the 226 misdemeanor caseload. In fiscal year 2020, there were 150 lawyers taking misdemeanor appointments and 106 (71%) received more than 226 misdemeanor equivalent appointments.

Table 54: Number of Misdemeanor Equivalent Appointments Attorneys Taking Misdemeanors in Harris County Received Payment on and the Proportion Over 226 Misdemeanors, TIDC Fiscal Year 2016 through TIDC Fiscal Year 2020

All Counties All Appointments	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Appointed to 226 Equivalent or Less	21	34	35	45	44
	16%	23%	24%	28%	29%
Appointed to More than 226 Equivalent	109	116	110	113	106
	84%	77%	76%	72%	71%
Total	**130**	**150**	**145**	**158**	**150**

Sentences for Clients Convicted or Deferred

Clients found or pleading guilty on any charge face three possible sentencing options on a misdemeanor: fine of up to $2,000 on a misdemeanor B or $4,000 on a misdemeanor A,[88] community supervision up to two years for both, or a jail sentence up to 180 days for a misdemeanor B or up to 365 days for a misdemeanor A. By definition, clients disposed as "deferred adjudication" receive community supervision. The other community supervision sentence is probation following a plea or finding of guilt. All misdemeanor offenses qualify for deferred adjudication under Texas law except DWI which receives probation if a community sentence is given. Both probation and deferred adjudication sentences are supervised by Harris County CSCD. A successful deferred adjudication term could result in an expunction of the defendant's record. On the other hand, revocation of deferred adjudication can lead to an incarceration sentence up to the maximum allowed with no credit given for time on supervision where probation revocations give credit for the time under supervision.

Table 55 shows the sentence types by conviction likelihood cohorts for assigned counsel for the study period. The proportion of low, moderate, and high likelihood of conviction sentences to jail decreased from fiscal year 2016 through fiscal year 2020, however, jail still remains the most likely sentence for those convicted on misdemeanors. For low likelihood, 88 percent of those sentence in 2016 received jail time which decreased to 85 percent in fiscal year 2020.

[87] PPRI. 2016 Appellate Addendum: Guidelines for Indigent Defense Caseloads. www.tidc.texas.gov/media/50833/161214_wcl-appellate.pdf.
[88] If reduced to a misdemeanor C, the maximum fine is $500 unless otherwise specified for some offenses.

Moderate likelihood had a slightly higher proportion of jail sentences with 96 percent receiving jail time in 2016 decreasing to 90 percent in 2020. High followed the same pattern with a slightly higher 98 percent receiving jail sentences in 2016 decreasing to 94 percent in 2020. The raw number of clients receiving jail sentences decreased for all categories as the total number of clients eligible for sentences decreased as noted previously (see Tables 20,22, and 24).

Table 55: Sentence Types by Conviction Likelihood Cohorts for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Low			Moderate			High		
	Fine Only	**Comm Super-vision**	**Jail**	**Fine Only**	**Comm Super-vision**	**Jail**	**Fine Only**	**Comm Super-vision**	**Jail**
FY 2016	9	291	2,197	6	361	8,079	2	188	9,279
	0.4%	12%	88%	0.1%	4%	96%	0.0%	2%	98%
FY 2017	3	220	1,461	0	434	4,702	2	302	12,258
	0.2%	13%	87%	0.0%	8%	92%	0.0%	2%	98%
FY 2018	11	142	1,406	1	349	3,767	1	183	5,690
	0.7%	9%	90%	0.0%	8%	91%	0.0%	3%	97%
FY 2019	2	135	1,581	3	299	4,278	1	164	5,345
	0.1%	8%	92%	0.1%	7%	93%	0.0%	3%	97%
FY 2020	0	156	872	1	281	2,493	0	164	2,511
	0.0%	15%	85%	0.0%	10%	90%	0.0%	6%	94%
FY 2021	1	262	489	0	252	949	0	102	871
	0.1%	35%	65%	0.0%	21%	79%	0.0%	10%	90%
Change FY16-21	-89%	-10%	-78%	-100%	-30%	-88%	-100%	-46%	-91%
Change FY16-20	**-100%**	**-46%**	**-60%**	**-83%**	**-22%**	**-69%**	**-100%**	**-13%**	**-73%**

Table 56 shows the comparison of sentence types by conviction likelihood cohorts by counsel for the study period. The proportion of assigned counsel's clients receiving jail sentences was higher than retained but lower than HCPD at every cohort level in fiscal year 2020. There were a limited number of fine only sentences by any counsel type. About a quarter of retained counsel clients received community supervision (deferred adjudication or probation) regardless of comparison cohort. Clients with assigned counsel received community supervision more frequently when in the low likelihood comparison cohort (15%) than in moderate (10%) or high (6%). HCPD rarely received community supervision.

Table 56: Comparison of Sentence Types by Conviction Likelihood Cohorts by Counsel Type, Harris County Fiscal Year 2020

	Low			Moderate			High		
	Fine Only	Comm Supervision	Jail	Fine Only	Comm Supervision	Jail	Fine Only	Comm Supervision	Jail
Retained	1	347	1,098	0	586	1,696	0	164	553
	0.1%	24%	76%	0%	26%	74%	0%	23%	77%
Assigned	0	156	872	1	281	2,493	0	164	2,511
	0.0%	15%	85%	0.0%	10%	90%	0.0%	6%	94%
HCPD	0	2	25	0	11	187	0	14	512
	0%	7%	93%	0%	6%	94%	0%	3%	97%
FY 2020	**1**	**505**	**1,995**	**1**	**878**	**4,376**	**0**	**342**	**3,576**
	0%	**20%**	**80%**	**0%**	**17%**	**83%**	**0%**	**9%**	**91%**

Table 57 shows punishment amount or length for clients with assigned counsel for the study period. The number of fine only sentences was so low that no real conclusions are possible about the amounts presented below. The length of community supervision sentences in months remained relatively stable through the period. The jail sentences also increased. The data did not clarify time served sentences from sentence balance remaining, nor indicate the number of days credit earned prior to adjudication or granted at adjudication. The sheriff credits three days for one served. Therefore, a 30-day sentence with two days credit would be six days credit leaving a balance of 24 days meaning a week in the jail.

Table 57: Punishment Amount or Length for Clients with Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Low			Moderate			High		
	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)
FY 2016	$56	16	24	$133	16	28	$150	18	33
FY 2017	$300	16	19	-	17	39	$100	18	31
FY 2018	$242	15	20	$200	16	29	$50	19	35
FY 2019	$100	15	24	$217	17	29	$200	20	36
FY 2020	-	14	29	$200	16	32	-	19	38
FY 2021	$1	15	22	$133	16	33	-	18	45
Change FY16-21		-6%	-8%		0%	18%		0%	36%
Change FY16-20		**-13%**	**21%**		**0%**	**14%**		**6%**	**15%**

Table 58 shows a comparison of punishment length by counsel type for the study period. Community supervision sentences for appointed clients were the same or shorter than retained clients at each comparison cohort level. The jail sentences varied by lawyer type for low likelihood clients with clients with retained counsel receiving 23 day sentences, those with assigned counsel receiving 29 days sentences, and HCPD receiving 45 day sentences. There was

less differentiation for the moderate likelihood as clients with retained counsel received an average 32 day sentences and those with assigned receiving a 33 day sentence though HCPD clients received 41 day sentences. The high likelihood cohort had no differentiation with retained (44 days), assigned (45 days), and HCPD (43 days) receiving about the same length of sentence. The same point regarding jail credits applies here. As discussed earlier, the length of time from filing to disposition for HCPD's clients was shorter than for assigned counsel which could decrease the amount of jail time that could be applied as credit specifically on simple assault and family violence assault cases for which a General Order Bond is not an option.

Table 58: Comparisons Punishment Length by Counsel Type, Harris County Fiscal Year 2020

	Low			Moderate			High		
	Fine Only $	Comm Supervision (M)	Jail (Days)	Fine Only $	Comm Supervision (M)	Jail (Days)	Fine Only $	Comm Supervision (M)	Jail (Days)
Retained	$500	14	23	-	16	32	-	20	44
Assigned	-	14	29	$133	16	33	-	19	45
HCPD	-	-	45	-		41	-	18	43
FY 2020	**$500**	**12**	**26**	**$133**	**16**	**33**	**-**	**19**	**45**

Trials in County Courts at Law

The number of trials, rate of clients with decisions made at trial, and number of trials ending in acquittals are presented in Table 59 for assigned counsel. The number of trials decreased by 28 percent from fiscal year 2016 through fiscal year 2020 but the total number of clients decreased more at 33 percent in the same period, so the proportion of clients with decisions made a trial increased minimally from 0.2 percent to 0.22 percent. The proportion of these trials resulting in acquittals varied between a low of 51 percent in fiscal year 2016 to a high of 67 percent in fiscal year 2021 (incomplete year).

Table 59: Trial Rate and Outcomes for Assigned Counsel, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020

	Clients	Trials	% Clients Decided at Trial	Acquittals	% of Trials Result Acquittal
FY 2016	23,271	47	0.20%	24	51%
FY 2017	22,801	31	0.14%	18	58%
FY 2018	16,197	36	0.22%	20	56%
FY 2019	17,856	20	0.11%	13	65%
FY 2020	15,493	34	0.22%	18	53%
FY 2021	7,895	6	0.08%	4	67%
Change FY16-21	-66%	-87%		-83%	
Change FY16-20	**-33%**	**-28%**		**-25%**	

Assigned counsel's trials rates by cohort over time are presented in Table 60 below. The rates decreased for low likelihood, a cohort with an 80 percent dismissal rate in fiscal year 2020 and

stayed the same for moderate and high likelihood of conviction cohorts. The rates were highest for low likelihood each year. The proportion of acquittals were consistently high for the low likelihood cohort with about three quarters of clients receiving an acquittal at trial compared to about half for moderate most years and under half for high which was also the most variable.

Table 60: Trial Rate and Outcomes for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020

	Low			Moderate			High		
	Clients	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**
FY 2016	3,907	20 0.5%	10 50%	9,496	20 0.2%	11 55%	9,868	7 0.1%	3 43%
FY 2017	3,405	12 0.4%	9 75%	6,145	14 0.2%	7 50%	13,251	5 0.0%	2 40%
FY 2018	3,870	19 0.5%	15 79%	5,705	10 0.2%	3 30%	6,622	7 0.1%	2 29%
FY 2019	4,719	7 0.1%	5 71%	6,619	8 0.1%	4 50%	6,518	5 0.1%	4 80%
FY 2020	5,445	11 0.2%	8 73%	5,884	19 0.2%	8 42%	4,164	4 0.1%	2 50%
FY 2021	3,319	4 0.1%	2 50%	2,889	0 0%	0	1,687	2 0.1%	2 100%
Change FY16-21		-80%	-80%		-100%	-100%			-33%
Change FY16-20		**-45%**	**-20%**		**-5%**				**-33%**

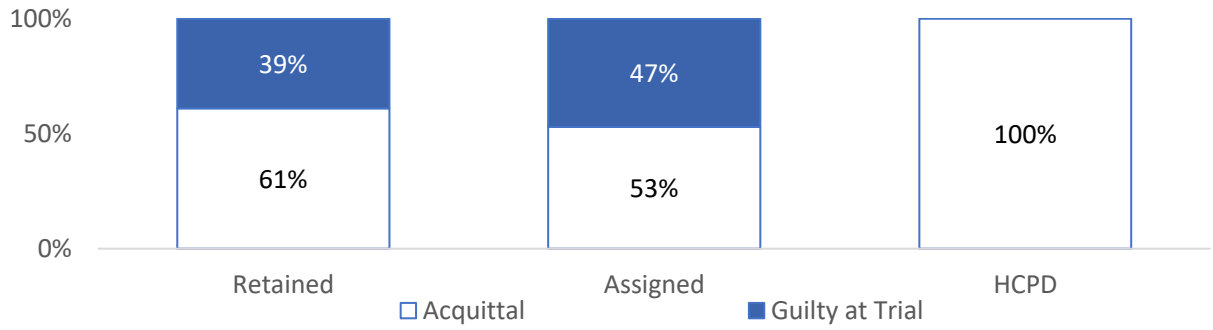
Table 61 shows the trial rate and acquittal at trial by council type for fiscal year 2020. the outcomes combined across comparison cohort for clients by counsel type in fiscal year 2020. Retained counsel had the highest proportion of clients with the disposition occurring at trial with 0.56 percent compared to 0.22 percent for assigned counsel and 0.18 percent for HCPD. These are all under one percent, so the differences are minimal. Remember, fiscal year 2020 had dismissal rates of 62 percent for all clients (see Table 11). At trial, HCPD had the highest acquittal rate at 100 percent compared to 61 percent for retained and 53 percent for assigned counsel. The acquittal rate when separated for low, moderate, and high was comparable between retained and assigned for low (71% versus 73%) and high (50% for both) and close for moderate (48% versus 42% respectively).

Table 61: Trial Rate and Acquittal at Trial by Counsel Type, Harris County Fiscal Year 2020

Comparison Cohort	Counsel	Clients	Trials	% Clients Decided at Trial	Acquittals	% of Trials Result Acquittal
Low	Retained	7,768	41	0.5%	29	71%
	Assigned	5,445	11	0.2%	8	73%
	HCPD	152	1	0.7%	1	100%
Moderate	Retained	4,824	31	0.6%	31	48%
	Assigned	5,884	19	0.3%	19	42%
	HCPD	531	2	0.4%	2	100%
High	Retained	1,079	4	0.4%	4	50%
	Assigned	4,164	4	0.1%	4	50%
	HCPD	1,030	0	0%	0	-
Total	Retained	13,671	76	0.56%	46	61%
	Assigned	15,493	34	0.22%	18	53%
	HCPD	1,713	3	0.18%	3	100%
Grand Total	**FY 2020**	**30,877**	**113**	**0.37%**	**67**	**59%**

The total acquittal rate by attorney type is presented in Figure 27 below presenting the three of four rows from Table 61 above.

Figure 27: Total Client Acquittal Rate by Counsel Type, Harris County Fiscal Year 2020



Motions to Revoke/Adjudicate

The clients who received community supervision at disposition are required to stay in compliance with individualized conditions during the supervision term. These include, but are not limited to, attending probation meeting, pay fines and fees, taking and passing urinalyses, and not getting a new arrest. Clients who are not in compliance with the terms of probation can have a Motion to Revoke (MTR) filed by the District Attorney following notice by the Probation Department. Clients who are not in compliance with the terms of their supervised deferred adjudication will have a Motion to Adjudicate (MTA) filed by the District Attorney. If community supervision was given for a misdemeanor, these motions are filed and disposed at the County Courts at Law. Misdemeanor offenses can receive a community supervision sentence up to 24 months long.

Table 62 shows the number of motions to revoke/motions to adjudicate filed and disposed in criminal courts at law from fiscal year 2016 through fiscal year 2021 and the disposition rate for

that year. The number of supervision failures filed decreased by 71 percent between fiscal year 2016 and 2020 while the number disposed decreased by 67 percent. The decline is cases filed and disposed reflects a decreased number of people placed on community supervision for misdemeanor offenses and the overall number of misdemeanors decreasing during this same period. The disposition rate, meaning the number of cases disposed for every 1 case filed, was at or above 1 for all but fiscal year 2018. This means there is not a backlog for these types of cases.

Table 62: Number of Motions to Revoke/Motions to Adjudicate Filed and Disposed in Criminal Courts at Law with the Disposition Rate, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Filed	Disposed	Disposition Rate
FY 2016	3,311	3,537	1.07
FY 2017	3,169	3,095	0.98
FY 2018	2,859	2,620	0.92
FY 2019	1,666	1,913	1.15
FY 2020	950	1,162	1.22
FY 2021	594	593	1.00
Change FY16-21	-82%	-83%	-7%
Change FY16-20	**-71%**	**-67%**	**+15%**

Source 24: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Table 63 shows the number and proportion of disposed motions to revoke/motions to adjudicate that were granted and denied. The total number of dispositions decreased 67 percent from 3,537 in fiscal year 2016 to 1,162 in fiscal year 2020. The number granted decreased by 78 percent from 2,186 to 482 during the same period. The proportion of total dispositions ending in a person having supervision revoked was around two-thirds for all years between fiscal year 2016 and fiscal year 2019 and then dropped to 41 percent for fiscal year 2020. The number of motions to revoke/motions to adjudicate that were denied allowing supervision to continue decreased by 50 percent from 1,315 in fiscal year 2016 to 419 in fiscal year 2020. The proportion continuing on supervision was about one-third (33%) from fiscal year 2016 through fiscal year 2019 then increased to 59 percent in fiscal year 2020.

Table 63: Number and Proportion of Disposed Motions to Revoke/Motions to Adjudicate Granted and Denied, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Disposed	Granted Supervision is Revoked		Denied Supervision is Continued	
FY 2016	3,537	2,186	62%	1,351	38%
FY 2017	3,095	2,081	67%	1,014	33%
FY 2018	2,620	1,752	67%	868	33%
FY 2019	1,913	1,184	62%	729	38%
FY 2020	1,162	482	41%	680	59%
FY 2021	593	174	29%	419	71%
Change FY16-21	-83%	-92%		-69%	
Change FY16-20	**-67%**	**-78%**		**-50%**	

Source 25: Office of Court Administration. County-Level Courts: Misdemeanor Case Activity Detail. Retrieved 12/24/2020 from card.oca.gov

Table 64 shows the proportion of defendants with disposed motions to revoke/motions to adjudicate granted represented by counsel type from fiscal year 2016 through fiscal year 2021. The data records do not align with the aggregate data trends so the only data informative from those records is the proportion of these cases represented by counsel type. Assigned counsel represents the vast majority of these clients. The lowest proportion represented by assigned counsel between fiscal year 2016 and fiscal year 2020 was 77 percent in fiscal year 2020. The highest proportion was 81 percent in fiscal year 2018. HCPD represented less than one percent each year. As seen previously, HCPD clients infrequently receive community supervision as a punishment. During this period, they do not represent clients with DWI charges, these only charges resulting in probation because they cannot get deferred adjudication by law, and they infrequently have clients plea to deferred adjudication because if supervision is revoked the client can face the maximum allowable punishment under law.

Table 64: Proportion of Defendants with Disposed Motions to Revoke/Motions to Adjudicate Granted Represented by Counsel Type, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

	Retained	Assigned	HCPD
FY 2016	20.8%	78.9%	0.3%
FY 2017	19.9%	79.6%	0.5%
FY 2018	18.6%	81.0%	0.4%
FY 2019	21.1%	78.5%	0.4%
FY 2020	22.3%	77.3%	0.3%
FY 2021	23.4%	76.6%	0.0%

VI. Recommendations to Ensure Effective Misdemeanor Representation County-Wide for Persons Unable to Afford Counsel; Blueprint for Representation; Creating State Standards

The objective in providing counsel must be "to assure that quality legal representation is afforded to all persons eligible for counsel…."[89] In order to have meaningful defense representation, the defense must put the prosecution's case through the "crucible of meaningful adversarial testing." *United States v. Cronic*, 466 U.S. 648, 656-57 (1984). Too often, "one of the primary guarantors of fairness and decency – a robust defense – is largely missing in action from misdemeanor court."[90]

The traditional indicators of meaningful representation include prompt appointment of counsel, prompt representation by counsel, excellent client relationships, adequate number of attorneys to represent the indigent defendants, appropriate number of investigators to conduct necessary investigation, access to and use of expert assistance when an expertise is necessary to test the government's evidence, vigorous discovery and pretrial motion practice, a capacity through social workers to provide holistic services and develop and present alternative sentencing proposals, trials by jurors in the community, filing of an appeal or writ when appropriate to challenge erroneous rulings and outcomes.

Our Recommendations are based on our interviews of County Court at Law judges, magistrates, public defenders, appointed counsel, prosecutors, criminal legal system leaders, county and community leaders, a considerable amount of data, our observations, and national benchmarks for performance and also for public defense delivery systems.

National and Texas standards of practice set out the best practices for the constitutional delivery of public defender representation to provide meaningful representation across all cases. These standards also provide smart advice on the prudent provisions of effective services. Standards guide our evaluation of the information we have reviewed and our Findings and Recommendations. National and state standards from the following organizations are helpful measures: Texas Indigent Defense Commission, Sate Bar of Texas, American Bar Association, National Association for Public Defense, and National Legal Aid and Defender Association. These standards are the minimum; they are not aspirational.

Our Recommendations focus on several areas specifically relevant to public defense issues in Harris County including structures to ensure independence, representation when pretrial release is at issue, timely access to counsel, prompt representation, proper investigation, affirmative sentencing proposals, reasonable workloads, adequate support staff, active supervision, and the use of data to manage and provide accountability.

[89] *ABA Standards for Criminal Justice: Providing Defense Services* Standard 5- 1.1 Objective, 5-1.4 (3d Ed. 1992).
[90] Alenandra Natapoff, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 79.

Our Recommendations also discuss the lack of mandatory TIDC standards and provide a beginning blueprint for county-wide high-quality public defense going forward.

1. Continue to Provide Representation at Magistration for All Clients

This Harris County system of representation at magistration of all defendants who want representation by full-time attorneys who are trained and supervised is an valuable system for clients, the magistrates, and the Harris County criminal legal system. Appointment of counsel at first appearance with the representation beginning promptly is the national best practice. There are important reasons for appointment and representation to begin at first appearance. Representation by a lawyer:

- Increases the likelihood of pretrial release;
- Increases the understanding of the defendant about the charge(s), defenses, probable cause determination;
- Allows for immediate obtaining of information to begin the process to develop and advocate for an alternative sentence;
- Increases an awareness of the full nature of the consequences of a plea of guilty, the collateral consequences to a plea for time served or to a suspended sentence, and chances at a trial;
- Increases the efficiency of the proceedings; and
- Allows for the early identification of critical evidence and the ability for counsel to take the necessary steps to preserve that evidence.

In other words, lawyers make a difference for clients. In an empirical study[91] looking at the difference between persons who had a lawyer representing them at the initial appearance pretrial release proceeding or not, the study found significant differences between being represented and being unrepresented. Having the representation of an attorney had the following objective and subjective benefits. A criminal defendant with a lawyer at first appearance:

- Is 2.5 times more likely to be released on own recognizance;
- Is 4.5 times more likely to have the amount of bail significantly reduced;
- Serves less time in jail (median reduction from 9 days jailed to 2, saving county jail resources while preserving the clients' liberty interests); and
- More likely feels that they had been treated fairly by the system.[92]

The study presents “convincing empirical data that the benefits of representation are measurable and that representation is crucial to the outcome of a pretrial release hearing. Moreover, the study revealed that early representation enhances defendants’ respect for the system’s overall fairness and confidence in assigned counsel.”[93]

[91] Douglas L. Colbert, Ray Paternoster, and Shawn Bushway, *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail,* 23 Cardozo L. Rev. 1719 (2002).
[92] *Id*. at 1720, 2002.
[93] *Id*. at 1720.

The study substantiates what is common sense. Criminal defense lawyers provide value to clients, courts, prosecution and the public. They advocate for the benefit of their client, promptly investigate the facts of the case, provide additional information to the prosecuting and judicial officers. The lawyer investigates a client's prior history, financial capacity, challenges evidence, and advocates for alternative sentences. The lawyer presents the client's side of the story. This results in courts having a fuller set of information about the matter, reduces the risk of an erroneous decision, and increases the likelihood that any decision is proportionate to the financial ability of the defendant. At minimum, the presence of defense counsel eliminates the possibility a person will say self-incriminating information in open court.

Therefore, representation at first appearance is the national standard of practice. The ABA *Criminal Justice Standards for the Defense Function* (4th Ed 2017), Standard 4-2.3 Right to Counsel at First and Subsequent Judicial Appearances states, "A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance."[94]

Recommendation 1A: Magistrates should be delegated authority through a general order that provides parameters to make the decision on whether counsel should be appointed in order for the representation by the subsequent attorney to occur sooner. The failure to appoint counsel should be subject to review by the County Court at Law judge.

Recommendation 1B: Information obtained from a client and information obtained about the client's case at magistration should be affirmatively provided to the attorney who subsequently represents the client.

Recommendation 1C: Full contact information should be obtained from the client at magistration to allow efficient client contact by the attorney who subsequently represents the client at the trial level.

Recommendation 1D: The addition of a Bachelor of Social Work (BSW) staff person to the Bail Division would assist the magistration attorneys with logistical matters and increase the ability to provide follow-up information to clients' families on the status of the case.

Recommendation 1E: Additional space at the Central Processing Center must be provided for public defenders to conduct confidential interviews.

Recommendation 1F: It is essential for Harris County to ensure that all attorney client communications with a client who is incarcerated are fully confidential.

There should be a guarantee of cost-free, unmonitored communications that are not recorded unless there is "a credible threat of immediate danger or violence, or advance judicial

[94] ABA Standards for Criminal Justice: For the Defense Function, Standard 4-2.3.

authorization." American Bar Association *Criminal Justice Standards for the Defense Function* (4th ed. 2017), Standard 4-2.2(d) Confidential Defense Communication with Detained Persons

Recommendation 1G: The use of telephonic interpretation service for in-court hearings should be used rather than passing clients to a subsequent docket, and all persons doing translation in court should be administered the interpreter's oath.

Recommendation 1H: Policy should ensure that when there are codefendants at magistration or a defendant at magistration has a conflict with the Harris County Public Defender Office for any other reason that measures are taken to protect information of the client from improper dissemination.

American Bar Association *Criminal Justice Standards for the Defense Function* (4th ed. 2017), Standard 4-1.7(d) Conflicts of Interest, states, "Except where necessary to secure counsel for preliminary matters such as initial hearings or applications for bail, a defense counsel (or multiple counsel associated in practice) should not undertake to represent more than one client in the same criminal case. When there is not yet a criminal case, such multiple representation should be engaged in only when, after careful investigation and consideration, it is clear either that no conflict is likely to develop at any stage of the matter, or that multiple representation will be advantageous to each of the clients represented and that foreseeable conflicts can be waived."

Recommendation 1I: Harris County public defenders representing clients at magistration should have readily available current information on immigration issues relevant at magistration so that clients are properly advised.

Recommendation 1J: At future magistrate trainings, there should be a discussion of a) when it is appropriate to place conditions on a person presumed innocent of the charged offense; b) the negative consequences of placing numerous conditions on defendants; and c) when, if ever, a defendant's answer to request for counsel can be assumed.

Recommendation 1K: At future trainings for defense lawyers working at magistration, there should be a discussion of a) how and when to argue probable cause; b) the importance of watching the video screen when doing magistration remotely to catch cues a defendant is going to start talking and possibly self-incriminate; and c) if there is another strategic objection they would like to make as a division (similar to the GA-13 objection).

Recommendation 1L: Defendants should not have the magistration process occur when they are not present. When a defendant is not present the case should continue to be docketed until the defendant is present.

In Los Angeles arraignments generally occur with the client present, absent extraordinary circumstances and/or certain waiver situations. In New York City any client unable to appear in

court because of being hospitalized has the representation at the hospital with all court staff present except the judge and district attorney who appear virtually.

2. Ensure Well-Trained, Competent, Independent, Client-Centered Representation

The culture and practice of appointed counsel must improve. As one judge insightfully observed, cases are won outside the courtroom. Good lawyering promptly provided makes a difference. Attorneys who thoroughly work their cases with excellent client communication, aggressive investigation of the facts and the social history of the client, timely obtaining discovery, and vigorous motion practice with evidentiary hearings obtain better outcomes for clients. The markers of high-quality representation by appointed counsel are lacking in critical areas.

Proper investigation and use of experts is lacking.
The County Court at Law judges report that amongst the thousands of cases that come before them the requests for funds for investigators and experts is less than minimal. The data we have outlined previously in this Report corroborates this lack of funding requests. The number of requests for funding for investigation are rare, averaging payments per case of $0.97 in 2016 to $2.60 in 2020. The number of requests for funding for use of experts are rare, averaging payments per cases of $0.47 in 2016 to $2.17 in 2020.

Some appointed counsel report that they are under the belief that judges do not want funding motions made. Judges tell us otherwise. Other appointed counsel report that they did their own investigation which can create ethical issues of significance. We heard that the motion practice and request for evidentiary hearings were not being asked for in many cases. The delay in receiving lab reports and discovery are indicators of the lack of adequate litigation by counsel. We fear that most cases proceed without investigation and motion practice that would be beneficial to the client, and clients plead before relevant information is obtained and reviewed. That must change.

Investigation in every case is required. Attorneys should use investigators routinely.[95]
The responsibility to investigate every case is a core duty of the attorney representing the client. As stated in the ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-4.1 Duty to Investigate and Engage Investigators, "Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges."

The duty to investigate is not subject to exception. Standard 4-4.1 provides: "The duty to investigate is not terminated by factors such as the apparent force of the prosecution's evidence, a client's alleged admissions to others of facts suggesting guilt, a client's expressed

[95]ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-4.1 (d) Duty to Investigate and Engage Investigators, "Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation."

desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt."[96]

The investigation includes what information the prosecution and law enforcement and its agents have or could have, interviews of witnesses,[97] and beneficial independent investigation.[98]

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

The Guideline details the investigation responsibilities of the charging documents, interviews with the client, potential witnesses, police and prosecution, the scene and experts.

Nationally, over 95 percent of misdemeanor cases resulting in a conviction are resolved by a plea of guilty.[99] Despite this, or better, in light of this, the ABA Criminal Justice Standards, *Providing Defense Services,* Standard 4-6.1(b) Duty to explore disposition without trial (plea) requires investigation in all cases. "In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed."

There are practical and ethical duties that require the help of investigators. The use of investigators when interviewing witnesses who may need to be impeached is the prudent practice to avoid an unresolvable ethical dilemma of the attorney becoming a witness in the case in which the attorney is representing a client.[100]

---

[96] See also ABA Criminal Justice Section Standards, Pleas of Guilty, Standard 14- 3.2. Responsibilities of defense counsel are "(b) [t]o aid the defendant in reaching a decision, defense counsel, after appropriate investigation, should advise the defendant of the alternatives available and address considerations deemed important by defense counsel or the defendant in reaching a decision. Defense counsel should not recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed."

[97] ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-4.3 Relationship With Witnesses "(c) Defense counsel or counsel's agents should seek to interview all witnesses, including seeking to interview the victim or victims, and should not act to intimidate or unduly influence any witness."

[98] ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-4.1 Duty to Investigate and Engage Investigators "(c)…Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise. (d) Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.

[99] Alenandra Natapoff, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 109.

[100] Texas Disciplinary Rules of Professional Conduct, Rule 3.08. Lawyer as Witness (a) "A lawyer shall not accept or continue employment as an advocate before a tribunal in a contemplated or pending adjudicatory proceeding if the lawyer knows or believes that the lawyer is or may be a witness necessary to establish an essential fact on behalf of the lawyer's client, unless:…." See also ABA Criminal Justice *Standards for the*

Trials are infrequent.

In Harris County in misdemeanor cases, between fiscal year 2016 and 2020, when cases went to trial the rate of acquittal was high, ranging from 51 percent to 67 percent of total trials for clients with assigned counsel. However, both the number of trials, ranging between 20 and 47, and the trial rate, ranging from 0.11 percent to 0.22 percent of dispositions, were extremely low for clients with assigned counsel.

Table 65: Trial Rate and Outcomes for Assigned Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2020

	Clients	Trials	% Clients Decided at Trial	Acquittals	% of Trials Result Acquittal
FY 2016	23,271	47	0.20%	24	51%
FY 2017	22,801	31	0.14%	18	58%
FY 2018	16,197	36	0.22%	20	56%
FY 2019	17,856	20	0.11%	13	65%
FY 2020	15,493	34	0.22%	18	53%
FY 2021	7,895	6	0.08%	4	67%
Change FY16-21	-66%	-87%		-83%	
Change FY16-20	**-33%**	**-28%**		**-25%**	

The lack of trials may be explained by a high dismissal rate, the number of pre-adjudicative diversion programs, and dismissals after being set for trial. However, there are other explanations that are equally probable, inordinate delays in providing full discovery that likely increases guilty pleas prior to receiving all the discovery including lab reports and body, dash, station video recordings,[101] lack of a trial culture amongst defense attorneys, absence of active supervision, and a lack of financial incentives taking cases to trial. We fear that so few cases proceeding to a trial resolution is not beneficial to clients. That must change.

Recommendation 2A: There should be robust use of investigators, social workers and experts by appointed counsel according to national best practices and the defense team-based interdisciplinary model.

Recommendation 2B: The MAC should create Misdemeanor Litigation Performance Guidelines and should include them in both performance and qualification reviews.

Defense Function (4th ed. 2017), Standard 4-4.3 Relationship With Witnesses "(f) Defense counsel should avoid the prospect of having to testify personally about the content of a witness interview. An interview of routine witnesses (for example, custodians of records) should not require a third-party observer. But when the need for corroboration of an interview is reasonably anticipated, counsel should be accompanied by another trusted and credible person during the interview. Defense counsel should avoid being alone with foreseeably hostile witnesses."

[101] If it takes 6 months or more to obtain the video recordings and lab reports through discovery and then the client decide to go to trial there is another long delay in having the case set for trial that can take resolution of a case by trial to 14 months.

Unless there are clear, comprehensive representation performance guidelines, how does an attorney, investigator, social worker know what is precisely expected of them? Making the implicit explicit is critical to a high-quality service organization.

The State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011) are a substantial reference. The *Guidelines* were developed to be the "foremost purposes are to encourage defense attorneys to perform to a high standard of representation and to promote professionalism in the representation of indigent defendants."[102]

The *Guidelines* are a "step-by-step guide to what lawyers should do in criminal cases. They remind attorneys that certain actions, like investigating facts before trial, should be considered in every case regardless of funding issues or local practice. At the same time, they remind judges and county officials that lawyers have work to do and steps to take that have to be paid for no matter how constrained counties feel about their budgets."[103]

Jeff Blackburn and Andrea Marsh make clear that the use of the *Guidelines* "will help ensure that people accused of crimes will receive not just a lawyer, but a lawyer who is ready and able to do the job they should do under the law."[104]

Recommendation 2C: The MAC should train on the significant sentencing advocacy that counsel must pursue, including the development of mitigation and alternative sentencing proposals with the assistance of investigators and social workers.

National standards require defense-generated alternative sentencing plans.

Sentencing advocacy is an essential duty of counsel. Whether the case resolves by plea or trial, defense counsel has substantial responsibilities to present sentencing proposals that are individual to the client and the client's case.[105]

Defense sentencing plans are sometimes termed mitigation or a defense sentencing memorandum.[106] These affirmative sentencing plans are usually generated with the assistance of both an investigator and a social worker.

---

[102] Texas Bar Journal, Vol. 74, No. 7 (July 2011), p. 620; found at: Performance Guidelines Non-Capital Criminal Defense Representation July 2011 (texasbar.com) "The Guidelines are a step-by-step guide to what lawyers should do in criminal cases. They remind attorneys that certain actions, like investigating facts before trial, should be considered in every case regardless of funding issues or local practice. At the same time, they remind judges and county officials that lawyers have work to do and steps to take that have to be paid for no matter how constrained counties feel about their budgets."

[103] Jeff Blackburn and Andrea Marsh, *The New Performance Guidelines in Criminal Cases: A Step Forward for Texas Criminal Justice*, Texas Bar Journal, Vol. 74, No. 7 (July 2011) p. 617.

[104] *Id*., p. 618.

[105] ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-8.3 Sentencing "(a) Early in the representation, and throughout the pendency of the case, defense counsel should consider potential issues that might affect sentencing. Defense counsel should become familiar with the client's background, applicable sentencing laws and rules, and what options might be available as well as what consequences might arise if the client is convicted. Defense counsel should be fully informed regarding available sentencing alternatives and with community and other resources which may be of assistance in formulating a plan for meeting the client's needs. Defense counsel should also consider whether consultation with an expert specializing in sentencing options or other sentencing issues is appropriate."

[106] See National Legal Aid & Defender Association, Performance Guidelines for Criminal Defense Representation,

The National Legal Aid and Defender *Performance Guidelines for Criminal Defense Representation* (1994), Guideline 8.6: The Defense Sentencing Memorandum, sets out the substantial minimum responsibilities of the public defender: "(a) Counsel should prepare and present to the court a defense sentencing memorandum where there is a strategic reason for doing so. Among the topics counsel may wish to include in the memorandum are:

(1) challenges to incorrect or incomplete information in the official presentence report and any prosecution sentencing memorandum;
(2) challenges to improperly drawn inferences and inappropriate characterizations in the official presentence report and any prosecution sentencing memorandum;
(3) information contrary to that before the court which is supported by affidavits, letters, and public records;
(4) information favorable to the defendant concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;
(5) information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;
(6) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;
(7) presentation of a sentencing proposal."

Recommendation 2D: The educational responsibilities of the MAC and appointed counsel are significant.[107] The training provided/required of MAC attorneys and staff should be comprehensive, including the importance of misdemeanor representation, the role of defense counsel, the ethical responsibilities of defense counsel, client-centered and holistic representation, client communication, client interviewing, client relationships, national and state performance guidelines, ethical limits on workload, the case management system adopted by the MAC, the use of investigators, social workers, experts, the team interdisciplinary defense model of representation, mitigation investigation and presentation, alternative sentencing plan development and presentation including diversion and probation programs, costs, fees, written motion practice, obtaining discovery, case law and statutory updates, immigration law and practice, DUI litigation, family violence litigation, team defense, negotiation, evidence, trial skills (theory of the case, voir dire, opening statements, cross-examination, impeachment, closing argument), direct and collateral consequences of convictions. There should be particular emphasis on discovery with the development of a discovery litigation manual.

Guideline 8.1 Obligations of Counsel in Sentencing; 8.2 Sentencing Options, Consequences and Procedures; 8.3 Preparation for Sentencing; the Defense Sentencing Memorandum; 8.7 The Sentencing Process (1994).
See also American Bar Association, Standards for Criminal Justice: Prosecution and Defense Function (4th ed. 2015) (Standard 4-8.3 Sentencing, "…(d) Defense counsel should gather and submit to the presentence officers, prosecution, and court as much mitigating information relevant to sentencing as reasonably possible; and in an appropriate case, with the consent of the accused, counsel should suggest alternative programs of service or

[107] See State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011), Guideline 1.2 Education, Training and Experience of Defense Counsel.

Recommendation 2E: In order to promote legal research, the MAC should provide appointed counsel the ability to purchase at a group rate an electronic legal research capacity, and in order to promote thorough investigation, provide access to an electronic investigative search on background information on witnesses, such as CLEAR.

Recommendation 2F: The MAC should have an easily accessible method for clients to register complaints.

Recommendation 2G: The Harris County Managed Assigned Counsel Director should be a voting member of the Harris County, Texas Criminal Justice Coordinating Council.

Recommendation 2H: The approved TIDC grant governance and quality control committees should be established and functioning as soon as practical with clear written authority and responsibilities according to TIDC Guidelines.

Recommendation 2I: The Managed Assigned Counsel Oversight Board must ensure professional and political independence in the representation of individual clients.

No public defense program can provide and sustain the requisite professional and political independent representation of all clients without adequate structures and leadership that prevent inappropriate interference with the representation of clients. Harris County has the experienced public defense leadership in Alex Bunin and Kenneth Harding. It must focus on the national best practices for creating a systematic assurance of independence. No public defense leader, no matter how experienced and talented, can advocate for and implement the ABA *Ten Principles of a Public Defense Delivery System*, which are the national standards, without the structure to assure independence.

Independence is the foundation for meaningful representation.
The first Principle of the *ABA Ten Principles of a Public Defense Delivery System*[108] is "The public defense function, including the selection, funding, and payment of defense counsel, is independent." This is the first principle because all other responsibilities of a public defense delivery system depend on the ability to provide the representation without undue interference.

The *ABA Ten Principles* Commentary details how independence is best achieved structurally through a particularly structured governing board. "The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial

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

independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff."

Governing boards must be structured to advance independence authentically.[109] The Governing Board:

- Should not include active prosecutors or judges;[110]
- Have as a primary function to support and protect the independence of the defense services program;[111]
- Have the power to establish general policy for the operation of defender Programs;
- Be precluded from interfering in the conduct of particular cases;
- Have a majority be members of the bar admitted to practice in the Jurisdiction;
- Should appoint a chief defender who serves a term of years that is renewable and not be removable except for cause with process.

Quality representation is advanced through an attorney-client relationship that has integrity and is without political or professional interference. Clients do not select who judges their case. Judges do not select who prosecutes a case. Judges do not select who represents a client when a lawyer is retained. Judges should not select who defends a case nor what compensation they receive.[112]

TIDC has independent oversight as a condition of its grant to Harris County:

> *Maintain a Managed Assigned Counsel Oversight Board to supervise the operation of this program. The County must submit a written policy on how the members are selected and which details the duties and procedures of the board with the first quarterly progress report. The Oversight Board must meet at least quarterly.*

---

[109] The ABA Criminal Justice Standards, *Providing Defense Services*, Standard 5-1.3 Professional independence (3d ed. 1992), states: "(b) An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned-counsel and contract-for-service components of defender systems should be governed by such a board. Provisions for size and manner of selection of boards of trustees should assure their independence. "

[110] The Commentary to ABA Criminal Justice Standards, Providing Defense Services Standard 5- 1.3 states: "Members of governing boards should not include prosecutors and judges. This restriction is necessary in order to remove any implication that defenders are subject to the control of those who appear as their adversaries or before whom they must appear in the representation of defendants, except for the general disciplinary supervision which judges maintain over all members of the bar."

[111] Footnotes to ABA *Ten Principles of a Public Defense Delivery System* (2002) Principle 1 refer to National Study Commission on Defense Services' (NSC) Guidelines for Legal Defense Systems in the United States (1976). The Guidelines were created in consultation with the United States Department of Justice (DOJ) under a DOJ Law Enforcement Assistance Administration (LEAA) grant. NSC Guideline 2.10 (The Defender Commission) states that "a special Defender Commission should be established for every defender system, whether public or private," and that the primary consideration of appointing authorities should be "ensuring the independence of the Defender Director." NSC Guideline 2.11 states that the "primary function of the Defender Commission should be to select the State Defender Director."

[112] ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992), Standard 5-1.3. Professional independence "(a) The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs."

TIDC provides guidance on the oversight structure in its TIDC *Guidelines for Indigent Defense Caseloads* (2015).[113]

Recommendation 2j: Collaboratively educate Harris County criminal legal professionals on diversion programs, their criteria, their fees and costs, and seek expansion of diversion and a more rational system of affordable fees and costs.

We suggest that appointed counsel, public defenders, judges and all criminal legal professionals be educated on all diversion programs, and that the program description, criteria, costs and waiver process for indigents be placed on a Harris County web page for easy access.

We also suggest that there is a discussion, perhaps facilitated by the Justice Administration Department, amongst the prosecution, judges, the Harris County Public Defender Office, the MAC, and the Harris County Community Supervision and Corrections Department and other appropriate persons on enhancing these diversion programs, reducing their fees and costs, and creating a simple process for assessing the ability of a person to pay fees for assessments, supervision and use of monitoring devices provided by vendors.

Law enforcement, along with the DA's Office, the Harris Center, and the local mental health authority have begun an initiative designed to divert individuals suffering from serious mental illness from the jail to a respite center or a hospital. This initiative should be encouraged and expanded. In addition, greater utilization of the 'Sobering Center' should be encouraged.

Diversion efforts for persons charged with non-violent misdemeanors should be expanded."

Harris County has the opportunity to strengthen “the fairness, accuracy, and efficiency of the misdemeanor system” by making it smaller.[114] Natapoff proposes commonsense ways to achieve a smaller misdemeanor system that includes bringing fewer people into the system, reducing jail time, sentencing to less punishment, seeking less taxation of defendants, providing more justice, information and engagement.[115] Her proposals merit reflective discussion. Less is more.

[114] Alexandra Natapoff, *Punishment Without Crime: How Our massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 228.
[115] Alexandra Natapoff, *Punishment Without Crime: How Our massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 225-245.

3. Ensure Timely Access to Counsel, Timely Representation and Continuity of Counsel

All magistrates, judges, defense counsel, county administrators, and prosecutors who offered an opinion on the time it took to have counsel appointed desired indigency and appointment determinations be made sooner. They see a seven-to-ten-day delay as inappropriate and inefficient as a prompt appointment of counsel would allow counsel to begin the representation before the first appearance of clients on the County Court of Law docket.

Prompt appointment of counsel is necessary
For a long time, national standards have provided that the appointment of counsel must be timely made "as soon as feasible after custody begins," and the attorney initially appointed should continue the representation throughout the case.

The ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992), Standard 5-6.1: Initial provision of counsel states, "Upon request, counsel should be provided to persons who have not been charged or taken into custody but who are in need of legal representation arising from criminal proceedings. Counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest." [116]

The Commentary to Standard 5-6.1 makes clear why the appointment must be prompt, "Effective representation of the accused requires that counsel be provided at the earliest possible time. Often there are witnesses who must be interviewed promptly by the defense lest their memories of critical events fade or the witnesses become difficult to locate….. Perhaps most important, unless the indigent accused is provided counsel at the earliest possible time, discrimination occurs between the poor defendant and the defendant of financial means: the latter is able to afford counsel and frequently acquires legal representation well before formal commencement of adversary proceedings. This standard seeks to provide for the indigent accused similar representation opportunities."

For a county the size of Harris County, a person unable to employ counsel must have counsel appointed no "later than: …the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel…."[117]
"The primary goal of Art. 1.051(e) is to ensure the indigent defendant receives appointed counsel who is prepared for the proceeding."[118]

Swift communication with client is essential
Upon appointment, counsel should communicate promptly with the client.

---

[116] Found at: Full page fax print (americanbar.org). See also, ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-2.3 Right to Counsel at First and Subsequent Judicial Appearances states "A defense counsel should be made available in person to a criminally-accused person for consultation at or before any appearance before a judicial officer, including the first appearance." Found at: Standards for the Defense Function (americanbar.org)
[117] Code of Criminal Procedure, Art. 1.051(c)(2), Right to Representation by Counsel
[118] *Marin v. State*, 891 S.W.2d 267, 272 (Tex. Crim. App. 1994).

The Texas Code of Criminal Procedure 26.04(j) states, "An attorney appointed under this article shall: (1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed."

The recently updated ABA Criminal Justice *Standards for the Defense Function* indicate, "Immediately upon appointment or retention, defense counsel should work to establish a relationship of trust and confidence with each client."[119]

The failure to timely and fully communicate is one of the most frequent complaints from clients. It is too often well founded.

Prompt and through action by counsel is necessary
"Many important rights of a criminal client can be protected and preserved only by prompt legal action."[120] Meaningful representation of a client requires counsel who has been swiftly appointed to rapidly seek the preservation and disclosure of the evidence, and also a plan of investigation.

Continuity of counsel is the national standard
Vertical representation is the best practice. The national standard of practice explicitly rejects[121] horizontal representation as inappropriate as its disadvantages are "substantial."

Usually, when a person is represented by retained counsel. That retained counsel represents the client from the beginning of the case and throughout the case. It would be unusual for retained counsel to have others in the firm provide representation.

There is benefit to the same attorney representing a client from the start of his case and throughout his case. The advantages are obvious. The same attorney creates efficiency in obtaining information from and communicating information to the client. Importantly, the same attorney increases the probability for a good client relationship and the necessary trust and confidence in the representation. "Counsel initially provided should continue to represent

[119] ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-3.1(a) Establishing and Maintaining An Effective Client Relationship states, **"**Immediately upon appointment or retention, defense counsel should work to establish a relationship of trust and confidence with each client. Defense counsel should explain, at an appropriate time, the necessity for frank and honest discussion of all facts known to the client in order to provide an effective defense. Defense counsel should explain that the attorney-client privilege protects the confidentiality of communications with counsel except in exceptional and well-defined circumstances, and explain what the client can do to help preserve confidentiality."
[120] ABA Criminal Justice *Standards for the Defense Function* (4th ed. 2017), Standard 4-3.7 Prompt and Thorough Actions to Protect the Client, "(a) Many important rights of a criminal client can be protected and preserved only by prompt legal action. Defense counsel should inform the client of his or her rights in the criminal process at the earliest opportunity, and timely plan and take necessary actions to vindicate such rights within the scope of the representation. (b) Defense counsel should promptly seek to obtain and review all information relevant to the criminal matter, including but not limited to requesting materials from the prosecution. Defense counsel should, when relevant, take prompt steps to ensure that the government's physical evidence is preserved at least until the defense can examine or evaluate it…."
[121] Commentary to ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992), Standard 5-1.3. Professional independence "Another situation which may compromise the integrity of a relationship between attorney and client is the use of so-called 'horizontal' or 'stage' representation. In that scheme, different attorneys from the public defender office or contracting agency represent the defendant at each stage of the proceeding. The practice of 'horizontal' representation is explicitly rejected in standard 5-6.2, and is implicitly rejected here as well."

the defendant throughout the trial court proceedings." ABA Criminal Justice Standards, *Providing Defense Services* Standard 5-6.2: Duration of representation.

The Commentary to this Standard explains that the "attorney initially appointed to provide representation continue to do so throughout the trial proceedings," and explains why the disadvantages of horizontal "representation, particularly in human terms, are substantial. [122]

Recommendation 3A: To achieve timely access to counsel, the appointment of counsel for persons unable to afford counsel should be delegated to magistrates who have affidavits of indigency in front of them at magistration.

Recommendation 3B: An Indigent Defense Coordinator should be created, employed by the county court judges or the Justice Administration Department and delegated authority to appoint counsel expeditiously at the time of release from jail according to a General Order that sets out criteria for appointment.

Judges can delegate their appointment authority. The Code of Criminal Procedure Art. 26.04(b)(1) states:

> (b) Procedures adopted under Subsection (a) [the indigent defense plan] shall:
> (1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

There are other provisions of CCP 26.04 that also refer to a court's designee, *e.g.,* 26.04(c). All persons that we talked with, including judges, appointed counsel, JAD, expressed support for this position and approach. This would reduce administrative matters for judges and speed the appointment of counsel for persons unable to afford counsel which would result in the MAC appointing particular attorneys sooner and clients being represented sooner. Appointed attorneys would appear in court having begun the representation. If the Indigent Defense Coordinator did not decide to appoint counsel for a particular client, the issue of appointment should be subject to review and reconsideration by the County Court at Law judge.

Other Texas counties are successfully using Indigent Defense Coordinators, including Bell, Ft. Bend, Tarrant, and Williamson counties.

[122] The Commentary further explains the reasons for this value, "This affords the best opportunity for the development of a close and confidential attorney-client relationship. The standard thus rejects the practice in some public defender programs in which 'stage' or 'horizontal' representation is used, that is, different public defenders represent the accused at different stages of the proceedings, such as preliminary hearings, pretrial motion hearings, trials, and sentencing. The utilization of stage representation in defender offices has developed due to the belief that it is cost-efficient and because it enables defenders to specialize and often reduces travel time and scheduling conflicts. The disadvantages of such representation, particularly in human terms, are substantial. Defendants are forced to rely on a series of lawyers and, instead of believing they have received fair treatment, may simply feel that they have been 'processed by the system.' This form of representation may be inefficient as well, because each new attorney must begin by familiarizing himself or herself with the case and the client must be reinterviewed. Moreover, when a single attorney is not responsible for the case, the risk of substandard representation is probably increased."

TIDC's *FY2021 Indigent Defense Improvement Grant Request for Applications* (RFA)[123] lists the required program elements for an indigent defense coordinator grant. They include:

> "Indigent Defense Coordinators (IDC)—These are multi-year grant programs. IDCs have been funded to institutionalize indigent defense processes into the courts of a county or region. They are dedicated to improving the appointment process and providing documentation that a county is in compliance with the Fair Defense Act. IDCs have reduced administrative time that judges must devote to indigent defense activities. They can also enhance processes for fair, neutral and non-discriminatory appointment practices. A clear and objective standard of indigence with a timely appeal process to the courts in case of denial by the IDC ensures success of these programs. IDCs are not to be confused with court administrators, secretaries, or court docket managers.
> Required Program Elements:
> a) Must perform all appointments (in and out of court) as the designee of the judge or judges;
> b) Must maintain the rotation default system on assigned counsel systems and monitor the frequency and reasons of exception for off list appointments;
> c) Must report summary of appointment data to judges at least monthly;
> d) Must manage the graduated list of court appointed attorneys for judges and receive applications for advancements or adjustments as higher qualifications are met by attorneys;
> e) Must monitor appointment list and attorneys' completion of continuing legal education (CLE) to meet minimum requirements of local plan and Commission rules;
> f) Must review invoices submitted by attorneys and compare to appointment schedule prior to judicial approval;
> g) Perform training for law enforcement, magistrates, local bar, and other stakeholders on indigent defense plan(s) adopted by courts;
> h) Report directly to the judges (rural) or board of judges (mid-size or urban);
> i) Develop procedures to track attorney contact with client, which includes tracking, investigating and reporting allegations of attorneys not meeting their clients within statutory or plan requirements; and
> j) Must involve all courts in the jurisdiction (rural and mid-sized) or all of the judges of a type of court (larger jurisdiction)."

Recommendation 3C: The MAC should expeditiously appoint a particular attorney to represent the client once the decision is made that the client will be provided counsel.[124]

Recommendation 3D: Persons who are arrested and who have counsel appointed for them should have a MAC attorney make every reasonable effort to speak to the client and begin

[123] Attachment C, page 13; found at: Task Force on Indigent Defense (texas.gov)
[124] Art. 26.04. PROCEDURES FOR APPOINTING COUNSEL. "(f-1) In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program."

the representation timely[125] within one business day after appointment by the MAC upon completion of magistration or release on a General Order Bond.[126] The MAC Director should make this an enforceable condition of taking an appointment.

Recommendation 3E: If a client charged with a misdemeanor is subsequently charged with an additional misdemeanor, the attorney appointed to represent the client on the first case should be promptly appointed to represent the client on the second case.

Recommendation 3F: The MAC should establish a compensation structure that incentivizes client-centered holistic representation according to national and state standards, including diligent client contact and communication, investigation, motion practice,[127] development of mitigation and alternative sentencing plans, and encourages trials.[128]

Recommendation 3G: Appointed counsel should be compensated by the hour, requiring appointed counsel to invoice the amount of time and the nature of the work.

Recommendation 3H: The MAC should provide a compensation system that encourages interim billing.

Recommendation 3I: The MAC should provide a payment system that compensates holistic representation and services, including representation for driver's license suspension.

Defense counsel uniformly reported the importance of representing clients who face the loss of a driver's license at the administrative hearing. A client able to maintain a license is more able to succeed while on pretrial release. The administrative hearing also provides valuable information for the client's case in the County Court of Law.

[125] The initial interview is key to development of the proper clint relationship. ABA Criminal Justice Standards for the Defense Function (4th ed. 2017), Standard 4-3.3 Interviewing the Client, states: "(a) In the initial meeting with a client, defense counsel should begin the process of establishing an effective attorney-client relationship. This includes assuring the client of confidentiality, establishing trust, explaining the posture of the matter, discussing fees if applicable, and inquiring about the client's objectives for the representation. Counsel may also discuss available evidentiary materials with the client, seek information from the client as to the facts and other potential sources of information, and ask what the client's immediate objectives and needs are and how to fulfill them."

[126] Art. 26.04. PROCEDURES FOR APPOINTING COUNSEL. (j) An attorney appointed under this article shall: (1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed."

[127] See State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011), Guideline 5.2 "The Decision to File Pretrial Motions A. Counsel should consider filing an appropriate pretrial motion whenever a good-faith reason exists to believe that the client is entitled to relief that the court has discretion to grant." This Guideline lists 15 areas of motions.

[128] See State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011), Guideline 8.1 Obligations of Counsel in Sentencing ("Among counsel's obligations in the sentencing process are: … F. To consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted;…."); Guideline 8.2 Sentencing Options, Consequences and Procedures; Guideline 8.3 Preparation for Sentencing; Guideline 8.4 The Official Presentence Report; Guideline 8.5 The Prosecution's Sentencing Position; Guideline 8.6 The Defense Sentencing Memorandum; Guideline 8.7 The Sentencing Process.

Recommendation 3J: Appointed counsel should not recommend to a client to plead guilty without doing investigation[129] and obtaining and reviewing all, not just open file, discovery.[130]

Recommendation 3K: When a misdemeanor is part of an incident involving a felony, there should be a consolidation of the cases with the appointment of one attorney and the case handled in the District Court.

There are clients who have cases that involve both a felony and a misdemeanor arising from the same incident. Texas law should provide that these cases can be adjudicated in the District Court.[131]

County Court at Law judges, appointed counsel, full-time public defenders all observed that a client's cases being adjudicated in two courts with two appointed counsel, two different prosecutors and judges does not advance the administration of justice or the interests of the client.

Other jurisdictions require the felony court to adjudicate the misdemeanor[132] case with the felony case. This allows consideration of a client's case in one proceeding with one defense lawyer, one prosecutor, one set of discovery.

Recommendation 3L: Discovery should be requested immediately and should be provided timely. Police videos and lab reports should be simultaneously available to defense counsel and prosecutors

Appointed counsel, full-time public defenders, judges, and others report defense counsel waits up to six months for discovery in cases with web, dash, and/or station cam video evidence. Cases that have lab reports typically take 3 to 5 months for reports to be provided through

[129] See State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011), Guideline 4.1A Investigation "Counsel has a duty to conduct, or secure the resources to conduct, an independent case review and investigation as promptly as possible. Counsel should, regardless of the client's wish to admit guilt, determine whether the charges and disposition are factually and legally correct and inform the client of potential defenses to the charges. Counsel should explore all avenues leading to facts relevant both to the merits and to the penalty in the event of conviction. In no case should counsel delay a punishment phase investigation based on the belief that the client will be found not guilty or that the charges against the client will otherwise be dismissed."

[130] See State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 28, 2011), Guideline 4.2 Formal and Informal Discovery "A. Counsel has a duty to pursue discovery procedures provided by the rules of the jurisdiction and such informal discovery methods as may be available. Counsel should pursue formal and informal discovery as soon as practicable and to the extent reasonably necessary to zealously and effectively represent the client.

[131] Texas Code of Criminal Procedure Art. 4.17. TRANSFER OF CERTAIN MISDEMEANORS. On a plea of not guilty to a misdemeanor offense punishable by confinement in jail, entered in a county court of a judge who is not a licensed attorney, on the motion of the state or the defendant, the judge may transfer the case to a district court having jurisdiction in the county or to a county court at law in the county presided over by a judge who is a licensed attorney. The judge may make the transfer on his own motion. The attorney representing the state in the case in county court shall continue the prosecution in the court to which the case is transferred. Provided, in no case may any such case be transferred to a district court except with the written consent of the judge of the district court to which the transfer is sought."

[132] In Kentucky, district courts have jurisdiction for misdemeanors and circuit courts have jurisdiction for felonies expect when the misdemeanor and the felony are part of the same incident. See*, e.g.*, Kentucky Revised Statutes, 24A.110(2) Criminal jurisdiction. "The District Court has exclusive jurisdiction to make a final disposition of any charge or a public offense denominated as a misdemeanor or violation, except where the charge is joined with an indictment for a felony…." In Los Angeles California and in Miami-Dade County Florida a case involving a felony and a misdemeanor arising out of the same incident are generally consolidated and handled by the felony court.

discovery; however, sometimes lab reports take 10 months to be provided. This is an inordinately long wait that prevents efficient case resolution.

The Houston Police Department reports that they are now uploading web, dash, and station cam videos through an automated system within 8 hours of the officer docking his body cam at the end of his shift. This is followed by the police "building" or "associating" an electronic location for all videos related to a case within 1-2 days of being told by prosecutors that the case will be prosecuted. For some cases, some of the work must be done manually for a variety of reasons. Currently, there is a 21-day waiting period before the police are told by the prosecution to "build" their case. This means that most Houston Police Department videos are available to the parties within 30 days. The Houston Police Department reports this process can occur faster, that the Department is working towards associating all videos to a case once charges are filed rather than waiting to be told to "build" a case., and that in the future there can be a defense portal for access to their videos.

A six-month delay in providing access to the defense of these important videos exceeds what we know to be the practice in comparable jurisdictions, is unreasonable, and creates unacceptable delay.

There is not timely provision of videos and lab reports to defense counsel but process wise defense counsel could have timely access to this discovery. Lab reports and videos should be provided simultaneously to defense counsel and prosecutors.

We encourage the Harris County criminal legal system leaders, JAD, prosecutors, police, public defenders, to convene and resolve this issue for the sake of the fair administration of justice.

The objective of discovery is (a) to promote a fair, accurate, and expeditious disposition of the charges…."[133] A prosecutor has the duty to provide the discovery "as soon as practical."[134] The national best practice is within 14 days of "the filing of the formal charging document."[135] When a lab test is complete, it should be promptly provided to defense counsel by the lab.

[133] ABA *Standards for Criminal Justice: Discovery* (Fourth Edition 2020), Standard 11-1.2 Objectives of these Standards.

[134] ABA *Standards for Criminal Justice: Discovery* (Fourth Edition 2020), Standard 11-2.1 Prosecutorial disclosure "(a) Obligation of the prosecutor to identify and gather information and material. As soon as practicable, the prosecutor should with reasonable diligence seek to identify and gather all information and material relevant to the case…."

[135] ABA *Standards for Criminal Justice: Discovery* (Fourth Edition 2020), Standard 11-2.3 Timing of discovery "(c)… (iii) Prosecution general disclosure. Within [14 days] of the filing of the formal charging document, the prosecutor should disclose to the defense all items listed in Standard 11-2.1(c)."

Recommendation 3M: The County Court at Law judges should ensure timely provision of discovery and should "adopt time limits within which discovery should be performed at each stage of a criminal case"[136] with enforceable remedies.[137]

The national best practice is clear that it is the duty of the prosecutor to provide discovery and that disclosure should be as soon as practical so disposition of the case can be accomplished expeditiously.

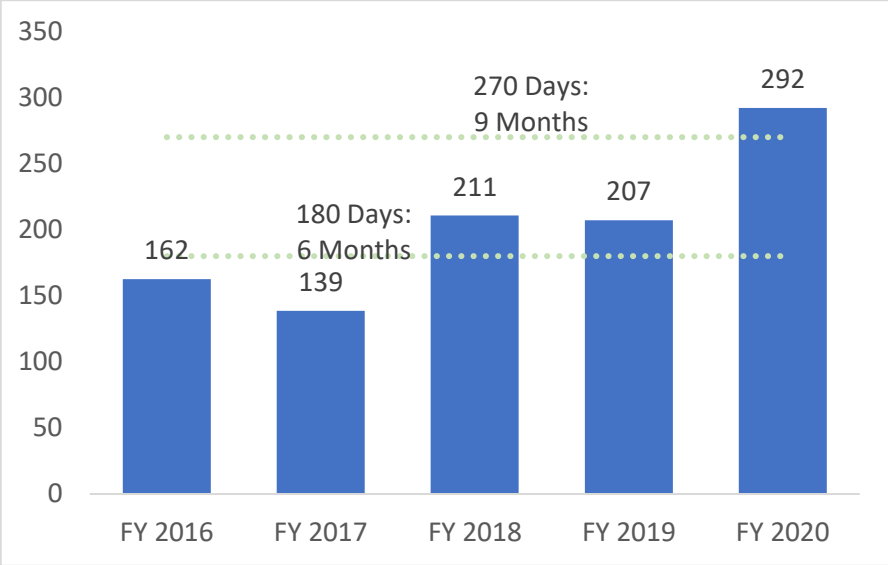
A delay of six months or more to provide video discovery is not acceptable. Assessment team members have information from public defense leaders that indicates discovery is being provided in substantially less time than six months. For instance, the time is less in Aurora, Colorado (2 to 3 weeks) and in in jurisdictions comparable to Harris County, Miami-Dade County, Florida (15 days to three months); Louisville, Kentucky (couple of weeks to a month); Knoxville, Tennessee (3 to 4 weeks). In Los Angeles, many law enforcement body cam videos are provided in discovery between 24 hours to a week within receipt of initial discovery at arraignment. Most are provided within 30-60 days. The office's lawyers prefer to be able to review the videos before preliminary hearings which often occur within 30 days after arrest.

One example of the statutory requirements in other states is New York's discovery law which requires the prosecution to turn over all "discoverable" materials as soon as practicable, but no later than 20 days after arraignment if the defendant is held in pretrial detention or 35 days after arraignment if the defendant is out of custody. An additional 30 days is permitted if the materials are "voluminous", or the prosecutor is not reasonably able to obtain them. The maximum timeframe is generally 50 to 65 days after the initial arraignment.[138]

This delay in Harris County of six months or more in providing discovery is not a small matter as the *average* in misdemeanor cases from filing to disposition is now 292 days.

[136] ABA *Standards for Criminal Justice: Discovery* (Fourth Edition 2020), Standard 11-2.3 Timing of discovery "(a) Discovery initiation and time limits. Discovery should be initiated as early as practicable. Each jurisdiction should adopt time limits within which discovery should be performed at each stage of a criminal case."
[137] ABA *Standards for Criminal Justice: Discovery* (Fourth Edition 2020), Standard 11-7.3 Available remedies.
[138] N.Y. Crim. Proc. Law § 245.20 - Automatic discovery (eff. 1/1/2020); found at: Section 245.20 - Automatic discovery, N.Y. Crim. Proc. Law § 245.20 | Casetext Search + Citator; Section 245.10 - Timing of discovery found at: Section 245.10 - Timing of discovery, N.Y. Crim. Proc. Law § 245.10 | Casetext Search + Citator

Figure 28: Length of Time from Filing to Disposition, TIDC Fiscal Year 2016 through TIDC FY 2020[139]



Recommendation 3N: Continuity of counsel, vertical representation, should be the practice in all cases where logistics reasonably allow, and all clients who go through magistration and are appointed counsel should become clients of the Harris County Public Defender Office on the charged offense and not become clients of the MAC.

Vertical representation in 100% of all cases is often challenging for public defense programs in rural and metropolitan areas. In Cook County, Illinois, clients appear in court and are represented 7 days per week. Attorneys appear before over 200 judges located in 11 courthouses. The office is budgeted for 704 staff of which about 500 are attorneys and attorney management. Representation provided in the suburban courts is vertical from bond court on first appear of the client. In the city cases representation is vertical from arraignment on.

The Los Angeles County Public Defender has 1,100 staff representing 120,000 clients. Some of the office's representation is vertical from arraignment but in many locations throughout the County representation is vertical after arraignment.

Despite the logistical challenges, the Legal Aid Society's Criminal Division in New York City provides representation 7 days per week and appears before approximately 600 judges located in 19 courts and 10 courthouses provides vertical representation in all cases. They are the

[139] This data reflects people, not cases, and are for people with original cases only not revocations due to data's structure. Data reflecting people means that a person with multiple cases disposed on the same date will be counted once so the length to disposition is not weighted by persons with multiple cases.

primary public defender providing representation in 5 boroughs (counties) and have 1,174 staff representing 125,000 - 155,000 defendants annually.

Amongst a number of ways to mitigate the current lack of continuity of counsel from magistration is to have all clients who go through magistration and are appointed counsel to become clients of the Harris County Public Defender Office and not clients of the MAC. This is possible going forward as the Harris County Public Defender Office increases its misdemeanor cases to 50 percent in the county. That would keep the clients within the same public defender organization. A longer-range approach is to imagine a way that the logistical challenges can be accommodated as the blueprint for the county is created as proposed in Recommendation No. 8.

4. Ensure Reasonable Workloads

A defender's workload cannot be excessive.
Excessive workloads of appointed counsel are an unmanaged problem in Harris County.
The national standards require funders and public defense leaders to make sure workloads are not excessive. "Defense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client's interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations. A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in counsel's existing matters." *ABA Standards for Criminal Justice: For the Defense Function*, Standard 4-1.8.

There are clear *maximum* workload limits but the amount of work an attorney representing indigents can competently provide is best determined by jurisdiction specific factors. All public defense providers should have workload limits that are based on an empirical study conducted according to the best methodology to properly determine how much work can be reasonably done by each attorney and the office as a whole. Short of that, there are longstanding national standards that provide maximum numbers of cases a defender can handle. The National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States (1976) require defender programs to set maximum caseloads based on the relevant factors:[140]

> In order to achieve the prime objective of effective assistance of counsel to all defender clients, which cannot be accomplished by even the ablest, most industrious attorneys in the face of excessive workloads, every defender system should establish maximum caseloads for individual attorneys in the system. Caseloads should reflect national standards and guidelines. The determination by the defender office as to whether or not

[140] "The Commission's charter was to utilize the standards developed by the National Advisory Commission on Criminal Justice Standards and goals in 1973 as a basic underpinning for an extensive study of defense services aimed at preparing a blueprint of guidelines and procedures which would meet the nation's indigent defense needs." *Guidelines for Legal Defense Systems in the United States*, Nat'l Legal Aid & Defender Assoc. (1976), http://www.nlada.net/sites/default/files/nsc_guidelinesforlegaldefensesystems_1976.pdf (internal citation omitted). 44 Ten Principles of a Public Defense Delivery System, American Bar Association (2002).

the workloads of the defenders in the office are excessive should take into consideration the following factors:
(a) objective statistical data;
(b) factors related to local practice; and
(c) an evaluation.

Principle 5 of the *ABA Ten Principles of a Public Defense System*[141] states: "Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (*i.e.,* caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement."

The American Bar Association *Model Rules of Professional Conduct*[142] describe mandatory ethical responsibilities of a lawyer, including Rule 1.1: Competence; Rule 1.2: Scope of Representation and Allocation of Authority Between Client and Lawyer; Rule 1.3, Diligence; Rule 1.4: Communication; Rule 1.7: Conflict of Interest: Current Clients; and Rule 1.16: Declining or Terminating Representation. Texas has similar ethical responsibilities in its Texas Disciplinary Rules of Professional Conduct.[143]

The ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation* (2006) reviewed these ethical responsibilities[144] and determined that public defenders had a responsibility not to take on excessive workloads, stating: "The Rules provide no exception for lawyers who represent indigent persons charged with crimes."

If a public defender office has proper staffing, including attorneys, investigators, and social workers, and they are all well-trained and actively supervised, then as reaffirmed by the American Bar Association's Principle 5 of the *ABA Ten Principles of a Public Defense System* (2002) the 1973 NAC Caseload Standard is a starting place to determine maximum workloads,

---

[141] *Ten Principles of a Public Defense Delivery System*, American Bar Association (2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf (internal citations omitted) ("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.").

[142] Found at: Model Rules of Professional Conduct (americanbar.org)

[143] Found at: TEXAS DISCIPLINARY RULES OF (texasbar.com)

[144] "Model Rules of Professional Conduct 1.1, 1.2(a), 1.3, and 1.4 require lawyers to provide competent representation, abide by certain client decisions, exercise diligence, and communicate with the client concerning the subject of representation. These obligations include, but are not limited to, the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area." ABA Standing Committee on Ethics and Professional Responsibility Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation* (2006).

"Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: …400 misdemeanors…."). It is helpful to convert the NAC caseload maximums into hours needed per case by type. The absolute maximum number of regular hours available to an attorney per year is 2,080.[145] However, that number of available hours is high because it does not account for holidays, vacation leave, sick leave, and time to be trained. If a government employee is provided 11 holidays plus 20 vacation days or more plus sick leave, that means at most 1,832 regular hours[146] of work are available each year for public defender attorneys. The *ABA 10 Principles* standard case maximums translate into hours as follows:

	2,080 hours year	1,832 hours year
Misdemeanors: 400 cases	5.2 hours/case	4.6 hours/case

The American Council of Chief Defenders issued a statement in 2007 calling for "each jurisdiction [to] develop caseload standards for practice areas that have expanded or emerged since 1973 and for ones that develop because of new legislation. Case weighting studies must be implemented in a manner which is consistent with accepted performance standards and not simply institutionalize existing substandard practices."[147] Workload methodology continues to evolve and increase in accuracy.[148] New workload studies indicate these case maximums are still too high to ensure meaningful representation. Merely counting cases does not adequately account for the work necessary, as it does not account for such things as the level and complexity of the case, the experience and skills of the attorney, and the sufficiency of staffing.

The current "breed of workload studies is more rigorous than its predecessors."[149]
In its 2015 *NAPD Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems* (2015),[150] The National Association for Public Defense stated: "the time has come for every public defense provider to develop, adopt, and institutionalize meaningful workload standards in its jurisdiction." Workload standards should be "derived and institutionalized through ongoing, contemporaneous timekeeping by public defense providers."[151]

To the benefit of Harris County, TIDC has conducted a workload study, *TIDC Guidelines for Indigent Defense Caseloads* (2015), specific to representation in Texas. The results of that workload study "indicate for the delivery of reasonably competent and effective representation attorneys should carry an annual full-time equivalent caseload of no more than the following:

---

[145] 40 hours per week x 52 weeks = 2,080 working hours per year.
[146] 5 x 52 = 260 – 31 vacation and holidays = 229 work days x 8 hours per day = 1,832 working hours per year.
[147] American Council of Chief Defenders, Statement on Caseloads and Workloads 1 (2007), https://jjie.org/wpcontent/uploads/2018/08/ls_sclaid_def_train_caseloads_standards_ethics_opinions_combined.authcheckdam.pdf.
[148] See Norman Lefstein, ABA Securing Reasonable Caseloads: Ethics and Law in Public Defense 140-60 (2011), https://www.ils.ny.gov/files/Securing%20Reasonable%20Caseloads.pdf.
[149] Geoffrey T. Burkhart, *How to Leverage Public Defense Workload Studies*, 4 Ohio St. J. Crim. L. 403, 429 (2017).
[150] NAPD Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems, Nat'l Assoc. for Public Defense (Mar. 19, 2015), http://www.publicdefenders.us/files/NAPD_workload_statement.pdf.
[151] *Id.* at 1-2.

- 236 Class B Misdemeanors
- 216 Class A Misdemeanors
- 174 State Jail Felonies
- 144 Third Degree Felonies
- 105 Second Degree Felonies
- 77 First Degree Felonies."[152]

The TIDC study further concludes that the aggregate number of Class A and B misdemeanors should be no more than 226.[153] This maximum workload limit of 226 is being exceeded in Harris County. Excessive workloads of appointed counsel are an unmanaged problem in Harris County that the MAC must address.

In TIDC Fiscal Year 2016, there were 130 lawyers paid for misdemeanor cases in Harris County of which 109 (84%) received enough appointments across case type they were over the 226 misdemeanor caseload. In TIDC fiscal year 2020, there were 150 lawyers taking misdemeanor appointments and 106 (71%) received more than 226 misdemeanor equivalent appointments.

Table 66: Number of Misdemeanor Equivalent Appointments Attorneys Taking Misdemeanors in Harris County Received Payment on and the Proportion Over 226 Misdemeanors, TIDC Fiscal Year 2016 through Fiscal Year 2020

All Counties All Appointments	**FY 2016**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**
Appointed to 226 Equivalent or Less	21	34	35	45	44
	16%	23%	24%	28%	29%
Appointed to More than 226 Equivalent	109	116	110	113	106
	84%	77%	76%	72%	71%
Total	**130**	**150**	**145**	**158**	**150**

Excessive workloads are even more than reflected in Table 66 because that information does not take into account appointments in other counties and does not account for private work.

Recommendation 4A: The MAC Director should require as a condition of appointment an annual declaration from those receiving appointments including the proportion of time the attorney spends on the representation of private clients, the representation of appointed cases in Harris and other counties, including ad litem appointments.

Texas Code of Criminal Procedure 26.04(j) (4) states, "not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code."

[152] TIDC Guidelines for Indigent Defense Caseloads (2015) pp. xvii, 30, 34. Found at: http://www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf
[153] *Id*. at 30-31.

Recommendation 4B: Before the MAC appoints an attorney to a case, it should determine if the attorney's workload is under the guideline of 226 closed misdemeanor equivalent cases. The MAC should complete a workload analysis on its data to determine if the 226 closed case guideline is sufficient.

Recommendation 4C: The MAC Director should establish the maximum number of appointments an attorney can receive per year and have open at one time. The number of misdemeanor equivalent caseloads of appointed counsel should not exceed the maximums identified in the *TIDC Guidelines for Indigent Defense Caseloads* (2015) which state "The results indicate for the delivery of reasonably competent and effective representation attorneys should carry an annual full-time equivalent caseload of no more than the following: 236 Class B Misdemeanors; 216 Class A Misdemeanors; 174 State Jail Felonies; 144 Third Degree Felonies; 105 Second Degree Felonies; 77 First Degree Felonies." The aggregate for Class A and B is 226 misdemeanors.[154]

Recommendation 4D: The MAC should monitor the workloads of appointed counsel including their private criminal and civil work, their appointed work in both felony and misdemeanors in Harris County and other counties and their ad litem work in determining how many Harris County misdemeanor appointments to make to an attorney.

As the MAC leadership implements the caseload standards that do not exceed PPRI's *Weighted Caseload Study*, then the MAC should track assigned cases across all court levels and in every county in which the assigned lawyer receives cases. This is needed to calculate the overall caseload for that lawyer. The leadership should track how caseloads are managed and re-allocated so this can be used later for evaluation purposes. An analysis of misdemeanor equivalent appointments across court levels in Harris County and all counties counsel takes appointments showed 71 percent of lawyers taking appointed cases in Harris County had more than 226 misdemeanors equivalent cases. This is the average caseload recommended for assigned counsel in misdemeanor cases and a higher caseload will exceed the standards. This area clearly requires data-driven management by MAC leadership. If the team institutes a caseload limit, the proportion of lawyers above that limit should decrease. If the team wants a limit different than the weighted caseload suggested level or tied to the number of open cases, they should draw a baseline and track against that.

5. Promote and Encourage an Interdisciplinary Representation Model that Includes Social Workers, Investigators and Adequate Support Staff

A stated goal of the MAC is to "establish a fair, impartial appointment system that ensures attorneys representing the accused will have access to the resources and support needed to

[154] Public Policy Research Institute Texas A&M University, *Guidelines for Indigent Defense Caseloads A Report to the Texas Indigent Defense Commission* (January 2015), found at: guidelines-for-indigent-defense-caseloads-01222015.pdf (texas.gov)

ensure holistic, client-centered defense." This is an appropriate goal. Client-centered, holistic representation represents the emerging national best practice.

Implementing a client-centered, holistic representation model will allow the MAC to achieve significant primary goals:

- Preventing crime;
- Reducing recidivism;
- Providing solutions to debilitating problems facing clients;
- Empowering clients to live positive, productive and meaningful lives;
- Increasing community involvement in the criminal justice system;
- Demonstrating an effective, and cost-efficient service model.

Recommendation 5A: The MAC should adopt a client-centered, holistic representation model and require all attorneys participating in the MAC to adopt and utilize this model.

Recommendation 5B: Management should undergo training from national experts on client-centered, holistic representation.

Recommendation 5C: The management team should develop an office mentor/mentee relationship with national experts in client-centered and holistic representation and maintain regular periodic contact with those mentors for the first three years of implementation of this model.

Recommendation 5D: The Director should embark on a Campaign of Conversations with the judiciary, community social service agencies, the District Attorney's Office, County Probation, Mayor/politicians, and funders explaining the model to these criminal justice stakeholders.

Recommendation 5E: The Director of the MAC should serve as host for a series of retreats: (1) management and staff retreat where the MAC's current mission statement, vision statement and organizational core values will be reconstituted; (2) retreats involving wheel attorneys where the attorneys will be introduced to the new mission and vision statement and the organization's core values of the MAC. (See Section VI Recommendation 10C and 10D).

The proposed Plan of Operation (hereinafter 'Plan') identifies a goal of the MAC as "establish[ing] a fair, impartial appointment system that ensures attorneys representing the accused will have access to the resources and support needed to ensure holistic, client-centered defense." MAC management should consider a more detailed and strategic demonstration and commitment to the model in the language of the Plan. The Plan is an opportunity for the MAC management to clarify that the MAC is fully embracing a new client-centered holistic representation model in its fullest sense.

The MAC should embrace a client-centered holistic representation model. But in doing so, they should be aware of the significant challenges that lie ahead. Anticipating lawyer resistance, the

Plan should include a fuller explanation of the model, the foundational underpinnings for moving to the model, and the benefits to the client and the Harris County community. Further, the Plan should attempt to lower anxiety by briefly addressing issues involving training, resource allocation, the referral process, data collection, as well as the interplay between social workers, clients, and wheel attorneys in this new representation model.

A shift to a client-centered holistic representation model will require significantly more than the six social workers the original staffing formula provided (currently reduced to 4). Considerable social work staffing improvements will need to occur in order to transition to this model. It is strongly believed that the costs savings to Harris County through the implementation of this model will more than offset the costs for the additional social workers

Management's decision to convert a social worker position to a Community Engagement and Recruiting Coordinator position should be reconsidered. Social workers are trained in community engagement. They have expertise in community resource mapping. Their community skill set is how they make the most of the limited community resources and meet the needs of the greater community. It is feared that a negative message might have been sent to wheel attorneys, and staff at the MAC, regarding the priority and role social workers will play in the representation of clients.

Recommendation 5F: The Executive Director should take proactive steps to recover the two (2) social work positions relinquished in early 2021. The Community Outreach position should be reconstituted and that responsibility should be assumed by the social worker supervisors.

The Plan sets out the duties of the Executive Director which includes, "developing and maintaining resources to better serve the program and facilitating the development, training, and education of assigned counsel by providing continuing legal education ("CLE") program[ing], implementing a training curriculum consistent with current trial and investigative techniques including ethics related to criminal law, and establishing a mentoring program." This job description should be supplemented to include the Director's obligation to endorse, adopt, promote, and appropriately respond to the significant challenge of rolling out this new representation model.

Recommendation 5G: Modify the job description and duties of the Executive Director to include the vigorous promotion and encouragement of a client-centered holistic representation model.

The work of psychologists James Prochaska and Carlo DiClemente suggests that behavior change does not occur over night, but rather in stages and cycles. At the same time, research exists suggesting that social worker involvement in the lives and cases of clients is 'more effective' with certain types of defendants and certain case types. While social workers should actively engage with all clients and all case types, thereby planting the seeds of change even with those "unsuccessful" cases, social work intervention with certain clients and case types yields a higher incident of behavior modification.

Dr. Sarah Buchanan studied the efficacy of social work intervention in a thousand indigent cases over a three-year period in a Tennessee public defender office. Her research showed that the intervention in higher level misdemeanors and lower-level felonies yielded the greatest impact on behavior modification and, consequently, the most significant reduction in recidivism rates.[155]

Dr. Buchanan's research suggests that limiting clinical social work resources to those targeted clients and cases yields a better return on investment than utilizing clinical social work skills in lower-level misdemeanants and higher-level felonies. At the same time, offering BSW level case management intervention, facilitating community resource linkages in low level misdemeanor cases, can begin the process of moving a client from the Precontemplative/Contemplative stage to the Preparation/Action stages at their next involvement with the criminal justice system.

Dr. Buchanan's research – along with interviews recently conducted – suggest that there are generally two types of needs in public defense settings:

1) Assessment needs: clients are facing lengthier incarcerations and are likely incarcerated when a social worker intervenes. More time is spent engaging, conducting biopsychosocial assessments, writing social histories, creating treatment plans and/or alternative sentence plans and assisting clients to obtain halfway house beds, treatment beds or intake appointments with substance abuse and mental health providers. Legal needs often demand this, but client life circumstances are often a motivator. Mitigation, supportive counseling, and community advocacy are likely to occur on behalf of this group and longer-term relationships are more common.

2) Resource needs: clients who cycle in and out of incarceration for offenses such as misdemeanor B theft or criminal trespass and often present with long-term untreated mental health and/or substance abuse concerns, but are unlikely to commit crimes of a serious nature. They are generally referred to social workers for services such as housing assistance, assistance obtaining identification, and release planning (from local incarceration). These clients are generally connected to community resources and are typically aware of agencies that provide assistance. The criminal justice system often looks to the social worker to get and keep the client out of the system. Client needs often do not align with what the criminal justice system demands, though (*i.e.*, the client wants to continue living outdoors or in a shelter but is required to have a more comprehensive housing plan for release from incarceration). Outside of attempting to reconnect to resources and develop release plans, social workers spend less time with these clients because they are often difficult to engage, resistant to treatment suggestions, and are difficult to locate once they are released from incarceration.

[155] Buchanan, Sarah Beck, "Social Work Practice in Public Defense. " PhD diss., University of Tennessee, 2017.ed.

Her research suggests that limiting clinical social work resources to those targeted assessment clients and cases yields a better return on investment than utilizing clinical social work skills for clients solely in need of resource assistance. However, there should be flexibility to use professional discretion in assignment of cases to social workers. A motivational approach can be used regardless of need.

The proposed Plan requires the social worker supervisor to, "Ensure the development of plans for linking clients to services throughout Harris County in support of the criminal defense team. The plans and services will attempt to address life situations that, if mitigated, may improve a client's opportunity for improving their lives and providing alternatives to incarceration and sentencing." "Linking clients to services" is case management. Holistic representation envisions a far more extensive clinical role by the social worker than resource linkage. The commitment to a client centered holistic model requires the Plan to demonstrate a far greater level of involvement between the social worker, client, and the lawyer than sentencing advocacy and linkage to community resources.

Recommendation 5H: The MAC should create an LCSW social worker supervisory position who supervises both the social workers engaged in clinical supervision (*i.e.,* MSW's); as well as the client advocates (BSW's) providing case management in lower-level misdemeanor cases.

Recommendation 5I: The management team of the MAC should develop a system that directs social work referrals from wheel attorneys to either Group A social workers (*i.e.*, MSW's and LCSW's) or Group B client advocates (BSW social workers) based on client need and case types.

Recommendation 5J: The social work supervisor for the client advocates should be responsible for recruiting, training and supervising these staff employees. In addition, this supervisor would be responsible for conducting community resource mapping. The MAC should publish annually a book on available community resources (see: "Take This Book" published by Metro Nashville Public Defender Office). Client Advocates should report quarterly the referral numbers they receive from the wheel attorneys (by attorney name, defendant, and case types) to their supervisor, who publishes quarterly referral numbers to the Deputy to allow for effective attorney monitoring.

Recommendation 5K: A comprehensive plan should be developed determining the number of BSWs the MAC should employ, the degree of autonomy afforded these BSWs, the level of case documentation required, and access to case-management software to accomplish that case documentation.

Recommendation 5L: The Social Work Supervisor should develop an internship program with local colleges and universities to introduce and promote forensic social work and holistic representation to the profession.

Introducing the private practitioners to a holistic, client-centered representation model will amount to a significant change in the way these private attorneys practice law. It is more difficult to represent people in a holistic, client-centered way. The foundational underpinning of client-centered representation, motivational interviewing, takes time. Motivational interviewing is a key component to a successful holistic model and lawyers generally have no training in that skill set.

The Plan includes, "[t]he MAC Office will support attorneys through training, mentorship, litigation support resources including investigators and social workers, through access to immigration advice, and through other components the MAC office will develop as it grows. ... [c]urrently, the Office of Managed Assigned Counsel will offer several services to the clients of participating attorneys, including providing access to investigators, social workers, an immigration attorney, and other resources. The MAC Office strongly recommends that attorneys utilize these resources in any case where these resources are likely to benefit their clients. The MAC Office has the goal of fulfilling any reasonable request for litigation support resources to the ability it can fulfill that request." To be sure, this is a perplexing challenge when the MAC is severely under resourced with only four (4) social workers.

Recommendation 5M: The MAC should develop a training curriculum and sponsor training sessions on the model with experienced national trainers coming to Harris County three (3) times in year one, two (2) times in year 2, and once annually thereafter to conduct joint, social worker, investigator, and lawyer trainings on the client-centered holistic representation model. In addition to the training by national figures, the office should conduct mandatory quarterly training for social workers, investigators and wheel attorneys that includes an ethics component for the first three (3) years of operation.

The duties of the Deputy Director include "supervising holistic programs, support programs ... and any additional holistic or support components." Holistic representation is not a "program" or a "component." Holistic representation is a transformational representation model that enhances the quality of the lives of clients, reduces recidivism, improves public safety, increases the efficiency of the criminal justice system, and saves counties (and tax payers) money.

The ethical obligations of social workers differ from those of an attorney. Social workers may have different confidentiality requirements. Their duties regarding client confidentiality is different. Most importantly, there are reporting obligations imposed on non-lawyers, including social workers, that may not apply to lawyers.

Recommendation 5N: The language in the proposed Plan should be modified to reflect the scope and value of client-centered holistic representation.

Data for Harris County revealed that an average time to disposition for a misdemeanor case is approximately seven months. That time should be reduced. Three months from appointment to case disposition (not to be confused with cessation of involvement) is a more appropriate goal. If wheel attorneys can turn their caseloads four (4) times per year, and MAC social workers

carry an open active caseload of between thirty-five (35) and fifty (50) cases for the MSW's, and seventy-five (75) to one hundred (100) BSW's doing case management, turning caseloads four (4) times produces an annual caseload for MSW's performing clinical social work to 140 to 200 misdemeanor cases.

Recommendation 5O: If the time to disposition is reduced from 2020's seven months to a more reasonable rate of three (3) to four (4) months, MSW social workers could maintain an annual caseload of between 140 and 200 cases. BSW social workers could maintain an annual caseload of between 300 and 400 cases.

Recommendation 5P: The MAC should maintain social work staffing at a rate that allows the social workers and BSWs to maintain the recommended caseloads.

Recommendation 5Q: The Director of the MAC will report annually on the value of the client-centered holistic model to include the number of days in jail avoided and the savings to Texas taxpayers of the diversion from jail to work.

Recommendation 5R: The Director of the MAC will determine the appropriate data to collect in order to measure the efficacy of the client-centered holistic model. Systems already in place should be consulted to determine the appropriate data to collect and the most appropriate ways to utilize this data to bring about programmatic improvements.

Recommendation 5S: Harris County should not operate parallel holistic systems through law enforcement, probation, or the judiciary.

Successful holistic representation models depend on whether the relationship between the client and the attorney is client-centered. "Client-centered representation" recognizes that the client retains the power, ability and right to decide what direction s/he wants to take with their case (and life) once given the information s/he needs. It means that the attorney attempts to understand the situation from the client's point of view, respecting the client's right to choose the course to pursue. Social workers are an integral part of the holistic defense team. They develop relationships with clients and work on behalf of both client and attorney. They advocate and work on behalf of the client and the defense team in service of the best legal and psychosocial outcomes. They practice from a rehabilitative perspective.

Social workers stationed in jails, working for probation offices, law enforcement agencies, or answering to the court, on the other hand, serve the community. Their focus is largely geared toward monitoring and supervision on behalf of their agencies. Unfortunately, they are generally forced to take a more punitive stance as they are expected to adopt the values of the system in which they are employed. Their relationships with their clients are often authoritarian with the client's role passive.

The Harris County MAC (and the HCPD) should adopt a client-centered holistic model and should not be forced to share information or resources with parallel efforts by social workers

answering to any agency other that the MAC and/or the Harris County Public Defender. Social workers should not share privileged, confidential information with outside agencies unless it is in the best interest of the client and permission from client and attorney has been obtained.

6. Provide Effective Data-Driven Management and Accountability

Active supervision of staff providing representation is today's standard.
There are a variety of ways that representation of persons who cannot afford counsel are being provided in Texas, Harris County, and nationally. Over many years, the culture of indigent defense representation whether provided by private attorneys appointed by judges, private attorneys operating through an organized program or a full-time public defender office has been that once a case is assigned the responsibility of the person making the assignment ended as the attorney was licensed and capable of handling any type of case.

Times have changed. Workloads, the complexity of litigation, and the direct consequences beyond just the sentence have expanded. National standards of practice have evolved to require active supervision of representation of clients that are the responsibility of the public defense program. Unsupervised representation is no longer the best practice.

NAPD *Foundational Principle* 7 provides that "Appropriate Supervision of All Public Defense Lawyers and Other Public Defense Professionals Is Essential. Public defense providers must provide regular and timely supervision as needed of all lawyers and other professionals. The objective of supervision is to assure that all defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards. Accordingly, supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling of clients, securing pretrial release of incarcerated clients, completion of fact investigations prior to formulating recommendations about plea agreements, formal and informal discovery is conducted, and preparation for pretrial hearings, trials, and sentencing proceedings. Supervision should also include continuous monitoring of lawyer workloads to assure that all essential tasks of defense representation are being completed."[156]

The NAPD *Foundational Principle 7* was expanded into a policy statement that details the particulars necessary for supervision consistent with national ethical and practice norms. NAPD *Policy on Active Supervision of the Representation of Clients* (October 15, 2020) states:

> "Public defense providers must provide appropriate and consistent supervision of all lawyers, and other public defense staff to ensure competent representation of each client according to national performance standards and ethical rules.

[156] NAPD *Foundational Principles* (March 16, 2017). Found at: NAPD Foundational Principles_FINAL_March 16 2017 (publicdefenders.us)

The objective of supervision is to assure that all defense services provided by lawyers are 'competent' within the meaning of rules of professional conduct and 'effective' pursuant to prevailing professional standards.

Supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling clients; securing pretrial release of incarcerated clients; completion of fact investigations prior to formulating recommendations about plea agreements; formal and informal discovery, engaging in vigorous motion practice, strategic formulation of a defense theory; preparation for pretrial hearings, trials, and sentencing proceedings, responsibilities for direct appeals and collateral attacks consistent with the theory of defense.

Supervisors should consider whether there are technological advances available to assist with these tasks and obligations, and if so, how they should be incorporated.

Supervision should include appropriate training and mentoring, in and out of court, along with ongoing training and education of all staff.

Supervision includes ensuring awareness of the obligations of staff at all levels including the supervisor him/herself.

Supervision should also include continuous monitoring of lawyer workloads to assure that that there is adequate time for counsel to perform all essential tasks of defense representation, and that those tasks are, in fact, being completed.

Public defense systems should have policies that provide for active and consistent supervision.

Supervisors should have reduced caseloads to allow for supervision.

Supervisors must regularly review case and performance information. Public defense systems and supervisors must ensure that staff are properly trained.

Public defense systems should provide one supervisor for every 10 lawyers, at a minimum."[157]

Effective management and accountability require active management of staff.

Recommendation 6A: The MAC should establish regular active supervision of its staff and of appointed counsel.

[157] NAPD *Policy on Active Supervision of the Representation of Clients* (October 15, 2020). Found at: https://www.publicdefenders.us/files/NAPD%20Policy%20on%20Active%20Supervision.pdf

Reporting is essential for management of performance and accountability to clients, attorneys, the funders and the public.

The NAPD *Policy on Active Supervision of the Representation of Clients* (October 15, 2020) describes what reports should be created and used. "Reports of information on the work of the staff a supervisor is responsible for should be generated and reviewed regularly by the supervisor and staff as information to use in supervision and evaluation. The reports should include such information as number and type of cases assigned to staff, the number and type of cases open, the number and type of cases closed within the report period and also the yearly reporting timeframes, the number carried over from the previous yearly reporting period, number of motions filed, hearings conducted, trials, disposition, average length of time cases are open, cases pled at arraignment, clients released pretrial, and sentencing plans filed."

Leaders "responsible for the administration of defense services programs, including contracts for services, should render periodic reports on operations, and these reports should be made available to the funding source, to the courts, to the bar, and to the public. Regular reports help to maintain public confidence in the integrity of the services provided and are a standard feature of most public agencies…."[158]

Recommendation 6B: The MAC should create explicit policies[159] on case data fields to be collected and responsibilities for collecting and reporting data.

Recommendation 6C: The following reports should be used to manage the MAC and should be available to all staff and appointed counsel and should be available for access at any time, including:

- **Number of cases an attorney has been appointed to, opened and closed for the year;**
- **Number of cases the investigator is assisting an attorney with, opened and closed for the year;**
- **Number of cases a social worker is assisting an attorney with, opened and closed for the year;**
- **Length of time from arrest to appointment and appointment to client contact and interview, length of time from appointment to disposition, by case and by attorney.**

Recommendation 6D: The following Annual Report should be published to educate the public and issued yearly on cost, throughput, justice system outcomes, and holistic outcomes.

Measures on cost include funds expended by the MAC, total cost per case, and funds spent on investigators and/or expert witnesses.

Throughput measures include total appointments, cases open from the previous year and closed within the year, average number of cases per attorneys, total number of attorneys, time

[158] Commentary to ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992) Standard 5- 1.2 Systems for legal representation
[159] Sample case data and report policies from Kentucky are available in the Appendix at No. 14.

to appointment, time from appointment to client contact, cases using an investigator, cases using an expert, and time from arrest to disposition. They also include attorneys turning in a flat fee voucher versus attorneys billing hourly.

The justice system outcomes include the number and proportion of the following original dispositions: dismissed, deferred, plea of guilty, finding of guilt, and acquittal. They also include the number and proportion of cases disposed at trial, punishment outcomes for anyone found or pleading guilty, and the number and proportion of people referred into a diversion program.

Holistic outcomes include the number of clients with an established need, the connection to resources to address that need, and the number who engaged with the services. It is important to track engagement because it will allow the MAC to determine if it is client choice not to engage with services or identify if a service is not meeting the needs of clients.

Recommendation 6E: Data should be collected and reported for those going through the magistration process and should include date, time, magistrate, defense and prosecutor, person information (including contact information), offense information, Rule 9 reason a person is at magistration and not released on a GOB, finding of probable cause (Y/N), argued probable cause (Y/N), bond suggested by the state and defense and set by magistrate, reasons given for not releasing person on personal bond, a flag for personal bond release, and if a person was present or not and why not.

Recommendation 6F: Data in the court system should be electronically provided to the MAC.

Each MAC attorney should have the case management system on their computer. Appointed counsel should have the responsibility to place data on case representation into the MAC case management system as requested by the MAC.

7. Strategically Collect and Analyze Data

Data collection and reporting are essential for competent management of a public defense program, for transparency and accountability to government funders and the public, and to promote integrity and confidence in the value of the work.

Clients deserve competent representation. Persons who lead public defense programs need data to understand what work is being assigned, what work is being done, and how timely and competently the work is provided. Authorizing agents deserve competent use of the authority and financial resources of taxpayers. The public deserves to understand the way their funds are being used and the value they provide to clients, the criminal legal system and have confidence in the validity and reliability of the system.

The NAPD *Policy on Active Supervision of the Representation of Clients* (October 15, 2020) describes what collected data should include. “The collection of public defense case data should include relevant performance metrics. For instance, the data collected should include the

traditional information of the client identifying information, name, race, gender, immigration status, the charges, arresting agency and officer, staff representing the client, date of arrest, date of appointment of counsel, court, judge, court case number, disposition, status of case, client's social security number, date of birth or other identifier, and whether case was conflicted to other counsel.

The collection of other data will allow supervisors to review the work of those who provide and support the representation of clients. All those providing the defense should record the date of the first client visit and its location, subsequent client visits and their locations, the length of time the client remained in jail pretrial, requests for bail reduction and pretrial release, and requests for investigation and mitigation assistance should also be recorded. The data should also include motions filed, including discovery, suppression, and requests for evidentiary hearings. The data should indicate sentencing plans offered, trials conducted, appeals or writs filed."

The Harris County Public Defender Office collects substantial data on each of its cases.[160]

Recommendation 7A: The MAC should create a policy on data it will collect on each case.

Recommendation 7B: The Harris County Misdemeanor MAC and the Harris County Public Defender Office should use the same case management software system and create policies on access to information.

Recommendation 7C: The MAC should use its case data to analyze outcomes and what factors influence better outcomes for clients.

Any future evaluation of the MAC's implementation on defendant outcomes will have to look at those results within the context of systemic changes noted earlier. Outcome metrics that could be impacted by the implementation of the MAC in the future are: increase in use of investigators; increase in dismissals or acquittals for offenses targeted for investigator use; increase in proportion of clients guilty at disposition receiving a community supervision sentence; and decrease in the proportion of lawyers with over 226 adjusted misdemeanor appointments.

The baseline analysis presented here shows how county system changes may impact defendant outcomes regardless of the performance of counsel. During the study period from fiscal year 2016 to fiscal year 2020, assigned counsel increased the proportion of clients exiting the criminal justice system for all comparison likelihood cohort discussed above. Those in the low conviction likelihood cohort exiting the criminal justice system increased from 35 percent to 81 percent, those in the medium conviction likelihood cohort increased from 11 percent to 53 percent exiting the system, and those in the high conviction likelihood cohort increased from 4 percent to 36 percent.

[160] See Appendix No. 13.

During the study period, retained and assigned counsel outcomes have converged on the same proportion exiting the system at each cohort level with 81 percent of low conviction likelihood cohort exiting the criminal justice system, 53 percent of the medium conviction likelihood exiting, and 81 percent of the high conviction likelihood cohort exiting the system in fiscal year 2020. The additional resources such as investigators or social workers' influence on cases and the caseloads carried by assigned counsel have not changed so the decrease in convictions seems more related to systemic issues and policies and practices in the county during the same period. These changes include: a 31 percent decrease in number of misdemeanor cases filed; a change in the profile of cases being filed with increases in DWI, Family Violence Assault, and Assault and decreases in other case types; a lengthier time to disposition with an increase in number of cases disposed in more than 90 days from 44 percent to 69 percent of all cases disposed; and a reduction in disposition rate leading to an increased backlog of cases.

The MAC Office's leadership should target specific areas where assigned counsel can improve client outcomes. One such area is delivering training on the use and importance of investigation on misdemeanor cases. The MAC could target cases such as theft/fraud cases or others they could identify from prior experience in the Harris County system in which investigations may provide critical information benefiting the defendant's case.

The high proportion of dismissals means there may not be a lot of room to increase dismissals but targeting specific case types could lead to more dismissals for the targeted offense(s). The dismissal rates were 81 percent for the low conviction likelihood cohort, 53 percent for the moderate likelihood, and 36 percent for the high likelihood. Targeting theft/fraud is a beneficial place to start because this offense type was correlated with a higher likelihood of conviction in the likelihood model and qualitative interviews revealed assigned counsel would like to target investigators at this type of charge because they need to collect video evidence from retail settings and do so quickly before the recordings are destroyed. Increased investigation should increase the dismissal rates especially for targeted offenses. In TIDC's fiscal year 2020, 21 percent of cases had no attached investigation expenses and the remaining 79 percent of cases received $2.60 worth of investigation or about 1 minute and 40 seconds worth. If assigned counsel receives training and begins using investigators, the number of cases with investigation will increase and the time per case should increase, too.

Another area to explore regarding counsel performance is the use of social workers. MAC leadership would need to host a training on what social workers could do on a case, especially related to constructing alternative sentencing plans and/or mitigation packets. Any policy adopted targeting specific populations for increasing dismissal rates should be made transparent so future outcomes can relate to the policy adopted. Integration of a social worker into the defense team would most likely show up as an increase in proportion of community sentences for those guilty on any charges at disposition. Low conviction likelihood clients received a jail sentence 85 percent of the time as did 90 percent of moderate conviction likelihood and 94 percent of high conviction likelihood clients. If these changes are

implemented, these proportion should decrease assuming clients also prefer a community sentence as opposed to accepting jail time as their best option.

8. Create a Unified Public Defense Delivery System in Harris County

The best way to a better future is to create it according to a value-centered vision. Clarity of what the best future is for Harris County public defense is essential to creating the best public defense structures over time.

We have been asked to offer a clear long-term vision for the delivery of public defense services in Harris County, Texas over the next five to ten years. Articulating the vison allows for discussion, commitment, and the development of a strategy to achieve it. We offer a blueprint based on national best practices.

We begin with the Harris County current context of its centralized and decentralized criminal legal structures.

County criminal legal structures are principally full-time except for public defense.
Harris County provides its judicial, prosecution and law enforcement services through full-time organization structures. It does not contract judicial, prosecution or law enforcement services out to private entities.

Judges do not determine which prosecutor is assigned to a case in Harris County. Judges make the decision on whether a person is entitled to have counsel appointed and the decision on which lawyer will represent a client for misdemeanor and felony cases except when appointing the Harris County Public Defender Office. For misdemeanor clients, which attorney represents the client is changing in 2021 with the creation of the Managed Assigned Counsel Office. That Office will assign counsel in misdemeanor cases after a judge determines eligibility for appointment.

The chief prosecutor, the Harris County District Attorney, has responsibility for the prosecution of all criminal cases. Likewise, when there is a funding or a policy matter at issue, the Harris County District Attorney speaks for all prosecutors and prosecution interests.

On the other hand, the public defense system is fragmented. There is no chief defender who speaks for all public defense in Harris County and all public defense interests. Instead, there is an institutional public defense office that in two years will be responsible for 50% of the felony, misdemeanor, and juvenile cases. There is a soon-to-begin Managed Assigned Counsel Office that will have responsibility for misdemeanor representation that in two years is projected to be 50% of the misdemeanor cases. Over the next two years, judges will continue to select particular attorneys to do appointed representation for 50% of felony clients.

National Principles for the Delivery of Public Defense

The ABA *Ten Principles of a Public Defense Delivery System* (2002) describe the ten fundamental values necessary for a proper public defense delivery system. The *Ten Principles* "were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. 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."

The ABA *Ten Principles* are straightforward:

1. Professional independence;
2. The "public defense delivery system consists of both a defender office and the active participation of the private bar";
3. Timely access to counsel;
4. Sufficient time and confidential space for counsel to communicate with clients;
5. Counsel's workload is controlled;
6. Counsel's "ability, training, and experience match the complexity of the case";
7. "The same attorney continuously represents the client until completion of the case";
8. 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";
9. Defense counsel is trained;
10. "Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards."

Characteristics of Delivering Quality Public Defense

"The single-most important factor to an organization's success is the cultural environment that defines it."[161] A culture of client-centered, aggressive, criminal defense representation is essential for creating and sustaining quality representation of clients. This culture results from intentional leadership. Commonsense features of achieving this type and level of service include:

- Leadership selected and retained on the merits of commitment to public defense
- A strong mission and values that prioritize holistic, team defense
- High expectations from leaders
- Continuous training of all staff, including value-centered orientation on the mission and values of the organization
- Active supervision to promote performance according to national best practices

[161] "The single-most important factor to an organization's success is the cultural environment that defines it. Business schools have taught future business leaders this lesson for twenty-five years. While business leaders have worked to manage the culture of their corporations, leaders in the indigent defense arena have often failed to understand the concept of culture…. Scholars of organizational development understand the centrality the
concept of culture plays in defining an organization and its members' perceptions, thoughts, feelings, and behavior about the world in which they operate. Leaders who share this understanding can transform culture and reform institutions." Jonathan A. Rapping, *Directing the Winds of Change: Using Organizational Culture to Reform Indigent Defense*, 9 Loyola Journal of Public Interest Law 177, 218 (2009).

- Hiring attorneys, social workers and investigators who value criminal defense representation

Full-Time Office Structure

For a jurisdiction the size of Harris County, the national standard for delivering public defense services is a full-time defender office. The ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992) Standard 5-1.2 Systems for legal representation states:

> (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 case.

Substantial Involvement of Private Counsel for Conflicts

There should be substantial involvement of private counsel to provide representation in addition to the representation by the full-time office especially in conflict cases.[162] The private bar involvement should be through a managed structure.[163]

The Commentary to ABA Standard 5-1.2 describes the importance of continued private bar involvement because of conflicts of interest and as a relief system for case overloads for the institutional defender office. "There also are definite purposes served by retaining the presence of substantial private bar participation in the system for criminal defense. Just as private attorneys often can learn from the full-time lawyers of defender organizations, there are many private attorneys, qualified by training and experience, who can contribute substantially to the knowledge of defenders. In addition, a 'mixed' system of representation consisting of both private attorneys and full-time defenders offers a 'safety valve,' so that the caseload pressures on each group are less likely to be burdensome…. Without the knowledgeable and active support of the bar as a whole, continued improvements in the nation's justice system are rendered less likely."

[162] The ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992) Standard 5- 1.2(b) Systems for legal representation "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…."

[163] "The plan for legal representation should include substantial participation by assigned counsel. That participation should include a systematic and publicized method of distributing assignments. Except where there is a need for an immediate assignment for temporary representation, assignments should not be made to lawyers merely because they happen to be present in court at the time the assignment is made. A lawyer should never be assigned for reasons personal to the person making assignments. Administration of the assigned-counsel program should be by a competent staff able to advise and assist the private attorneys who provide defense services." ABA Criminal Justice Standards, *Providing Defense Services,* Standard 5- Standard 5-2.1 Systematic Assignment.

Eventual Establishment of an Alternate Defender Office

As time goes on, an institutional defender office will have an increasing number of cases for which it has a conflict that prohibits it from providing representation. These clients will need representation by other counsel. At some point, it would be reasonable to expect that the number of conflicts would be at a level that an alternate defender office should be created with full-time staff of attorneys, investigators and social workers. When both the primary defender and alternate defender offices have conflicts with representation of a client then that client should be represented by counsel appointed by a managed assigned counsel office.

TIDC on Full-Time Defender Structure

In its *Public Defender Primer* (October 2020)[164] the Texas Indigent Defense Commission studied which public defense structure provides the highest level of representation. TIDC reviewed the various models, full-time defender office, managed assigned counsel, contract and assigned counsel.[165] TIDC found that the full-time defender office structure provides the most effective representation.

The following advantages of the full-time defender office model were identified by TIDC:

- Independence. Defenders make decisions about representation independent of courts.
- Oversight. Staff are supervised for quality representation.
- Workload. Attorneys are not paid by the case, and so are not incentivized to take more than they can handle.
- Teams. Attorneys and support staff work together on cases.
- Training. Staff are trained and mentored in-house.
- Institutionalization. Defender offices are a single hub for the defense, like a prosecutor's office.
- Administration. Defender offices manage case assignment and are consistently available to courts.
- Research shows that, because of this structure, public defenders get better outcomes and reduce justice system costs.

In explaining its finding that full-time public defender offices are the most effective structure, TIDC asked and answered relevant questions:

> "Why do Texas public defender offices work? Our criminal justice counterparts— police, prosecutors, judges, and jailers—can tell you. They've long embraced systems that include supervision, management, training, and support. These systems produce higher quality, accountability, transparency, and budget predictability, all to the joy of taxpayers."[166]

---

[164] TIDC *Public Defender Primer* (October 2020). Found at: public-defender-primer.pdf (texas.gov)

[165] "Public Defender: Full-time, salaried attorneys are appointed, supervised, and paid by an office that includes investigators and support staff. Managed Assigned Counsel: Private attorneys are appointed, supported, and paid by a defense management organization on a rotating, case-by-case basis. Contract: Private attorneys contract with a county for a volume of cases. Assigned Counsel: Private attorneys are appointed and paid by the court on a rotating, case-by-case basis." TIDC *Public Defender Primer* (October 2020), p. 6.

[166] TIDC *Public Defender Primer* (October 2020), p. 4.

> "Public defender offices work for similar reasons: attorneys are supervised, cases managed, trainings attended, and support provided. As a result, as study after study (many discussed below) shows, public defender offices produce higher quality, accountability, transparency, and budget predictability."[167]

National View of Benefits of Full-Time Structure for Clients and Policies

The Commentary to ABA Standard 5-1.2 also describes the advantages of the full-time defender office model. "By devoting all of their efforts to legal representation, defender programs ordinarily are able to develop unusual expertise in handling various kinds of criminal cases. Moreover, defender offices frequently are in the best position to supply counsel soon after an accused is arrested. By virtue of their experience, full-time defenders also are able to work for changes in laws and procedures aimed at benefiting defendants and the criminal justice system."[168]

Large City, County, Metropolitan Defense Structures

Many major metropolitan areas in the nation, including Chicago-Cook County[169] and Miami-Dade County,[170] provide representation for those charged with a crime who unable to afford counsel through a single institutional public defender office staffed with full-time attorneys, investigators, social workers and administrative staff. These institutional offices train their staff and actively supervise their staff's performance according to national standards.

The Los Angeles County Public Defender is a law office established and funded by the County of Los Angeles. It has 1100 staff, 636 attorneys, 83 investigators, 74 paralegals, 31 social workers, and administrative staff. The Office is the primary public defense program in the county representing on an annual basis, approximately 120,000 clients pretrial, appeal, in post-conviction proceedings, and those who are deemed incompetent to stand trial. It provides immigration guidance and has a law enforcement accountability unit. It staffs collaborative courts that focus on pretrial diversion, post-plea treatment placement and reentry. It represents juveniles including on education issues such as IEPs, and other delinquency issues. It provides holistic services for mental health pre plea diversion cases. There are 56 arresting agencies, and its attorneys appear before 258 judges at 32 courthouses. The office provides representation at arraignments. Conflict case representation is provided by the alternate public defender office which consists of full-time attorneys and staff. The alternate defender is one

---

[167] *Id*.

[168] The ABA Criminal Justice Standards, *Providing Defense Services* (3d ed. 1992) Standard 5- 1.2 Systems for legal representation

[169] Cook County (Chicago) Illinois has a unified public defense delivery system with one office of full-time staff led by one chief defender who is responsible for the operation of the office and the representation of the clients. In a year, the office is appointed to 100,000 -140,000 criminal, juvenile, and civil child protection cases. Clients appear in court and are represented 7 days per week. Attorneys appear before over 200 judges located in 11 courthouses. The office is budgeted for 704 staff of which about 500 are attorneys and attorney management. Representation provided in the suburban courts is vertical from bond court on first appear of the client. In the city cases representation is vertical from arraignment on. The Office also provides representation on arrest at police stations in 162 locations.

[170] The Miami-Dade Florida Public Defense Office has a unified public defense delivery system with one office of full-time staff led by one chief defender who is responsible for the operation of the office and the representation of the clients. When there is a conflict, the regional conflict counsel office is appointed. In a year, the office is appointed to 45,000-60,000 cases. Cases are called 7 days per week. Attorneys appear before 40 judges located in 3 courthouses. The office is budgeted for 408 staff of which about 215-220 are attorneys.

third the size of the Los Angeles County Public Defender. If that office has a conflict, then a judge appoints a private attorney who has a court contract with the Bar Panel.

New York City, New York's The Legal Aid Society's Criminal Division was the sole institutional defender organization.[171] It is now New York City's primary public defender providing representation in 5 boroughs (counties). It is a nonprofit that bids on contracts from an RFP from the city. The contract length is two years, renewable in two-year increments for up to 6 years. Each borough has a separate district attorney. The Legal Aid Society has 1174 staff, 644 attorneys, 74 social workers, and 69 investigators plus administrative professionals. It is responsible for representing 125,000 to 155,000 people a year at trial, on appeal, in post-conviction and in parole proceedings. It provides representation 7 days per week. Attorneys appear before judges located in 19 courts, 10 courthouses, and before approximately 600 judges. It provides vertical representation in nearly all most cases.

In New York City, there are five other nonprofits, Bronx Defenders, Brooklyn Defenders Services Queens Defenders, Neighborhood Defender Service of Harlem, New York County Defender Services that provide public defense services. These five represent a combined total of approximately 100,000 clients. They, too, respond to the city's RFP under a competitive bidding process.

Each of these six public defense organizations provide conflict representation for each other. There is also an assigned counsel system (18B) that provides representation in assigned conflict cases. An advantage that has been identified of the current five nonprofits providing public defense representation is the ability of conflict cases to be handled by full-time attorneys who are trained, supervised and supported by full-time staff.

Recommendation 8A: There should be a unified system of public defense delivered by full-time staff for all cases with substantial participation of private counsel especially in conflict cases. As the number of conflicts increase, there should be created an alternate defender office.

This recommendation, a blueprint for the delivery of public defense in Harris County, is made after our review of the current Harris County criminal legal system, the best thinking in Texas and nationally on the structures of public defense delivery of services and the commonly accepted knowledge about organizations and culture. The ingredients of the recommended method of effectively and efficiently delivering public defense services in Harris County include:

- A unified system of public defense for all cases;

[171] David Firestone, "Giuliani Moves to Reduce Legal Aid Society's Role" (Oct. 21, 1995) "In a move to diminish the role of the Legal Aid Society as the primary courtroom defender of the city's poor, the Giuliani administration yesterday asked for bids from other legal groups or law firms to handle much of the work. …But officials of the 119-year-old society, … charged that the city would wind up spending more money on multiple defenders, in effect, just out of spite….But society supporters said the city was making a mistake by fragmenting the representation of poor defendants. John Carro, who recently retired as a justice in the Appellate Division of State Supreme Court in Manhattan after 26 years on the bench, said that before Legal Aid was hired to represent most poor defendants in the 1960's, such legal work was handed out on the basis of a patronage system that often left defendants without lawyers." Found at: Giuliani Moves to Reduce Legal Aid Society's Role - The New York Times (nytimes.com)

- A public defender office with full-time public defenders, investigators, social workers and administrative staff as the primary method of representing all clients, juvenile, misdemeanor, felony, capital, appellate with the value of holistic team-based defense.
- A Managed Assigned Counsel office of private criminal defense practitioners who take all of the conflict and overflow cases involving juvenile, misdemeanor, felony, capital, appellate, and post-conviction representation.
- When the number of conflicts increase to a critical mass, there should be created an alternate defender office with full-time public defenders, investigators, social workers and administrative staff representing all conflict clients, juvenile, misdemeanor, felony, capital, appellate with the value of holistic team-based defense. Conflcy cases with both the full-time primary defender office and the full-time alternate defender office should have representation provided by a managed assigned counsel office through the private bar.
- A structure for every delivery system that ensures representation independent of political and professional interference.

Seize the Opportunity to Create the Future

"The future is not a result of choices among alternate paths offered by the present, but a place that is created - created first in the mind and will, created next in activity. The future is not some place we are going to, but one we are creating. The paths are not to be found, but made, and the activity of making them changes both the maker and the destination."[172]

We urge county leaders to map the path to the best future for clients needing counsel. County leaders who have the ultimate responsibility to ensure the proper representation of all clients unable to afford counsel have an opportunity to create structures according to the best thinking nationally that will provide and sustain quality, client-centered representation of clients that provides value to all clients, the criminal legal system and the public.

9. TIDC Should Adopt Comprehensive Statewide Policies and Standards for Providing Legal Representation and other Defense Services

Throughout this Assessment, we have used Texas statutes and rules against which we evaluate the Harris County system. We have used Texas ethical rules, the state bar's performance guidelines for criminal defense representation, and the TIDC grant conditions. We have used as benchmarks national standards of delivering public defense services and public defense performance standards.

Unfortunately, we have not been able to assess Harris County against comprehensive mandatory statewide policies and standards for the delivery of defense services and the qualification and performance of indigent defense counsel, primarily because TIDC has not enacted comprehensive policies and standards as required by their legislative mandate.

[172] John Schaar, professor, University of California, Santa Cruz.

The legislature has spoken to this issue in a clear manner. The Texas Fair Defense Act requires TIDC to enact statewide benchmarks. "The commission shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in post-conviction proceedings." Sec. 79.034(a). POLICIES AND STANDARDS. This provision, while not all inclusive, lists the subject areas that may be addressed including maximum workload, qualifications to represent particular types of cases, training, cortication and testing, indigency determinations, the organization and operation of defense delivery structures including legal clinics, compensation of counsel.

The only policies and standards that TIDC has adopted per 79.034(a) are the CLE requirements (79.034(a)(2)(C)) and contract defender requirements (79.034(a)(7)). They were made effective through rules promulgated in the Texas Administrative Code, Chapter 174, Subchapter A (CLE requirements) and Subchapter B (contract defender requirements).

In a criminal legal system that has justice as its goal, lawyers must meet ever evolving professional standards of practice. The genius of our society is that it is constantly advancing in its understanding of behavior and its meaning; in what is fair and what process is required to achieve valid and reliable results. The law changes and often becomes more complex. It requires more of practitioners. Amidst the complexity, practice must change to adapt to the evolving environment. Well thought out legal standards are "valuable measures of the prevailing professional norms of effective representation…."[173]

The 77th Texas Legislature passed the Fair Defense Act (SB 7) in 2001. It created the plan for distributing indigent defense funding from the State of Texas to local governments. Appropriately, by enacting 79.034, it made clear it wanted the taxpayer money used according to appropriate standards and polices. Two decades later, its clear mandate has not been fully realized.[174]

A critical example of the problematic nature of not adopting mandatory standards is the issue of maximum workloads for attorneys representing clients unbale to afford counsel. Excessive workload is a preeminent public defense issue causing representation that is not meaningful. While TIDC has conducted a study and issued helpful workload guidance, it has not mandated the study's findings of maximum workloads.[175] A recommendation is quite different than a requirement, especially on a foremost public defense issue.

Recommendation 9A: Adopt Comprehensive Statewide Policies and Standards for Providing Legal Representation and other Defense Services

[173] *Padilla v. Kentucky*, 559 U.S. 356, 366–67 (2010).

[174] For further discussion of this deficiency, see The Sixth Amendment Center's *The Right to Counsel in Armstrong County and Potter County, Texas: Evaluation of Adult Trial Level Indigent Defense Representation* (November 2019).

[175] "Policymakers in many states have recognized the need to set localized standards. Localized standards are able to consider unique demands made on defense attorneys in each jurisdiction, such as the travel distance between the court and the local jail, or the prosecution's charging practices. State law gives the Texas Indigent Defense Commission express authority to adopt standards for "ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants," but TIDC has not done so other than to require that where counties use contracts those contracts must "set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract." *Id*. at p 164.

For the sake of clients, the criminal legal system, the public and fair and just outcomes, we urge TIDC to expeditiously adopt comprehensive policies and standards identified in Sec. 79.034 so that counties, including Harris County, are in compliance with their statutory and constitutional mandates.

10. Create and Sustain an Appropriate Culture for the MAC

Recommendation 10A: Though the MAC publishes a mission and vision statement, as well as organizational values, when the MAC chooses a client-centered holistic representation model, management should repurpose those statements.

Recommendation 10B: When MAC management chooses to repurpose its mission, vision, and organizational values statements, that process should include a series of staff office retreats engaging staff in the process.

Recommendation 10C: MAC management should convene a series of retreats with wheel attorneys (attendance by wheel attorneys a prerequisite to being on the wheel) where the reconstituted organizational mission, vision and values are revealed and discussed.

Recommendation 10D: MAC management should receive a written affirmation from each wheel attorney indicating that they have received, read, and endorse the reconstituted organizational mission, vision and values statement. Failure to receive a written endorsement should disqualify the attorney from participation on the wheel.

Recommendation 10E: MAC management should publish the organization's reconstituted mission, vision, and values statements, distributing them to all criminal justice agencies and the greater community.

VII. Conclusion: Sustain Progress; Make Additional Improvements

We know from our lengthy experience as public defenders how damaging misdemeanors are to clients. "Petty convictions shape individual lives, families, communities, and the criminal system as a whole. It is time to put to bed the discredited notion that getting a minor conviction is no big deal."[176]

Sustain Progress

Harris County is providing full-time public defender representation to all defendants appearing for magistration with counsel informed by the charging document, criminal history, and an interview of the client before the client appears in court. The time it takes for the court to make the appointment decision has shortened. Harris County has committed to managing its assigned counsel misdemeanor program with a career public defender as its leader and provide assistance from investigators and social workers through a holistic model. The MAC's charge is to enact maximum caseload limits and select counsel. These improvements are important for clients, the criminal legal system, the judiciary, and the public. They must be continued.

Make Additional Improvements

Additional improvements are necessary. The MAC's Managed Assigned Counsel Oversight Board, necessary to supervise the operation of this program, does not yet exist. Appointment of counsel decisions must be prompt. Discovery must be timely. The time to final disposition is too long. While that length is explained by a number of reasons, a primary factor is the delay in discovery being provided by the prosecution. Many lawyers taking appointed cases have excessive workloads. Texas Code of Criminal Procedure 26.04(j) (4) workload reporting requirements are not complied with by all appointed counsel. The workloads of appointed counsel are unmanaged. The MAC does not have adequate investigators and social workers for the proper representation of clients in a holistic interdisciplinary model. A client, the prosecutors, and the court are not well served when a client who has a misdemeanor and felony charge arising out of the same incident with two or more appointed lawyers, two judges, and two prosecutors. There are no litigation guidelines for misdemeanor representation.

Ensure Well-Trained, Competent, Independent, Client-Centered Representation

Public defense, as a first principle, must have structures that ensure representation free of professional or political interference. Training and expectations specific to appointed counsel work must begin, especially on client-centered representation. The lawyering by counsel must improve with regular investigation, motion practice, assistance of social workers, use of experts when appropriate, and development of sentencing plans. Trials must increase.

Ensure Timely Access to Counsel, Timely Representation, and Continuity of Counsel

More work is needed to provide clients with prompt access to counsel by early appointment and with the representation by appointed counsel beginning promptly.

[176] Alexandra Natapoff, *Punishment Without Crime: How Our Massive Misdemeanor System Traps the Innocent and Makes America More Unequal* (2018), p. 214.

Ensure Reasonable Workloads
Workload maximums must be enacted. Workloads must be comprehensively monitored and enforced.

Promote and Encourage Interdisciplinary Representation Model that Includes Social Workers, Investigators and Adequate Support Staff
The clear emerging national trend in indigent defense is toward a client-centered holistic representation model. Studies regarding the efficacy of holistic defense have shown the model to reduce criminal activity and recidivism by offering individuals solutions to debilitating problems in clients' lives.[177]

Interactions with the criminal justice system create a state of crisis in the life of the person charged. Crisis provides the catalyst for behavior change, or, at a minimum, an opportunity to plant the seed for future behavior change as behavior change occurs in stages and cycles.

Criminal behavior is often symptomatic of underlying dynamics at play in the person's life. A holistic representation model offers an ecological perspective, recognizing the interaction of legal representation with factors ranging from individual (client) conditions to socio-economic structure and environmental circumstances.

Holistic representation includes, at a minimum, lawyers with social service providers (social workers), investigators, and adequate support staff available to address both the legal issues confronting the client, as well as those 'other' factors that serve as barriers to the client's functioning in the community and achieving life goals. Using a client-centered approach, the individual's legal problems, as well as personal and environmental issues, are addressed, a plan of action is developed, and together the client and his legal team begin the process of implementing the plan for change.

Provide Effective Data-Driven Management and Accountability
The days of the lone ranger defense lawyer have long since passed. While the myth is enticing, it is unrealistic. Amidst the increasing complexity of today’s public defense work, the lawyer representing the client must be supported with adequate staff assisting with their interdisciplinary skills. There should be supervision of performance and accountability. The MAC should report yearly on key indicators of client-centered representation.

Strategically Collect and Analyze Data
Accurate information is essential for the proper management of the services provided to clients. The MAC should use data to track outcomes and what factors influence better outcome for clients.

Create a Unified Public Defense Delivery System in Harris County
The fragmented, disjointed, uneven delivery of public defense must change. There should be a unified system of public defense in Harris County that meets the national principles of an

[177] Buchanan, Sarah Beck, "Social Work Practice in Public Defense. " PhD diss., University of Tennessee, 2017.ed

effective delivery system. The time is now to map the path to the best future for clients needing counsel.

TIDC Should Adopt Comprehensive Statewide Policies and Standards for Providing Legal Representation and other Defense Services

Clear, enforceable state standards must be adopted to ensure that the representation of clients is meaningful and meets minimum criteria.

The Ingredients and Importance of Full Implementation:

We were asked to make Findings and Recommendations on wide-ranging substantial areas. How can these considerable Recommendations effectively be implemented? Long ago, Aristotle verbalized the commonsense process of successful implementation that is too often not followed, "First, have a definite, clear practical ideal; a goal, an objective. Second, have the necessary means to achieve your ends; wisdom, money, materials, and methods. Third, adjust all your means to that end."

We believe that these recommendations map a clear path. The County, its public defense and criminal legal system leaders have the means to implement these Recommendations. With hard, focused work, they are all achievable. Peter Drucker said it well, "Plans are only good intentions unless they immediately degenerate into hard work." Harris County clients, its public defense professionals, political leaders and the public will benefit with their adoption and implementation.

VIII. Appendix

1. Section VII, REPRESENTATION AT BAIL HEARINGS, ODonnell Consent Decree, Texas No. 16-cv-01414 (S.D. Tex. Nov. 21, 2019), pp. 25-27.
2. Quantitative data obtained and reviewed by the Assessment Team
3. Persons interviewed by the Assessment Team
4. Documents and videos reviewed by the Assessment Team
5. TIDC Statement of Grant Award (September 6, 2019); Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06) grant modification request to extend the grant approved at the June 18, 2020 TIDC board meeting
6. Office of Managed Assigned Counsel Quarterly Summary, October 2020-March 2021 (April 15th, 2021)
7. Additional Data
8. Harris County Public Defender Office Magistration Interview Form, April 2021
9. Affidavit of Indigency
10. Harris County Public Defender Office CLE Programs, 2019-2021
11. Harris County Prosecutor pre-charge, post-plea diversion programs
12. Forms used by magistrate at magistration: Article 15.17 hearing; defendant present; defendant not present (12-17-20); ORDER FOR PRETRIAL SUPERVISION AND BOND CONDITIONS (11/03/2017)
13. Harris County Public Defender Office data field on each case
14. Sample case management policies from Kentucky public defender program
15. Additional training and implementation of Recommendations after receipt of Final Report
16. NAPD Assessment Team Members and their Professional Experience

1. Section VII. REPRESENTATION AT BAIL HEARINGS

37. The Parties agree that zealous and effective representation at bail hearings is important to protecting arrestees' right to pretrial liberty and right against wealth-based detention. The Parties further agree that the availability of adequate time and workspace for defense counsel to confidentially interview misdemeanor arrestees in preparation for bail hearings, as well as access to early and effective support staff to assist defense counsel in gathering and presenting information relevant to the bail decision and appropriate conditions of release, are important to supporting defense counsel's ability to make the best available arguments for release.

38. All misdemeanor arrestees are entitled to representation of counsel at bail hearings in accordance with Local Rule 9. The County will provide the funding and staffing necessary to ensure the PDO is both able to provide zealous and effective representation to misdemeanor arrestees at bail hearings as required by Local Rule 9 and this Consent Decree and also meet its obligations to provide zealous and effective representation to indigent defendants at all other stages of the representation process. To this end, any such funding provided must be at or above the PDO's Fiscal Year 2019-20 approved budget.

39. Any indigent misdemeanor arrestee shall be presumed eligible for appointment of counsel and may not be charged any fees for any condition of pretrial release. This provision in no way precludes a determination to appoint counsel or waive fees for a misdemeanor arrestee who does not meet the definition of "indigent" set forth in Section 17(h).

40. Any judicial officer presiding over the Local Rule 4.2 hearing of a misdemeanor arrestee must authorize the PDO to represent the misdemeanor arrestee for purposes of determining probable cause and the terms of pretrial release.

41. To promote defense counsel's ability to make well-informed arguments for release, the County agrees to provide defense counsel access to early and effective support staff, as defined in Section 17(t), to assist defense counsel in gathering and presenting information relevant to the bail decision and appropriate conditions of release.

a. Within 180 days of the entry of this Consent Decree, the CCCL Judges will establish a process by which private appointed counsel can receive assistance from support staff in gathering and presenting information relevant to the bail decision and appropriate conditions of release; in locating and linking misdemeanor arrestees to supports and services that may provide alternatives to detention; and in otherwise facilitating the provision of high-quality representation to misdemeanor arrestees who face the possibility of being detained pretrial. The CCCL Judges will provide a list of qualified support staff that the CCCL Judges have approved to assist private appointed counsel upon proper application. The County will provide access to and funding for support staff that court-appointed counsel can request to assist them at or before bail hearings, in accordance with Section 37 and Section 43(b). The County may provide such access

through independent contractors or through a nonprofit organization in partnership with the County. Nothing in this section (Section 41(a)) is intended to limit Defendants from hiring full-time support staff if the volume of cases requires additional such services in order for defense counsel to provide zealous and effective representation in accordance with best practices.

b. Additionally, the County will develop the systems and structures that best meet the

goals of providing effective indigent defense services during the pretrial period, including providing resources for indigent defense support services, such as investigation and mitigation. Whether the County, in its discretion, ensures effective indigent defense services through expansion of the PDO, or through funding support staff for use by private appointed counsel (or some combination), within 180 days of entry of the Consent Decree, the County will retain an expert with experience in holistic indigent defense to evaluate the County's current misdemeanor indigent defense systems and determine the County's need for essential support staff and holistic services to promote zealous and effective indigent defense. The evaluation must be completed within 180 days of commencement and result in a written report with recommendations that reflect national best practices and professional norms governing the provision of indigent defense services. Based on the results of the evaluation, and in consultation with the Monitor, the County must fund the minimum number of support staff the retained expert recommends should be available for use by defense counsel representing indigent misdemeanor arrestees. This requirement in no way prevents or discourages the County from funding additional support staff in its discretion.

42. The CCCL Judges shall adopt scheduling policies to ensure Local Rule 4.2 dockets allow defense counsel to provide zealous and effective representation at bail hearings consistent with prevailing professional standards.

43. Within 180 days of the entry of this Consent Decree, drawing on national standards and best practices for providing representation to indigent arrestees at bail hearings, Defendants must develop a written plan with policies and procedures to ensure defense counsel:

a. Are provided sufficient time, work space, and equipment to confer meaningfully and confidentially with misdemeanor defendants before a bail hearing is held;

b. Are provided access to social workers, investigators, and essential support staff, where access can be via phone or video conference;

c. Are able to call witnesses and present and confront evidence at bail hearings; and

Case 4:16-cv-01414 Document 617-1 Filed on 08/01/19 in TXSD Page 26 of 5127

d. Are promptly74 able to discover any information or reports concerning the represented misdemeanor arrestee that will be presented to the judicial officer presiding over the misdemeanor arrestee's bail hearing.

44. The plan developed pursuant to Section 43 will be submitted to the Monitor, who will review, provide feedback on, and approve the plan, which will be implemented within a reasonable timeline to be determined by the Monitor and Defendants. The Monitor will solicit Class Counsel's input during the review process.

45. The CCCL Judges, in consultation with the Monitor, will amend their indigent defense policies to reflect Local Rule 9 and this Consent Decree.

2. Quantitative data

There are two sources of aggregate quantitative data and four sources for individual level quantitative data. The Texas Office of Court Administration (OCA) receives data from the Harris County Court Clerk on a monthly basis which is used to produce the Misdemeanor Activity Detail Report providing cases filed, disposed, and dismissed by offense type as well time to

disposition information. The Texas Indigent Defense Commission provides the number of cases appointed by court by private appointed counsel and the Harris County Public Defender Office as well as cost of investigators, expert witnesses, and 'other' case costs. TIDC is also a source for individual level lawyer data, which was used to calculate number of cases represented by private appointed counsel in Harris County and all Texas counties. All of this information is presented as the TIDC fiscal year (October through September) because TIDC only provides it within those categories. See: TIDC: http://tidc.tamu.edu/public.net/ Fy16-fy20.

Harris County Criminal Courts at Law Court Administration staff provided individual level defendant information on cases filed, bond release information, disposed, type of disposition, sentence type and length if applicable (except deferred adjudication length - pending), charge and charge level, and lawyer type which was used to build a dataset of defendant disposition by type. The set included a state identification number (SID) that was used to match defendants with their Texas Department of Public Safety (DPS) criminal history file. This provided arrest offense and date and judicial history, how disposed and the applicable sentence type, for each person in the dataset. This combined information was used to create comparison cohorts so the defendant outcomes by lawyer type would be an apples to apples comparison, *i.e.* the results compare defendants with similar criminal history, charges, and bond status.

The final source of individual level quantitative data is from the Harris County CCL Court Administration which provided the recordings of every magistration hearing from September 1 through September 7, 2020. The data research team viewed every misdemeanor B and higher magistration hearing and hand coded a dataset including arrestee demographics, arrestee criminogenic information (current supervision status, other pending charges, and number of charges presented at this hearing), whether or not probable cause was found, bail amount and type suggested by the defense and prosecutor, and the final amount and type set by the magistrate.

3. Persons interviewed by the Assessment Team (orally or through email)

Criminal legal system leaders

Commissioner Rodney Ellis, Harris County Precinct One
Jim Bethke, Director of the Harris County Justice Administration Department; Pretrial Release
Alex Bunin, Chief Public Defender, Harris County, Texas Public Defender Office
Kenneth Harding, Director, Harris County Managed Assigned Counsel Office
Ed Wells, Harris County Texas Court Manager
Geoff Burkhart, Executive Director, Texas Indigent Defense Commission
Scott Ehlers, Texas Indigent Defense Commission, Director, Public Defense Improvement
James Jones, Executive Assistant Chief, Houston Police Department, Investigative & Special Operations

Judges

Judges Genesis Draper, Harris County Texas County Criminal Court at Law #12
Judge Sedrick Walker, Harris County Texas County Criminal Court at Law #11
Judge David Singer, Harris County Texas County Criminal Court at Law #14

Judge Franklin Bynum, Harris County Texas County Criminal Court at Law #8
Judge Toria Finch, Harris County Texas County Criminal Court at Law #9
Judge Shannon Baldwin, Harris County Texas County Criminal Court at Law #4
Judge Tonya Jones, Harris County Texas County Criminal Court at Law #15

Prosecutors, Community Supervision and Corrections
Nathan N. Beedle, Assistant District Attorney, Misdemeanor Trial Bureau Chief, Office of the Harris County District Attorney
Johna M. Stallings, Adult Sex Crimes and Trafficking Division Chief, Office of the Harris County District Attorney;
Alexander Forrest, Chief of the Environmental Crimes Division, Office of the Harris County District Attorney;
John Jordan, Chief of the Juvenile Division, Office of the Harris County District Attorney.
Teresa May, Ph.D., Director, Harris County Community Supervision and Corrections Department
Scott Durfee, General Counsel, Office of the Harris County District Attorney

Magistrates
Judge Courtney St. Julian
Judge Jennifer R. Gaut

Appointed counsel and public defenders
Bukky Oyewuwo, Assistant Public Defender, Harris County Public Defender Office, misdemeanor liaison
Mekisha Jane Walker, attorney taking misdemeanor appointments
Michael Moore, attorney taking misdemeanor appointments
Drew Willey, CEO of Restoring Justice and attorney taking misdemeanor appointments
Shannon Davis, attorney taking misdemeanor appointments
Enrique Ramirez, attorney taking misdemeanor appointments
Nicole Amos, Harris County public defender providing representation to clients at magistration
Bao-Long Hoang, Harris County public defender representating clients at magistration
Sarah Wood, General Counsel, Harris County, Texas Public Defender Office
Amy Campanelli, former Chief Defender, Cook County Public Defender Office, Chicago, IL.
Carlos J. Martinez, Chief Defender, Miami-Dade Public Defender, 11th Judicial Circuit of Florida, Miami, FL
Ricardo D. García, Public Defender, Los Angeles County Public Defender's Office, LA, Ca.
Tina Luongo, Attorney in Charge, Criminal Defense Practice, The Legal Aid Society, NY, NY
Leo Smith, Chief Defender, Louisville- Jeferson Count Pubic Defender Office, KY

Community members and policy advocates
Bishop James W. E. Dixon II, The Community of Faith; Second Vice-President, NAACP Houston Branch
RoShawn C. Evans, community organizer, Pure Justice, a client perspective
Amanda Woog, Executive Director, Texas Fair Defense Project
Nathan Fennell, Attorney, Equal Justice Works Fellow, Texas Fair Defense Project

Holistic defense
Leslie Ginzel, Holistic Division Chief, Harris County PDO
Kevin Bishop, Social Worker Coordinator for the Colorado Office of Alternate Defense Counsel
Claire Polini, Social Work Outreach Coordinator for the Colorado Office of Alternate Defense Counsel
Nick Hughes, Deputy Director, Harris County Managed Assigned Counsel Office
Emily Galvan-Almanza, Founder and Co-Executive Director of Partners for Justice
Katie Dyer, Clinical Professor, The University of Texas at Austin
Lindsey Ferguson, Team Leader/Social Work Supervisor, Criminal Defense Practice, The Bronx Defenders
Becca Hyatt, Social Worker, Travis County Mental Health Public Defender

Others
Alissa Fishbone; Jazondré Gibbs, ideas42
Consent Decree Implementation Team, Federal Monitor Team- Brandon Garrett, Sandra Guerra-Thompson, Dottie Carmichael; Plaintiff's Attorney- Elizabeth Rossi; CCL Judges' Attorney- Allan Van Fleet; Justice Administration- Jim Bethke, AJ Roy (Deputy Director), Kristina Robertson, Laura Hogan (Data Warehouse Specialist) and Stephanie Armand (Supervisor); Harris County Attorneys- Rachel Fraser, Brandon Draper, Miryea Ayala, and Jonathan Fombonne (litigating Russell, the felony class action lawsuit); Sherriff's Office- Victoria Jimenez and Patrick Dougherty

4. Documents and videos reviewed

- Magistration September 27, 2019 for reference
- Magistration September 1 – September 7, 2020 for coding and analysis
- Tony Fabelo & Jessica Tyler, Harris County Public Defender Tenth Year Report (Statistics 2013-2019) Harris County (May 1, 2020) statistical assessment of the Harris County Public Defender as the office completes its first decade of operations.
- Professor Brandon L. Garrett, Duke University School of Law, Professor Sandra Guerra-Thompson, University of Houston Law Center, Deputy Monitor, *First Sixth Month Report of the Court-Appointed Monitor* (September 3, 2020)
- TIDC Recommendations for a Unified Harris County Managed Assigned County Program (July 11, 2019)
- FY2020 Grant Modification December 18, 2020 Request by Kenneth Hardin, Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06) to the Commissioners' Court of Harris County, Texas, Order amending to grant #212-20-D06
- Initial Misdemeanor Report & County Response & Supplemental Response, Report issued October 7, 2016
- Analysis of Harris County's Pretrial and Indigent Defense Systems, Report issued October 7, 2016
- TIDC Managed Assigned Counsel Programs in Operation: A Supplement to the Primer on Managed Assigned Counsel Programs (February 2018)

- Harris County MAC web page at: Managed Assigned Counsel > Home (harriscountytx.gov)
- Misdemeanor Division Chief & Training Director job advertisement
- TIDC September 6, 2019 letter awarding MAC grant to Harris County, FY 2020 Statement of Grant Award – Grant Number 212-20-D06
- Harris County, FY2020 Grant Modification Request to TIDC, Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06) approved at the June 18, 2020 TIDC board meeting
- Harris County Order re MAC in regards to staff personnel titles, job descriptions, and salary allotment with no change to the overall budget or grant amount., TIDC Grant Modification of Grant #212-20-D06 (January 5, 2021)
- Revised MAC Job Descriptions
- Harris County Managed Assigned Counsel Organization Chart
- Code of Criminal Procedure Title 1. Code of Criminal Procedure
- Art. 1.051. Right to Representation by Counsel
- Justice for All: A Proposal to Expand the Harris County
- Public Defender's Office and Create a Model Indigent Defense System (December 8, 2020)
- Statutory Warnings by Magistrate - Probable Cause Determination – PR Bond/Bail Order Revised 12-17-2020
- TIDC A Short Guide to Texas Public Defender Oversight Boards, Includes Sample Language
- TIDC Texas Chief Public Defender Hiring Rubric
- Professor Brandon L. Garrett, Duke University School of Law, Professor Sandra Guerra, Thompson, University of Houston Law Center, Deputy Monitor, *Monitoring Pretrial Reform in Harris County, Second Report of the Court-Appointed Monitor* (March 3, 2021)
- TIDC *Policy and Fiscal Monitoring Review of Harris County's Indigent Defense Systems* (April 2021)
- TIDC Supplement to Harris County Monitoring Report (2021): Additional Observations on Attorney Qualifications
- TIDC *Public Defender Primer* (October 2020) public-defender-primer.pdf (texas.gov)
- NACDL's The Harris County, Texas Bail Manual (September 2018)
- Internal Bail Hearing Division Manual
- Forms used by Magistrates at magistration
- Texas State Bar *Performance Guidelines for Non-Capital Criminal Defense Representation* (January 2011)

5. TIDC Statement of Grant Award (September 6, 2019); Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06) grant modification request to extend the grant approved at the June 18, 2020 TIDC board meeting

TIDC
TEXAS INDIGENT DEFENSE COMMISSION

CHAIR:
The Honorable Sharon Keller
Presiding Judge
Court of Criminal Appeals

EX OFFICIO MEMBERS:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Brandon Creighton
Honorable Nicole Collier
Honorable Andrew Murr
Honorable Sherry Radack
Honorable Vivian Torres

MEMBERS APPOINTED BY GOVERNOR:
Mr. Alex Bunin
Honorable Valerie Covey
Honorable Richard Evans
Honorable Missy Medary
Mr. Gonzalo Rios

EXECUTIVE DIRECTOR:
Geoffrey Burkhart

September 6, 2019

The Honorable Lina Hidalgo
Harris County Judge
Via E-mail: cjograntsnotification@hctx.net

RE: FY 2020 Statement of Grant Award – Grant Number 212-20-D06

Dear Judge Hidalgo:

I am pleased to inform you that the Texas Indigent Defense Commission has awarded Harris County a **FY2020 Multi-Year Improvement Grant** in the amount of **$2,172,855** for the **Managed Assigned Counsel Program**. Your Statement of Grant Award for fiscal year FY 2020 is attached. Please sign, scan, and return via e-mail the Statement of Grant Award to **Edwin Colfax** at ecolfax@tidc.texas.gov on or before **9/15/2019**. You do not need to mail a copy.

Congratulations to Harris County on implementing this new indigent defense program. If you have any questions or need clarification of the information contained in this letter or the attached Statement of Grant Award, please contact Edwin Colfax, the Commission Grants Administrator at (512) 463-2508.

Sincerely,

Sharon Keller
Chair, Texas Indigent Defense Commission
Presiding Judge, Court of Criminal Appeals

cc:
Michael D. Post, Harris County Auditor: auditorgrantnotification@aud.hctx.net
Ed Wells, Court Manager, County Criminal Courts: Ed_Wells@ccl.hctx.net

Texas Indigent Defense Commission
209 West 14th Street, Room 202 · Austin, Texas 78701
www.tidc.texas.gov
Phone: 512.936.6994

TEXAS INDIGENT DEFENSE COMMISSION

Statement of Grant Award
FY2020 Improvement Grant

Grant Number:	**212-20-D06**
Grantee Name:	**Harris County**
Program Title:	**Managed Assigned Counsel**
Grant Period:	**Program 10/1/2019-9/30/2020**
Grant Award Amount:	**$2,172,855**

The Texas Indigent Defense Commission (herein, the Commission) has awarded the above-referenced grant to Harris County (herein, the County) for indigent defense services. The authorized official named on the grant application must sign this Statement of Grant Award and return it to the Commission by August 15, 2019. The grantee will not receive any grant funds until this notice is executed and returned to the Commission. Funding is provided as listed in the categories in the table below:

Direct Costs:	
1) Personnel Salary (FTEs: 19)	$1,810,000
2) Fringe Benefits	$615,400
3) Travel and Training	$20,500
4) Start-Up and Equipment	$74,069
5) Supplies	$16,100
6) Contract Services (case management software)	$180,000
7) Indirect Costs	0
Total Proposed Costs	$2,716,069
Less Cash from Other Sources- County Match	$543,214
Total Amount Funded by Commission	$2,172,855

Standard Grant Conditions:

- The authorized official for the grantee accepts the grant award.
- The authorized official, financial officer, and program director, referred to below as grant officials, must comply with the terms of the grant as written in the Request for Applications issued in January 2019, including the rules and documents adopted by reference in the Commission's Grant Rules in Title 1, Part 8, Chapter 173, Texas Administrative Code.
- The grant officials understand that a violation of any term of the grant may result in the Commission placing a temporary hold on grant funds, permanently de-obligating all or part of the grant funds, requiring reimbursement for funds already spent, or barring the organization from receiving future grants.
- Disbursement of funds is always subject to the availability of funds.
- The grant officials agree to follow the grant terms contained in the "Grant Terms and Conditions" in Attachment A which includes the grant application as amended.
- Any indigent defense plan documents submitted to the Commission must continue to meet all grant eligibility requirements.
- The judges hearing criminal and juvenile matters must amend the Indigent Defense Plan for their respective courts to include the program funded under this award and submit it to the Commission by November 1, 2019.

The authorized official for this grant program has read the preceding and indicates agreement by signing the Statement of Grant Award included below.

_____
Signature of Authorized Official

_____
Name & Title (must print or type)

_____
Date

j

Attachment A
Grant Terms and Conditions

In addition to the program requirements stated in the Request for Applications (RFA) these specific program requirements apply to this funded program.

I. Harris County will operate a Managed Assigned Counsel Program in accordance with Article 26.047 of the Code of Criminal Procedure.

II. Harris County must maintain a Managed Assigned Counsel Oversight Board to supervise the operation of this program. The County must submit a written policy on how the members are selected and which details the duties and procedures of the board with the first quarterly progress report. The Oversight Board must meet at least quarterly.

III. The County must develop a written plan of operation as detailed in Article 26.047 of the Code of Criminal Procedure and provide a draft to TIDC with the first quarterly progress report. Amendments to the plan of operation must be provided to TIDC with subsequent quarterly progress reports.

IV. The plan of operation must include caseload standards for each attorney and for the general operation of this program consistent with research-based guidelines published by TIDC. The Director of the Managed Assigned Counsel Program must notify the program's Oversight Board in writing if an exception to the caseload standards is authorized.

V. The County must provide to the Commission staff the minimum job requirements and a full job description of the staff positions specified under this project before positions are publicly posted.

VI. The budget appearing in the Statement of Grant Award is based on a 12-month period. The schedule provides the county twelve months of funding at each of the original agreed upon funding levels. If the county has a delayed start in the first year, it may necessitate an adjustment in future years to allow the county to fully expend grant funds. The intention is to follow a declining schedule of 80 percent in the first year, 60 percent in the second year, 40 percent in the third year, and 20 percent in the final year of TIDC support. The grants will remain on a fiscal calendar (October to September), but future awards will reflect any needed modifications to implement this policy.

VII. Equipment costs listed in the first-year start-up budget will not be carried forward into subsequent years of funding.

VIII. Grantees that use grant funds to contract for services must develop and include in the contract provisions to monitor each contract that is for more than $10,000 per year. These provisions must include specific actions to be taken if the grantee discovers that the contractor's performance does not meet the operational or performance terms of the contract.

IX. Contracts with third parties for core services under this grant must be provided to the Commission and approved prior to execution.

X. This grant requires quarterly progress reports to document the work performed and impact of the program. The TIDC grants administrator will construct an on-line progress report that reflects the work performed in this program and is consistent with the grant application listed below. The County will be able to request modifications to the on-line report when the performance measures do not

accurately reflect the work performed. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.

XI. Grant funds are disbursed on a reimbursement basis according to the funded percentage in the award. The County will submit expenditure reports to obtain reimbursement of expended funds based on actual expenditures. The reimbursements will be proportional to the county's required match. See the Timeline for Reporting and Fund Distribution at the end of this document for dates.

The narrative portions of the original grant application and amendments are included below for reference.

2020 Harris County Discretionary Grant Application Narrative

a. Application Form

Counties Represented: **Harris**

Fiscal Year: **2020**

State Payee Identification Number: **760454514**

Division To Administer Grant: **072206378**

Program Title: **Indigent Defense: Harris County Office of Managed Assigned Council**

Requested Grant Amount: **$2,644,535.20**

Financial Officer: **Michael D. Post**

Program Director: **Ed Wells**

Mailing Address: **1001 Preston; 900; Houston, TX 77002**

b. Introduction (Executive Summary)

The purpose of the Harris County Managed Assigned Counsel program is to create a managed attorney appointment system that is a well-organized, consolidated, impartial representation model for all involved in appointed representation for defendants found to be indigent in Harris County. This will be accomplished through strong partnerships and shared resources within and outside of Harris County government. This program will embrace a holistic defense philosophy. It will also exist as a central beacon of leadership, guidance, mentoring, training and continuing education for the defense bar, social workers, and other professionals dedicated to indigent defense. The FY 2020 Harris County Discretionary Grant Application includes both misdemeanor and felony components. This online submission is the misdemeanor component. The felony component will be submitted separately by email.

c. Problem Statement

Currently, Judges in Harris County are directly involved in the attorney appointment process, making appointment of counsel primarily through appointments for defendants determined to be indigent. Judges appoint from a list through an automated and random assignment system. Qualification exams are currently administered through the Office of Court Management for the County Criminal Courts at Law. Judges currently have some discretion in choosing attorneys to work for an agreed upon period of time. Judges also review and approve fee vouchers and payment for indigent representation, as well as ancillary services such as investigators based on an approved fee schedule.

There are a number of improvements to the Harris County attorney appointment system that can be realized through the successful implementation of a MAC program. In considering the American Bar Association's Ten Principles of a Public Defense Delivery System, a Harris County MAC program could immediately address several of these principles, including; (1) Defense function is independent of the judiciary, (5) Defense counsel's workload is controlled, (6) Defense counsel's ability, training, and expertise match case complexity, (7) the same attorney represents the client until the case is complete (8), Parity exists between defense and prosecution with regard to resources, and (10) defense counsel is supervised and reviewed for quality and efficiency.

d. Objectives

Appointment of counsel to qualified defendants will be administered by the Office of Managed Assigned Counsel, independently of the judiciary in accordance with the first of ABA's Ten Principles of a Public Defense Delivery System. Specific objectives are as follows:

1. Establish an agreement of organizational roles between the Harris County MAC program, the Harris County Public Defender's Office, the Houston Bar Association, and the Harris County Criminal Lawyers Association

2. Strong leadership and excellent communication will be important themes of the MAC program; this will include a MAC program director who has experienced in indigent defense systems.

3. The MAC program will operate with a clear mission and vision that is adopted by employees of the Office of Managed Assigned Counsel, and articulated to the Harris County criminal justice community as well as the clients the MAC program serves.

4. Establish a system to monitor and evaluate attorney caseloads, based on criteria outlined in Chapter 2 of TIDC's Managed Assigned Counsel Programs in Operation guide. This will be accomplished following the hiring of a MAC program director.

5. Establish a system to monitor and evaluate attorney performance, including evaluation standards, in-court observation by MAC leadership/administrators, annual surveys, motion review, and any other functions as deemed necessary by the MAC governing body. This will be accomplished following the hiring of a MAC program director.

6. Establish a system of in-house training, include Continuing Legal Education training, for appointed attorneys, as well as MAC program staff.

7. Create a system of mentoring for new appointed attorneys, those who have limited relevant experience, or those who otherwise require such assistance. This system will require mentors and mentees meet on a regularly-scheduled basis, that progress be reported to the MAC program Executive Director, and that mentors be compensated for their work in this capacity.

8. Create and clearly communicate a client feedback process, allowing a designated person within the MAC program to receive complaints or other feedback about appointed attorneys. This process will include a system of detailed documentation of this feedback, as well as written procedures for handling complaints.

9. Related to the above objective, create a survey for clients of attorneys appointed through the MAC program in order to track performance and client feedback, as well as a system within the MAC program leadership structure to review this feedback and consider possible improvements.

10. Create a system of feedback about MAC program quality and resources, to be provisioned to attorneys taking appointments through the MAC program, as well as a system within the MAC program leadership structure to review this feedback and consider possible improvements.

11. Create synergy between the MAC and the Harris County Public Defender's Office, which may include things like mentorship and coordination of caseloads and goals.

12. Create a model system for MAC program in a large jurisdiction, as evidenced by a third party justice system evaluation consultant with specialization in indigent defense systems. This will be accomplished during the first year of the MAC program's operation.

e. Activities

If awarded a grant to establish a Managed Assigned Counsel Program, Harris County will create the office in accordance with Tex. Code Crim. Proc. art. 26.047, while striving to achieve ABA's Ten Principles of a Public Defense Delivery System. Below are specific activities that will be conducted:

1. Work with the Harris County Commissioners Court and Budget Management Department to ensure the ability to sustain the MAC after the grant period has ended.

2. Assemble a committee to develop a job description for a MAC Director, to review candidates, and to make a recommendation to Commissioners Court. Advertise the posting, accept applications, review applications, interview candidates, and hire a MAC Director.

3. Identify key stakeholders and participants in order to establish an oversight committee to review MAC program history and existing implementation/use cases. This committee would determine a MAC program governance structure, quorum and voting rules, and the establishment of a clear set of goals, milestones, and a timeline for project implementation.

4. Work with local stakeholders and TIDC to develop a model and proposed budget to begin the implementation process.

5. Establish a government agency, the Office of Managed Assigned Counsel, which will consist of an advisory committee, a governing board, and staff as determined by an Executive Director of the Office of Managed Assigned Counsel.

6. Once an Executive Director is chosen, recruit staff members including social workers, investigative personnel, immigration specialists, technology professionals, expert/professional, and administrative staff to support the Office of Managed Assigned Counsel as well as appointed attorneys representing clients through the Managed Assigned Counsel program.

7. Engage in a strategic planning and visioning process in order to build an ideological foundation on which the MAC program can grow into an institution of indigent defense resources in Harris County.

8. Establish Board of Directors or refine oversight committee - including both voting membership and functions (such as financial responsibilities and disclosures, hiring and firing of director, budget approval, review committee recommendations, oversight committee meetings, etc.). Voting members can include members of the public. Non-voting members can include attorneys currently taking appointments.

9. Develop and implement an attorney recruitment system to include exam/testing procedures and management of the Harris County appointed attorney list.

10. Transition appointments from the current system of term-based assignments, to a system of individual case assignments.

11. Design and implement guidelines for caseload limits, as well as a system to systematically monitor attorney caseloads.

12. The MAC will coordinate with the Chief of the Harris County Public Defender's Office (PDO) to ensure that the PDO receives an appropriate number and types of cases, subject to Code of Criminal Procedure 26.044(j).

13. Develop systems of two-way communication and supervision through the Office of Managed Assigned Counsel, for use by (1) clients of appointed attorneys to report issues to the Office, (2) for appointed attorneys regarding matters in need of managerial attention, and (3) for MAC organization leadership and the MAC Advisory Committee or governing board.

14. Create and implement systems of mentoring and professional casework services (immigration expertise, investigators, interpreters, social workers, administrative staff, etc.) for shared use by appointed counsel.

15. Create and implement systems of holistic defense

f. Evaluation

The MAC program will be reviewed and evaluated based on the delivery of timely indigent defense, the quality of indigent defense, the delivery of essential services, management of caseloads, case outcomes, and management of costs.
Beyond these early phases, the evaluation of the functionality of the office, as well as the quality of representation for clients represented by the office, will include the use of an independent third party consultation service in the field of indigent defense. The specific service and the goals it will measure, will be identified by MAC leadership (governing body and director).
Some or all of the following performance metrics will be data priorities:

- Time from appointment to first contact with defendant - will measure the time from receipt of the order of assignment to the first contact with defendant
- The number of meetings with defendant
- Days from arrest to release
- Days until disposition - broken down by incarcerated compared to bonded defendants;
- Disposition type - with specific type of disposition
- Type of conviction
- Sentence imposed
- Use of experts
- Amount of money spent on experts
- Types of experts hired
- Amount of money spent on mitigation
- Use of investigators
- Amount of money spent on investigation of cases
- Survey of Judges - to address overall impressions of quality of indigent defense services and attorney performance
- Survey of Users - to gauge overall satisfaction with representation through the MAC
- Type of Bonds - broken down by case type and bond type
- Caseload review - the number of active cases assigned to attorneys
- Cases disposed
- Average caseload summary
- Individual attorney caseload

- Average cost per case
- Total number of cases assigned though the MAC

All of the above are to be broken down by attorney performance when possible. All of the above are to include socio-economic status of defendant when possible. These reports will be done monthly.
The holistic defense components of the MAC program will be reviewed and evaluated for effectiveness.
With respect to the duties of the Oversight Committee and the Director, our initial thoughts are as follows:
The Director has the responsibility to provide reports to the oversight committee regarding the following:

- All MAC program policies and procedures
- The date job descriptions are completed
- The date each staff position is filled
- The date each employee is added
- The date software is functional
- The date MAC representation commences
- The date the first case is received
- Analysis of cost and budget, including periodic reevaluation of budget needs

Along with quality representation and holistic defense, cost controls will be a priority of the office. Attorney activity will be quantifiable, and cost controls may take the form of reducing jail population, increasing efficiency, institutionalization, decreased administrative costs, and budget predictability.

Persistent evaluation of caseload performance will occur through the designation of key performance indicators as identified by the MAC program director. Supporting data for these KPIs may be provided by the Harris County Office of Court Management.

g. Future Funding

Harris County is fully committed to providing the highest quality indigent defense consistent with the efficient use of a managed assign counsel program. The County anticipates re-applying for the grant every year for the four years that grant funding is available. The first year funding request will include the start-up costs of the program, so subsequent years' funding would be significantly higher. After the expiration of the grant period, the MAC Office will request funding from the Harris County Commissioners Court. It is anticipated that funding for the office would be approved by the Commissioners Court, provided that it is established that the office can be run in cost-efficient manner while maintaining quality representation for indigent defendants. This will be determined by criteria outlined in the Evaluation section of this application.

h. Budget Narrative and Budget Form

Executive Personnel

Appointment of counsel to qualified indigent defendants will be administered by a County department (Office of Managed Assigned Counsel (MAC)) independent of the judiciary. Appointments will transition away from term assignments to individual case assignments. Attorney caseloads will be monitored by the MAC. The MAC will provide administration of the appointment system and payment of fees for appointed counsel. Additionally, the MAC will provide mentoring, training, professional services (investigators, immigration specialists, interpreters, social workers) to appointed counsel. At the discretion of the Director, executive staffing may also include an Administrative Assistant, Technical Support Manager, and Financial Analyst.

Misdemeanor Division Chief

A Misdemeanor Division Chief will be responsible for coordination of assignments, management of contracts, and general management assistance to the MAC Director. The Misdemeanor Division Chief will be a leadership role, tasked with communicating a unifying vision for the misdemeanor division of the MAC program.

Managing Attorneys

This proposal and budget anticipates that attorneys and other resources necessary for quality indigent defense will continue to be engaged by appointment and compensated as they currently are, only under assignment by Managing Attorneys. Managing Attorneys will be primary liaisons between the MAC and individual courts. Managing Attorneys will be responsible for intake assessment and appropriate assignment of attorneys to cases, review of financial claims, monitoring adherence to time standards for case processing, and assistance with problem resolution in discovery or litigation.

Between 140 and 160 attorneys are typically certified to accept appointments for misdemeanor indigent defendants in the County Criminal Courts. This number fluctuates in relation to qualification testing that is administered three times per year. This number does not include attorneys working in the Public Defender's Office taking cases requiring Mental Health expertise in the misdemeanor courts. 8 Managing attorneys could provide a ratio of one attorney per approximately 20 appointed attorneys handling indigent defense.

Currently, the average number of indigent defendants on County Criminal Court dockets is 8,573, which have a total of 10,107 active cases pending. Eight (8) Managing Attorneys would each provide management oversight for 1,072 defendants at any given time, or 1,263 cases annually.

In State Fiscal Year 2018, appointed attorneys in Harris County disposed of approximately 24,465 cases for indigent defendants. Based on TIDC's Guidelines for Indigent Defense Caseloads, the recommended caseload for Class B misdemeanors is 236 cases, and Class A misdemeanors is 216 cases. Based on a weighted average of Harris County's misdemeanor caseload distribution, a maximum allowable caseload of 224 misdemeanor cases per attorney would allow the current pool of appointed attorneys to handle up to 35,840 cases annually.

Immigration Attorney

The Immigration Attorney will be a liaison between the Office of Managed Assigned Counsel, and attorneys appointed through the Harris County MAC system. This person will have extensive experience with immigration law, and will serve as a resource, lending this expertise to attorneys managing their caseload through the MAC program. In addition to making this expertise available, the Immigration Attorney will provide training guidance as well as Continuing Legal Education (CLE) instruction to attorneys taking appointments. They will also keep attorneys apprised of legislative changes and emerging issues in the field of immigration law.

Holistic Defense Supervisor

This proposal and budget anticipates that investigators, social workers, mitigation specialists, expert witnesses, immigration attorneys, and other resources necessary for quality indigent defense will continue to be engaged and compensated as contract service providers as they currently are, only under supervision and management of a Holistic Defense Supervisor.

The Holistic Defense Supervisor will be responsible for training and supervision of holistic and mentoring programs and assist attorneys in the use of a team defense. This could include training attorneys in proper use of social workers, investigators, and immigration resources, both individually and in formal training.

The Holistic Defense Supervisor will evaluate and oversee the work of investigators, social workers, and an immigration attorney; manage processes for investigations, social workers, forensic and other experts, and an immigration attorney; establish guidelines for quality defense services; review the delivery of defense service to ensure services meet established quality guidelines, best practices, and needs of the attorneys and defendants; and provide legal guidance regarding applicable legal and ethical standards of defense services. The Holistic Defense Supervisor will also engage with the community to promote holistic defense methods and will study, monitor, and report on the effectiveness of holistic defense services.

Social Worker(s)

Connecting clients to available social and community services is a crucial component of a holistic defense system. A team of Social Workers will serve as a comprehensive resource guide for the Office of Managed Assigned Counsel and attorneys taking appointments through the Harris County MAC system. Social workers will help attorneys identify community services, housing, and other available resources in order to help reduce the collateral consequences of the criminal case lifecycle. This team will be a valuable resource for the office and the clients it serves, by maintaining a persistent awareness of available community resources, as well as maintaining routine communication with key contacts in the community of social work resources in Harris County.

Chief Investigator

This proposal and budget anticipates that investigators and other resources necessary for quality indigent defense will continue to be engaged and compensated as contract service providers as they currently are, only under supervision and management of a Chief Investigator. The Chief Investigator will assist the Holistic Defense Supervisor in ensuring that appropriate resources are available for investigation and case preparation. The Chief Investigator can provide direct investigatory services to attorneys where appropriate.

Technical Support Manager

Primary support for the office automation and desktop services will be the responsibility of Harris County Universal Services. The MAC Technical Support Manager will serve as the first line of technology troubleshooting, and also as the technical liaison to Universal Services for assistance with supporting the office. This person will have both strong communication skills and desktop support/troubleshooting skills, using both as a first-line of support for the MAC program's technical needs. This person will also be the MAC program's technical representative to other Harris County departments including Universal Services, as well as various technical committees in the Harris County justice community.

Harris County has developed an online system for Attorney claims processing, beginning with a TIDC discretionary grant in 2011. The system allows attorneys using a computer or smartphone to view information about the cases to which they are assigned, submit claims and supporting documentation for claims, and track the status of claims through the approval and payment process. The system is integrated with the courts' case management system, the County Auditor's system, and the Clerk's document system for electronic signatures and eFiling of forms. Anticipating that the MAC Director would recognize the value of this existing systems integration, we are requesting funds to adapt the systems to enable workflow automation for the MAC Office.

Financial Analyst: The MAC program Financial Analyst will oversee the funding and cost structure of the entirety of the Office of Managed Assigned Counsel. This will include budgeting, accounting, tracking of expenditures, overall budget analysis, and detailed financial reporting for use within the MAC program, the MAC oversight committee, and representatives of the Harris County budget process. The Financial

Analyst will also assist with preparation of financial information for continuation of TIDC grants, as well as research and engagement in other grant funding opportunities for indigent defense and holistic defense.

Startup Costs: Startup/non-reoccurring costs for necessary for the creation of the Office of Managed Assigned Counsel include office furniture, telephones, computer equipment (desktop/laptop computers and printers), and copiers.

Contract Services: Contract Services requested for this program are primarily allocated to an estimate for software development for a Case Management System (CMS) platform. The MAC program director may determine which CMS platform is best suited for the office, or consult with Harris County Purchasing and/or the Harris County Public Defender's Office in order to assist with this determination. Contract Services may also include consultation with a third-party organization to analyze the MAC program and ensure it is meeting the stated goals of the office and its oversight board.

Harris County Amendments to Original Grant Application Follows

TO: Texas Indigent Defense Commission, Grant Administration

CC: Geoff Burkhart
CC: Edwin Colefax
CC: Scott Ehlers

August 21, 2019

Re: Supplementary materials for Harris County Indigent Defense Improvement Grant application

---

On May 10, 2019, Harris County submitted a FY2020 Indigent Defense Improvement Grant application, seeking funding support for the creation of a Managed Assigned Counsel program. Contingent upon this grant, the creation of a MAC program in Harris County would open the door to a number of positive changes to the indigent defense system in Harris County.

Throughout the application process, TIDC has provided valuable guidance to Harris County, including a report distributed on July 11, 2019 titled *Recommendations for a Unified Harris County Managed Assigned Counsel Program.* Per this guidance, the following information is intended to supplement the Harris County application for the purpose of assisting the grant review process. In addition to this document, a modified budget narrative is also attached.

Table of Contents

Staffing 2
- Executive Director Qualifications 2
- Executive Director Role 2
- Executive Director Duties 2
- Administrative Assistants 3
- Total Number of Staff 3

Oversight Committee/Governing Board 4
Indigence Determination 4
Location of Department 4
Case Management System 5
Training and Professional Memberships 5

Staffing

The original application did not provide details associated with the Executive Director outlined in the Budget Summary. The following is a proposed description of the qualifications, role, and duties of the Executive Director for this program:

Executive Director Qualifications

Must be a member of the State Bar of Texas in good standing.
Must have at least ten years of experience trying cases in the area of criminal law including misdemeanor, felony and/or federal cases. A significant amount of his/her practice must be in the area of criminal defense.
Must have experience in drafting trial motions and memorandums of law.
Must have managerial, budget and administrative experience. (can include running his/her own practice)
Must have some experience in the hiring of experts and investigators.
Must have at least some knowledge and experience in forensics.
Must have taken court appointments in criminal law matters.

Executive Director Role

Responsible for maintaining the integrity of the Managed Assigned Counsel Program.
Responsible for developing and enforcing the policies and procedures of the Managed Assigned Counsel Program, including the creation of a personnel procedures guideline.
Responsible for the management of the participating defense attorneys.
Develops and maintains resources to better serve the program.
Actively monitors the overall caseload and performance of Managed Assigned Counsel attorneys.
Develops continuing legal educational opportunities for the program.
Assists attorneys in maintaining the integrity of the attorney/client relationship.
Manages the day to day operations of the Managed Assigned Counsel Program.
Develops and maintains the budget of the Managed Assigned Counsel Program.
Liaises with the judiciary, budget management department, and other justice stakeholders regarding indigent defense.

Executive Director Duties

Oversees the private appointed legal representation of indigent defendants in Harris County
Works closely with elected officials and policy-making entities in accomplishing the objective of the Office of Managed Assigned Counsel.
Provides guidance, mentoring and legal advice to assigned counsel; manages administrative functions of the office including budgeting, human resources, purchasing and resource planning. The Director will have fiscal and administrative duties in the management of the Office of Managed Assigned Counsel.
Will prepare a written plan of operation as required by Texas Code of Criminal Procedure Article 26.047(c), and direct the administrative and operation functions of the office consistent with the stated goals of the Office of Managed Assigned Counsel.
Oversees staff, including hiring, training, performance evaluations, dissemination of information regarding ethics issues such as confidentiality, privilege, and waivers, and the administration of disciplinary actions and dismissals.
Prepares and Presents an annual report on the operation of the office to Harris County Commissioners. The Director also prepares and presents quarterly operational and monthly financial reports on the expenditures of the indigent resources to the Advisory Committee.

Along with reporting, the Director establishes policies and procedures relating to the administration of indigent defense in conjunction with the Advisory Committee and develops recommendations for the committee.
Maintains positive relationships with other components of the criminal justice system and indigent defense organizations.
Facilitates the development, training and education of assigned counsel by providing Continuing Legal Education ("CLE") program, implementing a training curriculum consistent with current trial and investigative techniques including ethics related to criminal law, and establishing a mentoring program.
Maintains the following: expert database, witness/officer files, motion and brief banks, legal research file, CLE materials and performance measures for the Office of Managed Assigned Counsel.
Develops the processes for application, acceptance, renewal and removal of assigned counsel.
Responds to inquiries and complaints and investigates such complaints.
Represents the office on various committees and work groups and participate in community outreach at various governmental, judicial and community functions.
Researches and reviews legislative updates and legal opinions, and adapts existing policies and procedures to address legislative changes.

Administrative Assistants

There are two (2) Administrative Assistants included in the Budget Summary. The specific duties of these administrative assistants will be the discretion of the Executive Director. One Administrative Assistant may serve as an executive assistant to the Director of the Office of Managed Assigned Counsel. Generally, the Administrative Assistants will assume responsibility for office-critical functions such as purchasing and procurement, payroll and other human resource functions, phone and calendar management, office supply management, organization of meetings and conference calls, dissemination of various reports, and interfacing with the public as well as contacts within the county for general purposes related to the Office.

Total Number of Staff

In the original grant application, the budget request included a total of 23 staff members, including (8) supervising attorneys. The creation of this office will focus on misdemeanor appointments, therefore we are requesting a reduction in the number of supervising attorneys to four (4), which reduces the total number of FTEs to 19.

Oversight Committee/Governing Board

Governance of the Office of Managed Assigned Counsel can be simplified to include a governing board, the architecture, responsibilities, and subcommittees of which are currently under consideration. This board will be established in a manner that upholds independence from undue judicial or political influence. Board responsibilities will include, at a minimum, recommending an Executive Director, providing policy guidance to the Executive Director, and evaluating the efficacy of the office.
Membership on this board may include:
Voting Membership
2 Members of the defense bar
1 President of the Harris County Criminal Lawyer's Association or designee
2 Members of the community
2 or more additional members (TBD)
Non-Voting Membership

1 Judge or retired judge
1 Member of the Harris County Public Defender's Office
2 Members of Harris County Commissioners Court
1 Harris County Office of Court Management, Court Manager or designee Possible Additional Membership
Retired Judge
Member – Houston Lawyers Association
Member – Mexican American Bar Association
Budget Department Designee
Indigence Determination
The responsibility of determining indigency will remain with the Courts, in accordance with Harris County Criminal Courts at Law, Local Rule 24: Alternative Plan for the Appointment of Counsel to Indigent Defendants Under the Fair Defense Act, 24.4: Determining Indigence.

Location of Department
The environment in which the Office of Managed Assigned Counsel will operate is located centrally on the north side of downtown Houston. At the time of this grant application, much of this environment remains displaced from damages sustained during Hurricane Harvey. This includes the courts, administrative offices supporting the courts, and the offices of other justice system stakeholders, many of which currently operate in temporary and shared facilities. While Harris County has yet to determine a specific location for this office, repairs are underway at key facilities in the downtown courthouse complex, including the 20-story Harris County Criminal Justice Center.
The Executive Director will work with Harris County Commissioners Court and the Harris County Engineer to determine the most appropriate office location. Such a decision would consider independence from the judiciary a high priority. This independence may be accomplished through physical means (*i.e.* a building separate from the courts) or through established electronic systems (access control and private elevators).

Case Management System

In the original grant application, the budget request included the line item **Software Development – Case Management** in the amount of $180,000. The intent of this item is to ensure the case management platform that is either built or purchased, meets the operational needs of the office as established by the Executive Director, and meets the reporting needs of Harris County stakeholders and those of the

Texas Indigent Defense Commission. Implementation of this system may require custom programming or integration with existing Harris County systems, which may exceed the scope of an off-the-shelf product.

This system needs to incorporate mobile-friendly and remote-entry/viewing capabilities that are empowering to the end-user, as opposed to a burden. Usability on the front-end will be crucial not only for attorneys using the system, but also for reliable reporting and downstream data analysis.

The research and selection process for this platform will be carried out by the Executive Director with the assistance of Harris County justice system stakeholders. The $180,000 budget request is intended to fund the creation of, and maintenance for this system through the entirety of the grant.

Training and Professional Memberships

In the original grant application, the budget request included the line item **Training and Professional Memberships**. Details relating to provisions for training office personnel and appointed attorneys will fall within the scope Executive Director. Training will be a core component of this office. As is stated in the application's executive summary, the Office of Managed Assigned Counsel will exist as a central beacon of leadership, guidance, mentoring, training, and continuing education.

FY 2020 Harris County Discretionary Grant Application
Managed Assigned Counsel Budget Narrative

Table of Contents

Executive Director (1) 2
Administrative Assistants (2) 2
Misdemeanor Division Chief (1) 2
Managing Attorneys (4) 2
Immigration Attorney (1) 3
Holistic Defense Supervisor (1) 3
Social Worker (6) 3
Chief Investigator (1) 3
Technical Support Manager (1) 4
Financial Analyst (1) 4
Capital/Equipment (Startup Costs) 4
Contract Services 4
Budget Summary 5

Executive Director (1)

Upon securing funding for the Office of Managed Assigned Counsel, Harris County will engage in the search for an Executive Director who will report to Commissioners Court. This person will be responsible for recruiting staff members detailed below in this Budget Narrative. A set specific of qualifications, roles, and duties of the Executive Director are outlined in the supplementary Memorandum.
This individual will have a strong background in indigent and holistic defense, demonstrate extraordinary leadership skills, and possess the ability to forge and maintain partnerships in the communities that will benefit the organization's mission, both within and outside of government. Independence from the judiciary is of paramount importance to the creation of this office, and a Board of Directors will be established to provide guidance for the Executive Director accordingly. Additionally, the County Criminal Courts at Law, the Harris County Office of Court Management, and many other Harris County representatives stand ready to help ensure the Executive Director has a successful start.

Administrative Assistants (2)

The specific duties of these administrative assistants will be determined by the Executive Director. One Administrative Assistant may serve as an executive assistant to the Director of the Office of Managed Assigned Counsel. Generally, the Administrative Assistants will assume responsibility for office-critical functions such as purchasing and procurement, payroll and other human resource functions, phone and calendar management, office supply management, organization of meetings and conference calls, dissemination of various information and reports, and interfacing with the public as well as contacts within the county for general purposes related to the Office.

Misdemeanor Division Chief (1)

A Misdemeanor Division Chief will be responsible for coordination of assignments, management of contracts, and general management assistance to the MAC Director. The Misdemeanor Division Chief will be a leadership role, tasked with communicating a unifying vision for the misdemeanor division of the MAC program.

Managing Attorneys (4)

This proposal and budget anticipates that attorneys and other resources necessary for quality indigent defense will continue to be engaged by appointment and compensated as they currently are, only under assignment by Managing Attorneys. Managing Attorneys will be primary liaisons between the MAC and individual courts. Managing Attorneys will be responsible for intake assessment and appropriate assignment of attorneys to cases, review of financial claims, monitoring adherence to time standards for case processing, and assistance with problem resolution in discovery or litigation.
Between 140 and 160 attorneys are typically certified to accept appointments for misdemeanor indigent defendants in the County Criminal Courts. This number fluctuates in relation to qualification testing that is administered three times per year. This number does not include attorneys working in the Public Defender's Office taking cases requiring Mental Health expertise in the misdemeanor courts. 4 Managing attorneys could provide a ratio of one attorney per approximately 40 appointed attorneys handling indigent defense.

Currently, the average number of indigent defendants on County Criminal Court dockets is 8,573, which have a total of 10,107 active cases pending. Four (4) Managing Attorneys would each provide management oversight for an annual 2,144 defendants, or 2,562 cases.

In State Fiscal Year 2018, appointed attorneys in Harris County disposed of approximately 24,465 cases for indigent defendants. Based on TIDC's Guidelines for Indigent Defense Caseloads, the recommended caseload for Class B misdemeanors is 236 cases, and Class A misdemeanors is 216 cases. Based on a weighted average of Harris County's misdemeanor caseload distribution, a maximum allowable caseload of 224 misdemeanor cases per attorney would allow the current pool of appointed attorneys to handle up to 35,840 cases annually.

Immigration Attorney (1)

The Immigration Attorney will be a liaison between the Office of Managed Assigned Counsel, and attorneys appointed through the Harris County MAC system. This person will have extensive experience with immigration law, and will serve as a resource, lending this expertise to attorneys managing their caseload through the MAC program. In addition to making this expertise available, the Immigration Attorney will provide training guidance as well as Continuing Legal Education (CLE) instruction to attorneys taking appointments. They will also keep attorneys apprised of legislative changes and emerging issues in the field of immigration law.

Holistic Defense Supervisor (1)

This proposal and budget anticipates that investigators, social workers, mitigation specialists, expert witnesses, immigration attorneys, and other resources necessary for quality indigent defense will continue to be engaged and compensated as contract service providers as they currently are, only under supervision and management of a Holistic Defense Supervisor.

The Holistic Defense Supervisor will be responsible for training and supervision of holistic and mentoring programs and assist attorneys in the use of a team defense. This could include training attorneys in proper use of social workers, investigators, and immigration resources, both individually and in formal trainings. The Holistic Defense Supervisor will evaluate and oversee the work of investigators, social workers, and an immigration attorney; manage processes for investigations, social workers, forensic and other experts, and an immigration attorney; establish guidelines for quality defense services; review the delivery of defense service to ensure services meet established quality guidelines, best practices, and needs of the attorneys and defendants; and provide legal guidance regarding applicable legal and ethical standards of defense services. The Holistic Defense Supervisor will also engage with the community to promote holistic defense methods and will study, monitor, and report on the effectiveness of holistic defense services.

Social Worker (6)

Connecting clients to available social and community services is a crucial component of a holistic defense system. A team of Social Workers will serve as a comprehensive resource guide for the Office of Managed Assigned Counsel and attorneys taking appointments through the Harris County MAC system. Social workers will help attorneys identify community services, housing, and other available resources in order to help reduce the collateral consequences of the criminal case lifecycle. This team will be a valuable resource for the office and the clients it serves, by maintaining a persistent awareness of

available community resources, as well as maintaining routine communication with key contacts in the community of social work resources in Harris County.

Chief Investigator (1)

This proposal and budget anticipates that investigators and other resources necessary for quality indigent defense will continue to be engaged and compensated as contract service providers as they currently are, only under supervision and management of a Chief Investigator. The Chief Investigator will assist the Holistic Defense Supervisor in ensuring that appropriate resources are available for investigation and case preparation. The Chief Investigator can provide direct investigatory services to attorneys where appropriate.

Technical Support Manager (1)

Primary support for the office automation and desktop services will be the responsibility of Harris County Universal Services. The MAC Technical Support Manager will serve as the first line of technology troubleshooting, and also as the technical liaison to Universal Services for assistance with supporting the office. This person will have both strong communication skills and desktop support/troubleshooting skills, using both as a first-line of support for the MAC program's technical needs. This person will also be the MAC program's technical representative to other Harris County departments including Universal Services, as well as various technical committees in the Harris County justice community.

Harris County has developed an online system for Attorney claims processing, beginning with a TIDC discretionary grant in 2011. The system allows attorneys using a computer or smartphone to view information about the cases to which they are assigned, submit claims and supporting documentation for claims, and track the status of claims through the approval and payment process. The system is integrated with the courts' case management system, the County Auditor's system, and the Clerk's document system for electronic signatures and eFiling of forms. Anticipating that the MAC Director would recognize the value of this existing system integration, we are requesting funds to adapt the system to enable workflow automation for the MAC Office.

Financial Analyst (1)

The MAC program Financial Analyst will oversee the funding and cost structure of the entirety of the Office of Managed Assigned Counsel. This will include budgeting, accounting, tracking of expenditures, overall budget analysis, and detailed financial reporting for use within the MAC program, the MAC oversight committee, and representatives of the Harris County budget process. The Financial Analyst will also assist with preparation of financial information for continuation of TIDC grants, as well as research and engagement in other grant funding opportunities for indigent defense and holistic defense.

Capital/Equipment (Startup Costs)

Startup/non-reoccurring costs for necessary for the creation of the Office of Managed Assigned Counsel include office furniture, telephones, computer equipment (desktop/laptop computers and printers), and copiers.

Contract Services

Contract Services requested for this program are primarily allocated to an estimate for software development for a Case Management System (CMS) platform. The MAC program director may determine which CMS platform is best suited for the office, or consult with Harris County Purchasing and/or the Harris County Public Defender's Office in order to assist with this determination. Contract Services may also include consultation with a third-party organization to analyze the MAC program and ensure it is meeting the stated goals of the office and its oversight board.

Budget Summary

		Num	***Rate***	***Extended***
Executive				
	Personnel			
	Director of the Managed Assigned Counsel Program	1	$160,000	$160,000
	Administrative Assistant	2	$60,000	$120,000
	Technical Support Manager	1	$70,000	$70,000
	Financial Analyst	1	$70,000	$70,000
	Executive Personnel Subtotal			**$420,000**
	Fringe and Benefits			$142,800
	Executive Personnel Total			**$562,800**
Misdemeanor Division				
	Misdemeanor Division Chief	1	$130,000	$130,000
	Supervising Attorneys - Misdemeanor Division	4	$110,000	$440,000
	Holistic Defense Supervisor	1	$130,000	$130,000
	Immigration Attorney	1	$90,000	$90,000
	Chief Investigator	1	$90,000	$90,000
	Social Worker	6	$85,000	$510,000
	Misdemeanor Personnel Subtotal			**$1,390,000**
	Fringe and Benefits			$472,600
	Misdemeanor Personnel Total			**$1,862,600**
Operating Expenses				
	Training and Professional Memberships			$20,500
	Travel/training for professional development and memberships, including bar dues.			
	Professional Services			$5,000
	Office Supplies/Misc.			$11,100
Capital/Equipment				$74,069
	Funds for one-time office startup costs: Furniture, Telephones, and Computer/Office equipment			
	2% Indirect Cost			$0
	Operating Expenses Subtotal			**$110,669**
Software Development - Case Management				$180,000
	Number of FTEs / Salary	19		$1,810,000
	Fringe and Benefits			$615,400
	TOTAL			**$2,716,069**

Timeline for Reporting and Fund Distribution

Reports will be submitted on-line at tidc.tamu.edu

Reporting Period	Report Due	Report Due Date	Fund Distribution Date
October 2019 through December 2019	Expenditure Report Progress Report	January 15, 2020	February 2020
January 2020 through March 2020	Expenditure Report Progress Report	April 15, 2020	May 2020
April 2020 through June 2020	Expenditure Report Progress Report	July 15, 2020	August 2020
July 2020 through September 2020	Expenditure Report Progress Report	October 15, 2020	November 2020

ee

FY2020 Grant Modification Requests

1. Harris County Misdemeanor Managed Assigned Counsel Program (#212-20-D06)

    a. The Commission awarded Harris County an FY2020 grant to implement a Misdemeanor Managed Assigned Counsel Program. The program has had a delayed start. Request modification of the original grant term to extend through July 2021.

    b. The County has had significant challenges recruiting a well-qualified director for the program and requests a budget modification to reallocate $8000 to contract services to allow the county to contract with the National Association for Public Defense for leadership recruitment. The modification does not affect the award amount.

2. El Paso County 48 Hour Bond Review Program (#212-20-D09)

    a. The program had a delayed start and only requires 6 months funding. The program has also reduced its personnel budget based on alternative staffing model. Reduce FY2020 award from $353,736 to $179,451.

3. Williamson County Transformational Justice Program (#212-29-D08)

    a. Adjust FY2020 grant to reflect delayed start of program and extension of FY19 grant term, from $115,773 to $75,182.

4. Dallas County Transformational Justice Program (#212-29-D06)

    a. Adjust FY2020 grant to reflect delayed start of program and extension of FY19 grant term, from $121,564 to $80,042.

6. Office of Managed Assigned Counsel Quarterly Summary, October 2020-March 2021 (April 15th, 2021)

OFFICE OF MANAGED ASSIGNED COUNSEL

HARRIS COUNTY, TEXAS

April 15th, 2021

To: Texas Indigent Defense Commission "TIDC", 209 West 14th Street, Room 202, Austin, Texas 78701

Re: Office of Managed Assigned Counsel Quarterly Summary

Period: October 2020-March 2021

Executive Summary

- **October 13th, 2020:** Kenneth Hardin was appointed by the Commissioners Court on a unanimous vote to be the Executive Director of Harris County's *first* Office of Managed Assigned Counsel ("MAC Office")

- **November 21st, 2020:** Kenneth Hardin officially began serving his appointment as Executive Director.

- **November 23rd, 2020:** The MAC Office was officially established as a Harris County Department.

- **November 2020—January 2021:** During this time period, there were several projects undertaken/completed by Director Hardin.

  - Director Hardin appeared on FOX 26 News Channel and discussed the MAC Office with reporter Isiah Carey.
  - Director Hardin appeared on the talk-show "Reasonable Doubt" and discussed the MAC Office—a weekly show led by Harris County defense attorneys (on the misdemeanor appointment list).
  - Director Hardin toured multiple venues with FPM representatives Jake Frazelle and Rosanette Bosco. Director Hardin was able to secure 1310 Prairie St (16th floor) as the permanent long-term office space for the MAC Office. In the interim, Director Hardin

was also able to secure temporary office space at 1115 Congress St (7th floor), courtesy of the Justice Administration Department ("JAD").

- Director Hardin completed the first draft of the MAC's organizational structure.
- Director Hardin completed "phase one" of the office's website: https://mac.harriscountytx.gov/.
- Director Hardin completed the design for the MAC's logo.
- Director Hardin established a parking agreement with Joshua Pascua, of Budget Management, for five parking spaces
- Director Hardin completed 18 grant revisions in regards to personnel titles, job descriptions and salary allotment with no change to the overall budget amount
- Director Hardin established a hiring committee for the Program and Office Administrator positions.
- Director Hardin offered the position of Program Administrator to Shannon Evans and Office Administrator, both of whom accepted.
- Three weeks after accepting the offer, Shannon Evans withdrew her acceptance due to an unexpected promotion at her current place of employment

- **January 5th, 2021:** The 18 grant revisions in regards to personnel titles, job descriptions and salary allotment with no change to the overall budget amount were unanimously approved by the Commissioner's Court

- **January 6th, 2021:** Director Hardin presented during budget hearings for the following county funded position (after multiple meetings with the Commissioner Ellis, TIDC, and the Harris County Budget Department): the Community Engagement & Recruiting Specialist position

- **January 26th, 2021:** Leading up to this date, there were several projects undertaken/completed by Director Hardin.

  - Director Hardin submitted an additional TIDC grant modification to the Commissioner's Court, which was the realignment of salary and fringe benefit ratios within the current grant and match budget allocations to reflect actual benefit rates of 23.68% plus $14,900. The aforementioned request was approved by the Commissioner's Court after a unanimous vote.

  - Director Hardin submitted a request to the Commissioner's Court to approve the following positions: Deputy Director (1), Chief Investigator (1), Social Worker Supervisor (1), and Systems Technician (1). The aforementioned request was approved by the Commissioner's Court after a unanimous vote.

- **February 2021:** During this time period, there were several projects undertaken/completed by Director Hardin.
  - Director Hardin completed hiring interviews for the Misdemeanor Division Chief & Training Director position. Carrie Ellis was offered the position and accepted.

- Hattie Miranda officially began as the Office Administrator on February 1st, 2021.
- The Commissioner's Court officially approved the budget request by Director Hardin for the Community Engagement & Recruiting Specialist position on February 9th, 2021.
- Director Hardin completed the first draft of the MAC personnel manual.
- Director Hardin and Ms. Miranda completed the first draft of the office layout for the 1310 Prairie St. location.
- Director Hardin and Ms. Miranda completed an updated budget based upon the grant reflecting actual costs (as opposed to estimated costs).
- Director Hardin presented an overall of the MAC Office to the county court judges on February 7th, 2021
- Director Hardin initiated a project for juvenile inclusion into the MAC for year-one.

❖ **March 2021:** During this time period, there were several projects undertaken/completed by Director Hardin.

- The Commissioner's Court officially approved the budget request by Director Hardin for the Juvenile Chief & Training Director position on March 9th, 2021 (after several meetings with TIDC leading up to this date)
- Carrie Ellis officially began her position as the Misdemeanor Division Chief & Training Director on March 15th, 2021.
- Director Hardin creating hiring committees and held interviews for the Chief Investigator, Deputy Director, Systems Technician, Program Administrator, and Social Worker Supervisor positions.
- Nick Hughes was offered the Deputy Director position and accepted.
- Rei Umali was offered the Systems Technician position and accepted. The job title was subsequently revised to IT Systems Administrator.
- Karen Ellis was offered the Program Administrator position and accepted.
- Director Hardin completed the first draft of procedural guidelines for the Board of Directors.
- Director Hardin and Ms. Miranda submitted orders for equipment and furniture (after multiple meetings with vendors).

7. Additional Data

Office of Court Administration Data

Table 67: Cases Filed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Growth in Filings	**15,755**	**16,141**	**16,740**	**20,758**	**22,129**	**20,519**
DWI 1st	8,031	8,401	9,069	10,707	11,932	10,452
DWI 2nd	1,696	1,798	2,003	2,145	2,397	2,095
Fam Vio Assault	4,083	4,073	4,012	5,835	5,704	5,782
Assault	1,945	1,869	1,656	2,071	2,096	2,190
Reduction in Filings	**46,892**	**44,143**	**35,188**	**34,343**	**29,694**	**22,826**
Theft & Theft by Check	9,369	6,300	5,535	5,120	5,820	2,803
Poss. Marijuana	7,698	7,085	2,286	3,311	554	10
Other Drug Offense	700	581	427	324	327	159
Driving While Lic Susp	4,673	4,361	3,502	2,984	1,834	184
All Other Misd	24,452	25,816	23,438	22,604	21,159	19,670
Total Filings	**62,647**	**60,296**	**51,938**	**55,101**	**51,823**	**43,345**

Table 68: Cases Disposed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Growth in Filings	**15,947**	**15,492**	**13,601**	**15,676**	**15,505**	**13,665**
DWI 1st	8,044	7,856	6,999	7,867	7,842	7,376
DWI 2nd	1,632	1,675	1,642	1,672	1,479	1,364
Fam Vio Assault	4,344	4,037	3,452	4,433	4,564	3,725
Assault	1,927	1,924	1,508	1,704	1,620	1,200
Reduction in Filings	**48,087**	**45,012**	**33,814**	**31,760**	**26,435**	**16,184**
Theft & Theft by Check	10,232	7,424	5,503	5,565	4,644	2,675
Poss. Marijuana	8,200	7,240	3,190	2,749	1,692	236
Other Drug Offense	677	580	463	327	286	157
Driving While Lic Susp	4,644	4,338	3,244	2,596	2,268	605
All Other Misd	24,334	25,430	21,414	20,523	17,545	12,511
Total Dispositions	**64,034**	**60,633**	**47,476**	**47,486**	**41,940**	**29,908**

Table 69: Disposition Rate from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Growth in Filings	**1.01**	**0.96**	**0.81**	**0.76**	**0.7**	**0.67**
DWI 1st	1	0.94	0.77	0.73	0.66	0.71
DWI 2nd	0.96	0.93	0.82	0.78	0.62	0.65
Fam Vio Assault	1.06	0.99	0.86	0.76	0.8	0.64
Assault	0.99	1.03	0.91	0.82	0.77	0.55
Reduction in Filings	**1.03**	**1.02**	**0.96**	**0.92**	**0.89**	**0.71**
Theft & Theft by Check	1.09	1.18	0.99	1.09	0.8	0.95
Poss. Marijuana	1.07	1.02	1.40	0.83	3.05	23.60
Other Drug Offense	0.97	1.00	1.08	1.01	0.87	0.99
Driving While Lic Susp	0.99	0.99	0.93	0.87	1.24	3.29
All Other Misd	1	0.99	0.91	0.91	0.83	0.64
Total Filings	**1.02**	**1.01**	**0.91**	**0.86**	**0.82**	**0.69**

Table 70: Number Dismissed from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Growth in Filings	**4,316**	**3,707**	**4,487**	**6,613**	**8,503**	**8,644**
DWI 1st	1,563	1,269	1,569	2,752	3,522	4,375
DWI 2nd	165	127	203	225	394	305
Fam Vio Assault	1,836	1,600	1,939	2,717	3,448	3094
Assault	752	711	776	919	1,139	870
Reduction in Filings	**17684**	**17,156**	**18,134**	**18,563**	**20,030**	**13,349**
Theft & Theft by Check	4,097	3,505	2,870	3,177	3,117	2,106
Poss. Marijuana	3,158	2,445	2,158	1,832	1,543	234
Other Drug Offense	303	317	300	224	240	138
Driving While Lic Susp	1,806	1,892	1,768	1,606	1,956	556
All Other Misd	8,320	8,997	11,038	11,724	13,174	10,315
Total Filings	**22,148**	**20,985**	**22,696**	**25,226**	**28,605**	**22,052**

Disposition from County Court at Law

Table 71: Retained Counsel Dispositions, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2020

Year of Disposition	Acquittal All	Dismissal All	Deferred	Guilty Some, Dism Some	Guilty on All	Total Clients
FY 2016	95	6,673	649	1,110	9,497	18,024
	0.5%	37%	4%	6%	53%	
FY 2017	70	6,675	521	1,259	8,819	17,344
	0.4%	38%	3%	7%	51%	
FY 2018	27	6,729	232	850	6,168	14,006
	0.2%	48%	2%	6%	44%	
FY 2019	37	7,522	143	573	5,202	13,477
	0.3%	56%	1%	4%	39%	
FY 2020	46	9,175	158	583	3,709	13,671
	0.3%	67%	1%	4%	27%	
FY 2021	6	7,096	227	397	2,213	9,939
	0.1%	71%	2%	4%	22%	

Table 72: Appointed Counsel Dispositions from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

Year of Disposition	Acquittal All	Dismissal All	Deferred	Guilty Some, Dism Some	Guilty on All	Total Clients
FY 2016	24	2,800	490	1,610	18,347	23,271
	0.1%	12%	2%	7%	79%	
FY 2017	18	3,363	548	1,870	17,002	22,801
	0.1%	15%	2%	8%	75%	
FY 2018	20	4,592	293	1,446	9,846	16,197
	0.1%	28%	2%	9%	61%	
FY 2019	13	6,016	231	1,970	9,626	17,856
	0.1%	34%	1%	11%	54%	
FY 2020	18	8,984	274	1,282	4,935	15,493
	0.1%	58%	2%	8%	32%	
FY 2021	4	4,964	308	611	2,008	7,895
	0.1%	63%	4%	8%	25%	

Table 73: Public Defender Counsel Dispositions from OCA Report, Harris County Fiscal Year 2016 through Fiscal Year 2020

Year of Disposition	Acquittal All	Dismissal All	Deferred	Guilty Some, Dism Some	Guilty on All	Total Clients
FY 2016	0	370	17	129	1,658	2,174
	0.0%	17%	1%	6%	76%	
FY 2017	3	502	20	161	1,702	2,388
	0.1%	21%	1%	7%	71%	
FY 2018	0	533	14	238	1,075	1,860
	0.0%	29%	1%	13%	58%	
FY 2019	1	569	10	347	860	1,787
	0.1%	32%	1%	19%	48%	
FY 2020	3	957	20	235	498	1,713
	0.2%	56%	1%	14%	29%	
FY 2021	0	779	11	163	200	1,153
	0.0%	68%	1%	14%	17%	

Table 74: Retained Counsel Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Fine Only		Community Supervision		Jail		Total
FY 2016	32	0.3%	3,479	31%	7,715	69%	11,226
FY 2017	17	0.2%	3,308	31%	7,231	69%	10,556
FY 2018	23	0.3%	2,288	32%	4,905	68%	7,216
FY 2019	13	0.2%	1,950	33%	3,942	67%	5,905
FY 2020	1	0.0%	1,097	25%	3,347	75%	4,445
FY 2021	1	0.0%	1,005	35%	1,830	65%	2,836

Table 75: Appointed Counsel Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Fine Only		Community Supervision		Jail		Total
FY 2016	17	0.1%	840	4%	19,555	96%	20,412
FY 2017	5	0.0%	956	5%	18,421	95%	19,382
FY 2018	13	0.1%	674	6%	10,863	94%	11,550
FY 2019	6	0.1%	598	5%	11,204	95%	11,808
FY 2020	1	0.0%	601	9%	5,876	91%	6,478
FY 2021	1	0.0%	616	21%	2,309	79%	2,926

Table 76: HCPD Defendant Punishment Outcomes, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Fine Only		Community Supervision		Jail		Total
FY 2016	1	0.1%	21	1%	1,781	99%	1,803
FY 2017	0	0.0%	24	1%	1,858	99%	1,882
FY 2018	0	0.0%	20	2%	1,305	98%	1,325
FY 2019	0	0.0%	20	2%	1,196	98%	1,216
FY 2020	0	0.0%	27	4%	724	96%	751
FY 2021	1	0.3%	15	4%	358	96%	374

Table 77: Average Settings to Disposition for Retained Counsel, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Total
FY 2016	7.1	6.4	6.4	6.7
FY 2017	7.2	6.3	6.2	6.7
FY 2018	7.6	6.6	6.7	7.1
FY 2019	7.9	6.7	6.8	7.3
FY 2020	8.2	7.4	7.6	7.9
FY 2021	9.5	9.1	9.7	9.4

Table 78: Average Settings to Disposition for Assigned Counsel, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Total
FY 2016	5.9	4.0	2.1	3.1
FY 2017	6.0	4.1	2.2	3.3
FY 2018	5.9	4.7	3.1	4.3
FY 2019	6.1	5.2	4.2	5.1
FY 2020	6.8	6.1	5.3	6.2
FY 2021	8.8	8.9	8.3	8.7

Table 79: Average Settings to Disposition for HCPD Counsel, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Total
FY 2016	5.7	4.3	2.2	2.5
FY 2017	6.9	5.3	2.7	2.7
FY 2018	6.0	4.7	2.9	3.4
FY 2019	6.9	5.5	4.0	4.4
FY 2020	7.0	6.0	4.8	5.4
FY 2021	8.4	8.5	7.2	7.8

Table 80: Time in Days from Case Filing to Disposition for Retained Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Average Days to Disposition for Retained Counsel
FY 2016	213	276	264	250
FY 2017	217	192	160	199
FY 2018	250	235	200	238
FY 2019	303	290	260	294
FY 2020	336	276	271	310
FY 2021	463	430	406	450

Table 81: Time in Days from Case Filing to Disposition for Assigned Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Average Days to Disposition for Assigned Counsel
FY 2016	170	153	25	67
FY 2017	156	90	30	65
FY 2018	170	119	55	105
FY 2019	197	161	103	149
FY 2020	244	202	158	205
FY 2021	392	385	309	372

Table 82: Time in Days from Case Filing to Disposition for HCPD Counsel by Comparison Cohort, Fiscal Year 2016 through Fiscal Year 2021

Year of Disposition	Low	Moderate	High	Average Days to Disposition for HCPD
FY 2016	104	62	25	28
FY 2017	135	69	26	36
FY 2018	132	82	39	52
FY 2019	169	124	65	83
FY 2020	190	154	102	125
FY 2021	291	294	218	251

Table 83: Disposition Outcomes for Retained Counsel Clients in the **LOW** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

LOW	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	73	4,151	288	22	5,095	9,629
	0.8%	43%	3%	0.2%	53%	
FY 2017	41	4,548	193	25	2,877	7,684
	0.5%	59%	3%	0.3%	37%	
FY 2018	19	4,567	94	16	2,194	6,890
	0.3%	66%	1%	0.2%	32%	
FY 2019	24	5,245	71	10	1,781	7,131
	0.3%	74%	1%	0.1%	25%	
FY 2020	29	6,292	78	10	1,359	7,768
	0.4%	81%	1%	0.1%	17%	
FY 2021	4	5,237	142	13	1,053	6,449
	0.1%	81%	2%	0.2%	16%	

Table 84: Disposition Outcomes for Assigned Counsel Clients in the **LOW** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

LOW	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	10	1,384	166	14	2,333	3,907
	0.3%	35%	4%	0.4%	60%	
FY 2017	9	1,697	164	13	1,522	3,405
	0.3%	50%	5%	0.4%	45%	
FY 2018	15	2,285	101	10	1,459	3,870
	0.4%	59%	3%	0.3%	38%	
FY 2019	5	2,991	65	13	1,645	4,719
	0.1%	63%	1%	0.3%	35%	
FY 2020	8	4,407	86	19	925	5,445
	0.1%	81%	2%	0.3%	17%	
FY 2021	2	2,565	160	15	577	3,319
	0.1%	77%	5%	0.5%	17%	

Table 85: Disposition Outcomes for HCPD Clients in the **LOW** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

LOW	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	0	33	3	0	32	68
	0.0%	49%	4%	0.0%	47%	
FY 2017	0	44	2	0	17	63
	0.0%	70%	3%	0.0%	27%	
FY 2018	0	41	5	4	27	77
	0.0%	53%	6%	5.2%	35%	
FY 2019	0	48	0	2	35	85
	0.0%	56%	0%	2.4%	41%	
FY 2020	1	124	2	1	24	152
	0.7%	82%	1%	0.7%	16%	
FY 2021	0	124	3	0	16	143
	0.0%	87%	2%	0.0%	11%	

Table 86: Disposition Outcomes for Retained Counsel Clients in the **MODERATE** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Moderate	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	19	2,292	280	624	3,685	6,900
	0.3%	33%	4%	9.0%	53%	
FY 2017	26	1,814	241	567	4,751	7,399
	0.4%	25%	3%	7.7%	64%	
FY 2018	6	1,851	103	355	3,223	5,538
	0.1%	33%	2%	6.4%	58%	
FY 2019	11	1,981	48	238	2,793	5,071
	0.2%	39%	1%	4.7%	55%	
FY 2020	15	2,524	62	270	1,953	4,824
	0.3%	52%	1%	5.6%	40%	
FY 2021	2	1,635	69	210	973	2,889
	0.1%	57%	2%	7.3%	34%	

Table 87: Disposition Outcomes for Assigned Counsel Clients in the **MODERATE** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Moderate	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	11	1,025	228	348	7,884	9,496
	0.1%	11%	2%	3.7%	83%	
FY 2017	7	986	236	332	4,584	6,145
	0.1%	16%	4%	5.4%	75%	
FY 2018	3	1,565	133	330	3,674	5,705
	0.1%	27%	2%	5.8%	64%	
FY 2019	4	2,024	110	422	4,059	6,619
	0.1%	31%	2%	6.4%	61%	
FY 2020	8	3,096	120	339	2,321	5,884
	0.1%	53%	2%	5.8%	39%	
FY 2021	0	1,688	115	181	905	2,889
	0.0%	58%	4%	6.3%	31%	

Table 88: Disposition Outcomes for HCPD Clients in the **MODERATE** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

Moderate	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	0	149	9	11	530	699
	0.0%	21%	1%	1.6%	76%	
FY 2017	0	116	6	7	166	295
	0.0%	39%	2%	2.4%	56%	
FY 2018	0	153	4	16	213	386
	0.0%	40%	1%	4.1%	55%	
FY 2019	1	185	1	21	213	421
	0.2%	44%	0%	5.0%	51%	
FY 2020	2	330	10	20	169	531
	0.4%	62%	2%	3.8%	32%	
FY 2021	0	266	4	21	75	366
	0.0%	73%	1%	5.7%	20%	

Table 89: Disposition Outcomes for Retained Counsel Clients in the **HIGH** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

High	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	3	230	81	464	717	1,495
	0.2%	15%	5%	31%	48%	
FY 2017	3	313	87	667	1,191	2,261
	0.1%	14%	4%	30%	53%	
FY 2018	2	311	35	479	751	1,578
	0.1%	20%	2%	30%	48%	
FY 2019	2	296	24	325	628	1,275
	0.2%	23%	2%	26%	49%	
FY 2020	2	359	18	303	397	1,079
	0.2%	33%	2%	28%	37%	
FY 2021	0	224	16	174	187	601
	0.0%	**37%**	**3%**	**29%**	**31%**	

Table 90: Disposition Outcomes for Assigned Counsel Clients in the **HIGH** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

High	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	3	391	96	1,248	8,130	9,868
	0.0%	4%	1%	13%	82%	
FY 2017	2	680	148	1,525	10,896	13,251
	0.0%	5%	1%	12%	82%	
FY 2018	2	742	59	1,106	4,713	6,622
	0.0%	11%	1%	17%	71%	
FY 2019	4	1,001	56	1,535	3,922	6,518
	0.1%	15%	1%	24%	60%	
FY 2020	2	1,481	68	924	1,689	4,164
	0.0%	36%	2%	22%	41%	
FY 2021	2	711	33	415	526	1,687
	0.1%	**42%**	**2%**	**25%**	**31%**	

Table 91: Disposition Outcomes for HCPD Clients in the **HIGH** Likelihood of Conviction Category, Harris County Fiscal Year 2016 through Harris County Fiscal Year 2021

High	Acquittal All	Dismissed All	Deferred	Dism (or Acquittal) Some, Guilty Some	Guilty All	Total Clients
FY 2016	0	188	5	118	1,096	1,407
	0.0%	13%	0%	8%	78%	
FY 2017	3	342	12	154	1,519	2,030
	0.1%	17%	1%	8%	75%	
FY 2018	0	339	5	218	835	1,397
	0.0%	24%	0%	16%	60%	
FY 2019	0	336	9	324	612	1,281
	0.0%	26%	1%	25%	48%	
FY 2020	0	503	8	214	305	1,030
	0.0%	49%	1%	21%	30%	
FY 2021	0	389	4	142	109	644
	0.0%	**60%**	**1%**	**22%**	**17%**	

Table 92: Sentence Types by Conviction Likelihood Cohorts for Retained Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Low			Moderate			High		
	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail
FY 2016	22	1,794	3,573	10	1,389	3,178	0	296	964
	0.4%	33%	66%	0.2%	30%	69%	0.0%	23%	77%
FY 2017	9	857	2,213	3	1,872	3,665	5	579	1353
	0.3%	28%	72%	0.1%	34%	66%	0.3%	30%	70%
FY 2018	20	672	1,594	1	1,217	2,450	2	399	861
	0.9%	29%	70%	0.0%	33%	67%	0.2%	32%	68%
FY 2019	6	578	1,274	7	1,067	1,999	0	305	669
	0.3%	31%	69%	0.2%	35%	65%	0.0%	31%	69%
FY 2020	1	347	1,098	0	586	1,696	0	164	553
	0.1%	24%	76%	0.0%	26%	74%	0.0%	23%	77%
FY 2021	0	408	799	1	452	799	0	145	232
	0.0%	34%	66%	0.1%	36%	64%	0.0%	38%	62%

Table 93: Sentence Types by Conviction Likelihood Cohorts for Assigned Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Low			Moderate			High		
	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail
FY 2016	9	291	2,197	6	361	8,079	2	188	9,279
	0.4%	12%	88%	0.1%	4%	96%	0.0%	2%	98%
FY 2017	3	220	1,461	0	434	4,702	2	302	12,258
	0.2%	13%	87%	0.0%	8%	92%	0.0%	2%	98%
FY 2018	11	142	1,406	1	349	3,767	1	183	5,690
	0.7%	9%	90%	0.0%	8%	91%	0.0%	3%	97%
FY 2019	2	135	1,581	3	299	4,278	1	164	5,345
	0.1%	8%	92%	0.1%	7%	93%	0.0%	3%	97%
FY 2020	0	156	872	1	281	2,493	0	164	2,511
	0.0%	15%	85%	0.0%	10%	90%	0.0%	6%	94%
FY 2021	1	262	489	0	252	949	0	102	871
	0.1%	35%	65%	0.0%	21%	79%	0.0%	10%	90%

Table 94: Sentence Types by Conviction Likelihood Cohorts for HCPD Counsel, Harris County Fiscal Year 2016 through Fiscal Year 2021

	Low			Moderate			High		
	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail	Fine Only	Comm Super-vision	Jail
FY 2016	0	4	31	0	12	538	1	5	1,212
	0.0%	11%	89%	0.0%	2%	98%	0.1%	0%	100%
FY 2017	0	2	17	0	6	173	0	16	1668
	0.0%	11%	89%	0.0%	3%	97%	0.0%	1%	99%
FY 2018	0	5	30	0	5	228	0	10	1047
	0.0%	14%	86%	0.0%	2%	98%	0.0%	1%	99%
FY 2019	0	0	37	0	1	233	0	19	926
	0.0%	0%	100%	0.0%	0%	100%	0.0%	2%	98%
FY 2020	0	2	25	0	11	187	0	14	512
	0.0%	7%	93%	0.0%	6%	94%	0.0%	3%	97%
FY 2021	0	4	15	0	5	95	1	6	248
	0.0%	21%	79%	0.0%	5%	95%	0.4%	2%	97%

Table 95: Punishment Amount or Length for Clients with Retained Counsel, Harris County Fiscal Year 2016 through 2021

	Low			Moderate			High		
	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)
FY 2016	$339	16	24	$185	16	27	-	18	40
FY 2017	$322	16	18	$283	17	32	$350	18	44
FY 2018	$305	16	23	$1000	17	40	$900	19	44
FY 2019	$350	16	24	$250	17	38	-	19	44
FY 2020	$500	14	23	-	16	32	-	20	44
FY 2021		15	18	Unk	16	26	-	17	34

Table 96: Punishment Amount or Length for Clients with Assigned Counsel, Harris County Fiscal Year 2016 through 2021

	Low			Moderate			High		
	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)
FY 2016	$56	16	24	$133	16	28	$150	18	33
FY 2017	$300	16	19	-	17	39	$100	18	31
FY 2018	$242	15	20	$200	16	29	$50	19	35
FY 2019	$100	15	24	$217	17	29	$200	20	36
FY 2020	-	14	29	$200	16	32	-	19	38
FY 2021	$1	15	22	$133	16	33	-	18	45

Table 97: Punishment Amount or Length for Clients with HCPD, Harris County Fiscal Year 2016 through 2021

	Low			Moderate			High		
	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)	Fine Only $	Comm Super-vision (M)	Jail (Days)
FY 2016			25		18	31	$100		34
FY 2017			38			27	-		28
FY 2018			26			34	-		32
FY 2019			29			33	-	24	38
FY 2020			45			41	-	18	43
FY 2021			95		9	48	$100	15	57

Table 98: Trial Rate and Outcomes for Retained Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020

	Low			Moderate			High		
	Clients	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**
FY 2016	9,629	122 1.3%	73 60%	6,900	36 0.5%	19 53%	1,495	9 0.6%	3 33%
FY 2017	7,684	68 0.9%	41 60%	7,399	45 0.6%	26 58%	2,261	8 0.4%	3 38%
FY 2018	6,890	27 0.4%	19 70%	5,538	15 0.3%	6 40%	1,578	5 0.3%	2 40%
FY 2019	7,131	34 0.5%	24 71%	5,071	17 0.3%	11 65%	1,275	6 0.5%	2 33%
FY 2020	7,768	41 0.5%	29 71%	4,824	31 0.6%	15 48%	1,079	4 0.4%	2 50%
FY 2021	6,449	8 0.1%	4 50%	2,889	3 0.1%	2 67%	601	0 0%	0

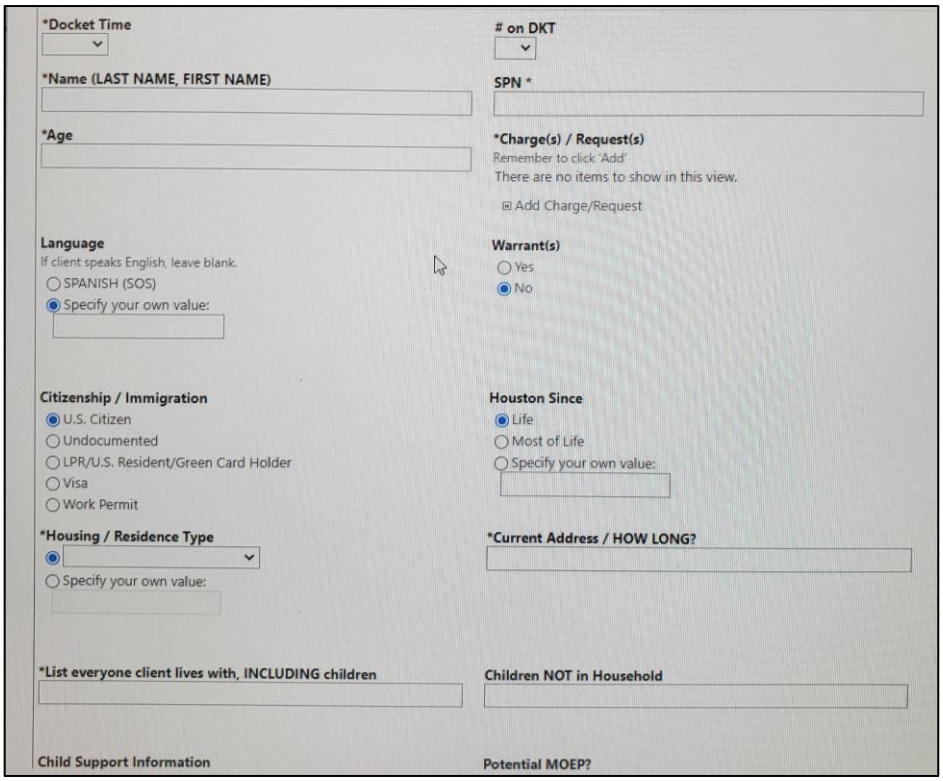
Table 99: Trial Rate and Outcomes for Assigned Counsel by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020

	Low			Moderate			High		
	Clients	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**
FY 2016	3,907	20 0.5%	10 50%	9,496	20 0.2%	11 55%	9,868	7 0.1%	3 43%
FY 2017	3,405	12 0.4%	9 75%	6,145	14 0.2%	7 50%	13,251	5 0.0%	2 40%
FY 2018	3,870	19 0.5%	15 79%	5,705	10 0.2%	3 30%	6,622	7 0.1%	2 29%
FY 2019	4,719	7 0.1%	5 71%	6,619	8 0.1%	4 50%	6,518	5 0.1%	4 80%
FY 2020	5,445	11 0.2%	8 73%	5,884	19 0.2%	8 42%	4,164	4 0.1%	2 50%
FY 2021	3,319	4 0.1%	2 50%	2,889	0 0%	0	1,687	2 0.1%	2 100%

Table 100: Trial Rate and Outcomes for HCPD by Comparison Cohort, Harris County Fiscal Year 2016 through Fiscal Year 2020

	Low			Moderate			High		
	Clients	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**	**Clients**	**Trials**	**Acq at Trial (% of Trials)**
FY 2016	68	0 0%	0	699	2 0.3%	0	1,407	1 0.1%	0
FY 2017	63	2 3.2%	0	295	2 0.7%	0	2,030	3 0.1%	3 100%
FY 2018	77	0 0%	0	386	0 0%	0	1,397	0 0%	0
FY 2019	85	0 0%	0	421	2 0.5%	1 50%	1,281	0 0%	0
FY 2020	152	1 0.7%	1 100%	531	2 0.4%	2 100%	1,030	0 0%	0
FY 2021	143	0 0%	0	366	0 0%	0	644	0 0%	0

8. Harris County Public Defender Office Magistration Interview Form, April 2021



*Docket Time

on DKT

*Name (LAST NAME, FIRST NAME)

SPN *

*Age

*Charge(s) / Request(s)
Remember to click 'Add'
There are no items to show in this view.
Add Charge/Request

Language
If client speaks English, leave blank.
SPANISH (SOS)
Specify your own value:

Warrant(s)
Yes
No

Citizenship / Immigration
U.S. Citizen
Undocumented
LPR/U.S. Resident/Green Card Holder
Visa
Work Permit

Houston Since
Life
Most of Life
Specify your own value:

*Housing / Residence Type
Specify your own value:

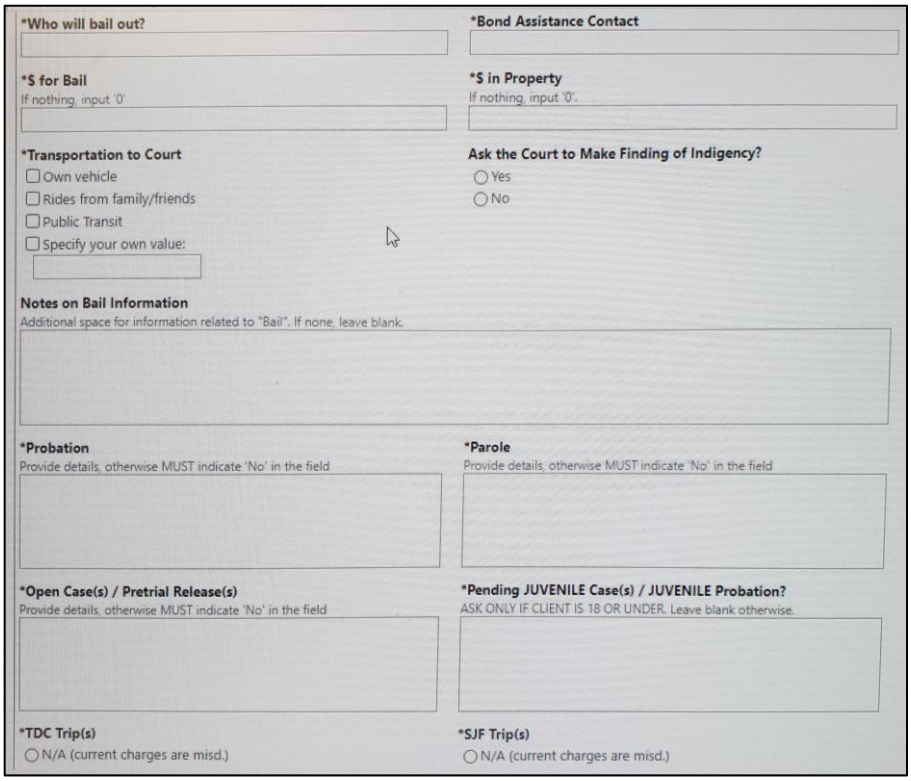
*Current Address / HOW LONG?

*List everyone client lives with, INCLUDING children

Children NOT in Household

Child Support Information

Potential MOEP?



*Who will bail out?

*Bond Assistance Contact

*$ for Bail
If nothing, input '0'

*$ in Property
If nothing, input '0'.

*Transportation to Court
Own vehicle
Rides from family/friends
Public Transit
Specify your own value:

Ask the Court to Make Finding of Indigency?
Yes
No

Notes on Bail Information
Additional space for information related to "Bail". If none, leave blank.

*Probation
Provide details, otherwise MUST indicate 'No' in the field

*Parole
Provide details, otherwise MUST indicate 'No' in the field

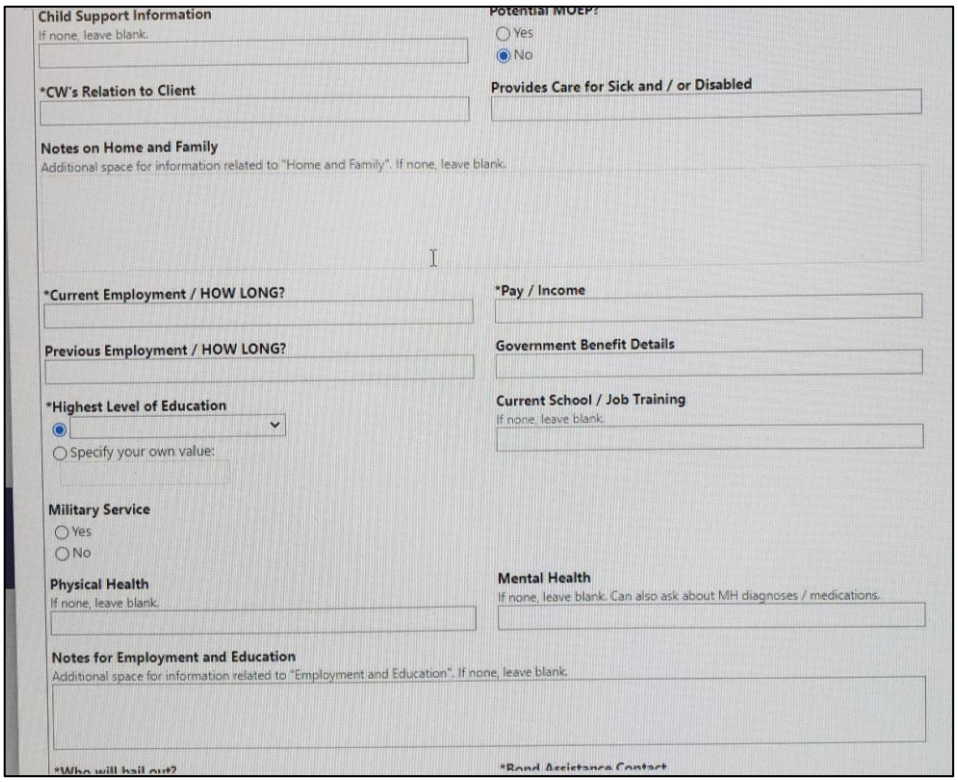
*Open Case(s) / Pretrial Release(s)
Provide details, otherwise MUST indicate 'No' in the field

*Pending JUVENILE Case(s) / JUVENILE Probation?
ASK ONLY IF CLIENT IS 18 OR UNDER. Leave blank otherwise.

*TDC Trip(s)
N/A (current charges are misd.)

*SJF Trip(s)
N/A (current charges are misd.)

yy



Child Support Information
If none, leave blank.

Potential MOEP?
- ○ Yes
- ◉ No

***CW's Relation to Client**

Provides Care for Sick and / or Disabled

Notes on Home and Family
Additional space for information related to "Home and Family". If none, leave blank.

***Current Employment / HOW LONG?**

***Pay / Income**

Previous Employment / HOW LONG?

Government Benefit Details

***Highest Level of Education**
- ◉
- ○ Specify your own value:

Current School / Job Training
If none, leave blank.

Military Service
- ○ Yes
- ○ No

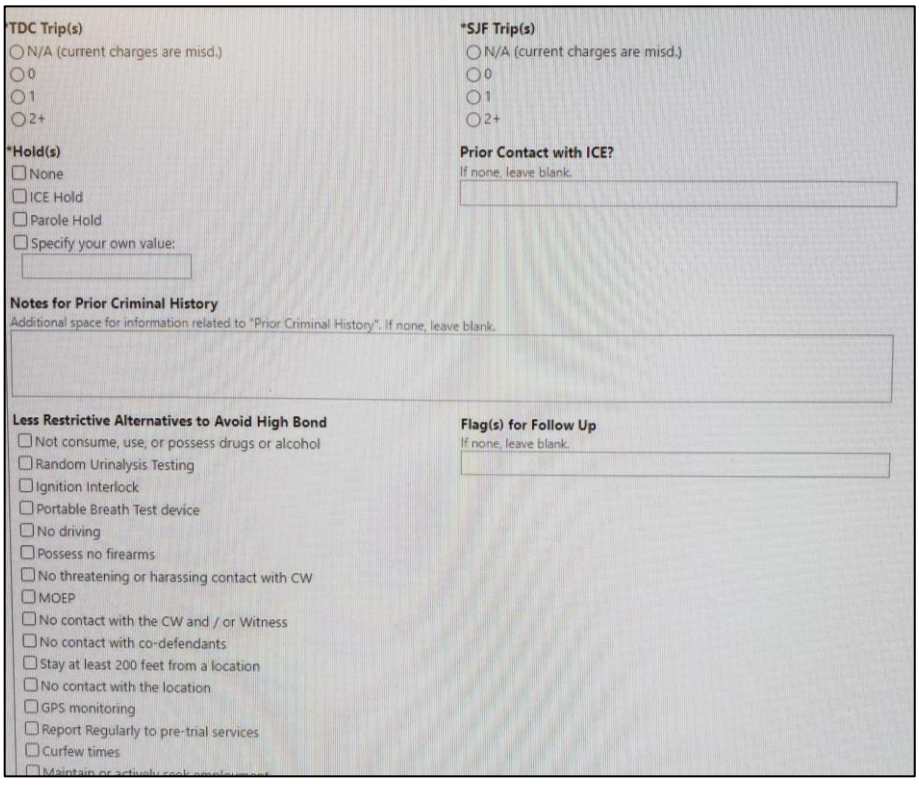
Physical Health
If none, leave blank.

Mental Health
If none, leave blank. Can also ask about MH diagnoses / medications.

Notes for Employment and Education
Additional space for information related to "Employment and Education". If none, leave blank.

***Who will bail out?**

***Bond Assistance Contact**



***TDC Trip(s)**
- ○ N/A (current charges are misd.)
- ○ 0
- ○ 1
- ○ 2+

***SJF Trip(s)**
- ○ N/A (current charges are misd.)
- ○ 0
- ○ 1
- ○ 2+

***Hold(s)**
- ☐ None
- ☐ ICE Hold
- ☐ Parole Hold
- ☐ Specify your own value:

Prior Contact with ICE?
If none, leave blank.

Notes for Prior Criminal History
Additional space for information related to "Prior Criminal History". If none, leave blank.

Less Restrictive Alternatives to Avoid High Bond
- ☐ Not consume, use, or possess drugs or alcohol
- ☐ Random Urinalysis Testing
- ☐ Ignition Interlock
- ☐ Portable Breath Test device
- ☐ No driving
- ☐ Possess no firearms
- ☐ No threatening or harassing contact with CW
- ☐ MOEP
- ☐ No contact with the CW and / or Witness
- ☐ No contact with co-defendants
- ☐ Stay at least 200 feet from a location
- ☐ No contact with the location
- ☐ GPS monitoring
- ☐ Report Regularly to pre-trial services
- ☐ Curfew times
- ☐ Maintain or actively seek employment

Flag(s) for Follow Up
If none, leave blank.

9. Affidavit of Indigency Form

Defendant's Name: _____ Date: _____

DOB: _____ Cause/Warrant #: _____ Booking #: _____

Special Needs: _____

AFFIDAVIT OF INDIGENCE

To determine eligibility for a court appointed attorney, you must complete this form.

Size of Family Unit (Members of immediate family that you support financially. List name, age, and relationship.)		
Name	**Age**	**Relationship**

Monthly Income		**Necessary Monthly Living Expenses**		**Nonexempt Assets**	
Your Salary		Rent / Mortgage		Cash on Hand	
Spouse's Salary		Transportation: Make: Model: Year:		Value of Stocks, Bonds, and Investments	
SSI/SSDI		Car Payment		Amount in Savings Account	
TANF		Car Insurance			
Social Security Check		Utilities (gas, electric, etc.)			
Child Support		Clothes / Food			
Other Government Check		Day Care / Child Care			
Other Income		Health Insurance			
		Medical Expenses			
		Credit Cards			
		Court-Ordered Monies			
		Child Support			
TOTAL INCOME		**TOTAL NECESSARY EXPENSES**		**TOTAL ASSETS**	

STAFF USE ONLY:

Comments:

_____

Total Monthly Income _____ **Defendant Meets Eligibility Requirements**

Total Monthly Expenses - _____

Difference (Net Income) = _____ **___ YES ___ NO ___ UNDETERMINED**

I have been advised of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. I swear that the above information is true and correct. The information I listed is accurate and I will immediately notify the court of any changes in my financial situation.

**** All information is subject to verification. Falsification of information is a criminal offense.***

aaa

_____ _____

Defendant's Signature Date

10. Harris County Public Defender Office CLE Programs, 2019-2021

Date	Course No.	Title	In-house		
01-31-2019	174039661	Litigating Writs of Habeas Corpus on Bond Issues	X		
02-13-2019	174041265	How to Win	X		
03-18-2019		Appellate Hand Down	X		
03-28-2019	174043927	Why you Need to Keep Fighting	X		
03-29-2019	174043513	Understanding Forensic Reports			
05-02-2019	174046982	Effective Voir Dire			
05-09-2019	174047948	Voir Dire Workshop	X		
05-16-2019	174048092	Medical Records Revealed			
06-06-2019	174051761	Preserving Error At Trial	X		
06-19-2019	174052335	Mock Trial Training at the Medical Examiner's Office	X		
06-27-2019	174052294	Arguments in Court, Storytelling for Lawyers			
07-11-2019	174050553	Mitigation for Every Case			
07-16-2019	174052432	Storytelling Workshop	X		
08-15-2019	174058327	Dealing with Enhancements and Prior Convictions	X		
08-22-2019	174058325	Legislative Update	X		
08-28-2019	174058948	Effective Cross Examination			
09-04-2019	174058699	Defending MAJ and MRP Hearings	X		
09-18-2019	174059816	Arguing Punishment in Criminal Cases	X		
09-25-2019	174058954	Dealing with Sexual Harassment from Clients Judges and Others	X		
10-16-2019	174064481	Pretrial Investigation: How to Effectively Investigate Criminal Cases	X		
10-30-2019	174060141	Dealing with Mentally Ill Clients and Difficult Clients	X		

11-06-2019	174066840	Forensic Training for Criminal Lawyers			
11-20-2019	174065469	Pre-Trial Motions and Discovery Practices	X		
12-04-2019	174067501	DNA at the Harris County Institute of Forensic Science	X		
12-11-2019	174069627	Statutory Changes Chapter 46B			

Date	Course No.	Title	In-house		
01-08-2020	174071356	Effective Storytelling Cross Examination	X		
01-15-2020	174071013	Defending a Blood DWI/Intoxication Case	X		
01-29-2020	174072081	Cross Examining Child Witnesses in Sex Cases	X		
02-05-2020	174073818	Investigating Child Sexual Abuse Cases	X		
02-19-2020	174076344	Effective Voir Dire Made Simple	X		
02-26-2020	174076439	Should I Stay or Should I Go? Recusal & Disqualification	X		
03-04-2020	174076445	Why We do What We do	X		
03-11-2020	174079150	Multicultural Awareness	X		
04-08-2020	174079225	Cell Phone Discovery and Cell Location Analysis	X		
04-17-2020	174082660	Effective Storytelling: Drafting and Delivering Great OS CA	X		
04-22-2020	174082552	Defending Family Violence Cases	X		
05-06-2020	174083277	Suicide Prevention	X		
05-07-2020	174084191	Techniques and Strategies Useful During a Crisis	X		
05-13-2020	174084725	Cross Examination the Arresting Officer in DWI/Intox Offenses	X		
05-14-2020	174085044	Fast Track Your Covid 19 Writ			
05-15-2020	174084336	Challenging the State's Expert	X		
05-27-2020	174086219	Cross Examining Complaining Witnesses in Sexual Assault Cases	X		
06-03-2020	174086998	Cross Examining the SANE	X		
06-10-2020	174087242	Motivational Interviewing	X		
06-17-2020	174087243	Cross Examination in a Compassionate Way	X		
06-24-2020	174088955	Jury Charge: From the Basic to the Tricky Stuff	X		

06-25-2020	174088967	Holistic Defense: Providing Holistic Services for Clients	X		
07-01-2020	174089638	Pretrial Discovery and Pretrial Investigation	X		
07-08-2020	174090397	Defending Cases When Identification is the Issue	X		
07-09-2020	174090710	The Utilization of Cognitive Assessment Measures in Juvenile	X		
07-15-2020	174090943	Voir Dire on Difficult Issues	X		
07-16-2020	174090714	The Utilization of Personality Assessment Tools and Risk	X		
07-22-2020	174091629	Batson v. Kentucky	X		
07-23-2020	174087410	Nuts and Bolts Series: The Lifecycle of a Trial			
07-28-2020	174092516	Round Table Discussion: Developing Defensive Theories	X		
07-29-2020	174092388	Mitigation and Punishment	X		
08-03-2020	174092645	School Discipline			
08-03-2020	174092640	Designing High Quality IEPs for Disabled Students in IEP	X		
08-03-2020	174092622	Negotiating Success for Disabled Students in IEP	X		
08-04-2020	174092647	Understanding How Texas Schools Refer, Evaluate and Identify-Juvi			
08-05-2020	174092654	Constitutional Protections for Public School Students	X		
08-05-2020	174092652	Reading and Interpreting Special Education Assessment Data-Juvi			
08-05-2020	174092649	Civil Rights Protection for Public School Students	X		
08-05-2020	174092544	Impeaching Witnesses with Prior Inconsistent Statements	X		
08-06-2020	174092657	Manifestation Determination Reviews-Juvi			
08-06-2020	174092655	School Enrollment and McKinney Vento	X		
08-07-2020	174092658	Dispute Resolution, Remedies and Fees-Juvi			
08-19-2020	174094285	Practical Approaches to Cross Examination	X		
08-20-2020	174098534	Drug Chemistry for the Defense	X		
08-26-2020	174095194	Reviewing CPS Records and Medical Records	X		

ddd

09-01-2020	174098451	Rendering Effective Assistance of Counsel	?		
09-02-2020	174095945	The Cops and CPS: Investigating them and Handling their proc	X		
09-09-2020	174092983	Cross Examination and Cross Examination Techniques	X		
09-16-2020	174097140	The Fundamentals of Fire Arms	X		
09-17-2020	174090946	Nuts and Bolts: Evaluating the Admissibility of Evidence			
09-30-2020	174098000	Habeas Corpus	X		
10-14-2020	174099516	The Art of Negotiation	X		
10-21-2020	174097984	Advance Cross Examination Techniques	X		
10-22-2020	174095776	Federal Consequences	X		
10-28-2020	174099519	Persuading Judges	X		
11-04-2020	174099369	The Medical Examiner's Office and the Forensic Autopsy	X		
11-05-2020	174100257	The Use of Evidence Blocking in Criminal Trials			
11-11-2020	174099787	Defending Homicides: Closing the Jurors Minds After Voir Dire	X		
11-18-2020	174102784	The Unspoken Rule of Trying a Murder Case	X		
11-20-2020	174103300	Jonathan Rapping Discussing Client Centered Representation	X		
12-02-2020	174105106	Theory-Driven Opening Statements	X		
12-09-2020	174102006	Dealing with Implicit Bias	X		
12-10-2020	174095794	Using Media to Advance Client Litigation/Narratives			
12-11-2020	174105108	DWI Defense: From Appointment through Trial	X		
12-16-2020	174104895	Forcing Error-The Vital Third Task Every Criminal Defense	X		

		2021 CLEs			
Date	**Case Number**	**Title**	**Attendance**	**Accredited**	**Inhouse**
01/06/21	174107691	Parole Preliminary Hearing for Investigation	Entered	Yes	X
01/13/21	174107707	Forensic Issues in Criminal Cases	Entered	Yes	X
01/15/21	174109384	Defensive Strategies in Assault Cases	Entered	Yes	X

eee

01/27/21	174109481	Litigating Motions to Suppress	Entered	Yes	X
01/28/21	174110292	Effective Closing Arguments	Entered	Yes	X
01/28/21	174109704	January 2021 Appellate Caselaw Updates	Entered	Yes	X
02/03/21	174109447	Defending Women		Yes	X
02/10/21	174111726	Sane Nurse – Dealing with Sexual Assault Examinations, etc.		Yes	X
02/16/21	174112633	Making objections in Court		No_2/3	X
02/18/21	174110368	Intellectual Disability as a Defense	rescheduled 4/22	Yes _3/1	
02/24/21	174113828	Forensic Serology and DNA Tool Kit		Yes	X
03/10/21	174113843	Litigating MAJs and Preserving Issues for Appeal		Yes	x
03/10/21	174114312	Litigating MAJs: Practical Guidance for What to Do		No_(pend)	x
03/11/21	174115405	Investigative Tools for the Defense		Yes	
03/18/21	174115878	More investigative Tools for the Defense		Yes	
03/24/21	174115379	Cross Examining and Challenging Experts		Yes	?
03/26/21	174117039	Misdemeanor Enhancements and Collateral Consequences		No (pend)	
03/31/21	174114308	Timing is Everything		Yes	?

March 1st, 2021 Meeting
Next Meeting: March 15 & March 29

On this meeting:

1. Discussion of March 11th CLE – Investigators – Whole Bar

   a. Credit– Course No. 174115405 1:30-3pm
   b. Blurb – Dan

fff

c. Flyer - Nick
d. Moderator - Dan
e. Backup - Mary

2. Discussion of March 18th CLE – Investigators – Whole Bar

a. Speakers confirmed? Yes
b. Credit- Course No. 174115878_approved and ready to go
c. Blurb- Dan
d. Flyer- Nick
e. Moderator- Dan
f. Backup- Mary

3. Forensic CLE – April 1, 2021 – Whole Bar (8:10am to 4:55pm)

a. Backup for Nick -> TDCLA, Natalie (co-chair)

4. Holistic CLE – April 8, 2021 – In House (next meeting)

a. Blurb- Leslie
b. Credit – Ruth
c. Flyer–Nick/Angela

5. Hobson/Odom – April 22, 2021- Whole Bar, via Zoom (1:30-3:00pm): Course No. 174115862

a. Advertising – Change date
b. Moderator – Mary
c. Backup - Angela

6. Implied Bias – Ereka Peterson – May 6th – Whole Bar, via Zoom (1:30-3:00pm)

a. Credit- Course No. 175115862
b. Flyer – Nick/Angela
c. Moderator - Larry
d. Backup - Nick

7. Anthony Graves - May 20, 2021- Whole Bar (next meeting)

a. Credit-Ruth – How many parts/credit hours
b. Flyer – Nick/Angela
c. Moderator
d. Backup

8. Caselaw update – Miranda Meador - in house, via zoom

a. Dates - May 13th
b. Angela to contact _ Course No. 174116148

9. Policing as Trauma – Kristin Henning - June 10th – Whole Bar 1:30-3:00pm

a. Credit- Course No. 174115869
b. Flyer – Nick/Angela
c. Moderator- Bukky
d. Backup- Angela

10. Goldwater Institute – Whole Bar (1 credit hour) on Civil Forfeiture

a. Dates June 17th from 2:00 to 3:00pm
b. Moderator – Mary _ Course No. 174116147

11.July CLE – Whole Bar (waiting on speaker to confirm)

a. How to Get Agencies Recordings – Gemayel? (N & B)
b. Confirm date
c. Blurb–
d. Credit – Ruth
e. Flyer–Nick/Angela
f. Moderator – Nick
g. Backup

12.August 26th – Mark Stevens – Pending PDRs – Whole Bar

a. Blurb–Angela
b. Credit – Ruth
c. Flyer–Nick/Angela
d. Moderator - Mary

hhh

e. Backup - Angela

13.September CLE – Leslie Protective Orders – Whole Bar? (next meeting)

a. Date?
b. Credit – Ruth
c. Flyer–Nick/Angela
d. Moderator
e. Backup

14. Oct CLE – ~~Oct 6 & 7th~~ –Whole Bar (pre-recorded)

a. Date change to 13th & 14th- TDCLA had a conflict, Raymond to make change on our website
b. 2-day format–10hrs
c. Discuss Eric's email
d. Day 1 – Sexual Assault
   i. SANE nurse – Jed Silverman confirmed

ii. Confessions – Sarah Roland or Heather Barbieri_ not responding. Mary to go with Lisa Wayne

iii. CAC - Nikki Canto – Larry on it
iv. Voir Dire – Eric Davis_ good for the 6th but to check now that for new dates

v. Experts_ rebuttal of psychological expert and methodological practices

e. Day 2 - Drugs

i. Gangs – Monique Sparks_ Larry no success to try Gemayel

ii. Search Warrants – Natalie Ware_ Mary

iii. Confidential Informant - Leticia Quinones – Bukky, on board

iv. Collateral Consequences – Leslie Ginzel

v. DUI /Traffic Stops

1. Sean Darvishi – does date change help?
2. Tyler Flood, Mark Thiessen, Grant Scheiner

15.Other potential topics

a. JaniMaselli ~~Gideonday?~~ Preservation of Error Paper for Rusty
b. Investigate CW – Cynthia Patterson - table for now

11. Harris County Prosecutor pre-charge, post-plea diversion programs

This information about the nature of the programs and the numbers of persons who have completed the programs in calendar years 2019 and 2020 has been provided by the following in the Office of the Harris County District Attorney, Nathan N. Beedle, Assistant District Attorney, Misdemeanor Trial Bureau Chief; Johna M. Stallings, Adult Sex Crimes and Trafficking Division Chief; Alexander Forrest, Chief of the Environmental Crimes Division, and John Jordan, Chief of the Juvenile Division, Office of the Harris County District Attorney. Information on DWI fees and the numbers of people completing the DWI program and a description of the assessment process was provided by Teresa May, Ph.D., Director, Harris County Community Supervision and Corrections Department.

1. **Project 180 is a Human Trafficking Program with Defendants selling sex**
   No cost to participants, no publicly filed contract. Participants are given information to access services, opportunity to meet with advocates and chance to participate in Adult Forensic Interview.
   2018 – 2020: 579 participants diverted from convictions.

2. **Retail Theft Pre-trial Intervention Program** The Retail Theft Pre-trial Intervention Program is a program offered to **first time offenders** charged with misdemeanor Class B – Theft (Retail Only) it's a one-time opportunity for offenders to keep his/her record clean DEF. IS REFFERED TO RTIP, A MEETING VIA ZOOM WITH PROBATION COORDINATOR IS SCHEDULED. PAYMENT DATE IS SCHEDULED AND AGREEMENT IS SIGNED. DEF. WILL BE REQUIRED TO COMPLETE AN 8 HOUR COGNITIVE DECISION-MAKING CLASS VIA ZOOM (2 SESSIONS) *PARTICIPANTS REMAIN IN PROGRAM FOR 90 DAYS NO EXCEPTIONS. DEF. WILL BE REQUIRED TO COMPLETE AN 8 HOUR COGNITIVE DECISION-MAKING CLASS VIA ZOOM (2 SESSIONS) *PARTICIPANTS REMAIN IN PROGRAM FOR 90 DAYS NO EXCEPTIONS
   Theft- Retail Only- $100-$750 (class B) plus $751-$2500 (Class A) Clear Criminal History (no out of State of Out of County) No outstanding warrants or Holds
   Has never received probation or DADJ as an adult, is currently not on bond, Probation or DADJ
   Must be no evidence of assaultive conduct from Def. toward anyone during this offense
   Property must have been recovered, no outstanding restitution and no employee thefts
   Previously participated in this program or another PTI program as an adult.

Fees: $130 to probation department
2019 – 760 completions
2020 – 333 completions

3. **MISDEMEANOR VETERANS COURT PROGRAM** - Veterans Court is a treatment program for clients arrested in Harris County who are veterans of the armed forces. VTC APPLICATION REQUEST & SUBMISSION PROCESS: Defense counsel requests and prepares VTC application on behalf of defendant. Completed applications should be emailed to: misdveteranscourt@dao.hctx.net (We also accept physical applications from defense counsel). VTC staff will review and notify attorneys of incomplete applications. Should an application be incomplete we allow 1 week to submit completed paperwork. All applicants must be registered and should receive benefits from the VA. Applicants will not be eligible for program if they don't qualify for benefits through the VA. All applicants must have received an Honorable or General (under honorable conditions) discharge.
   Fees: funded by VA; probation fee $80 ($60 pretrial, $20 UAA)/month + one-time $12.50 probationer ID card
   2019 – 42 completions
   2020 – 4 completions

4. **The Clean and Green Diversion Program** is dedicated to give a second chance to nonviolent offenders. *Chiefs are to use their discretion in determining what is an appropriate case for Clean and Green. The Clean & Green Program is a post-charge program offered to non-violent offenders. It is a voluntary program, non-violent offenders who elect to participate in the program will sign an Agreement to do so for a period of 60 days. Participants are responsible to pay a program fee of $240 to Texas Conservation Corps at American Youth Works on their scheduled date of community service. Participants will serve 6-hours of community service by working with a team of 10 to 12 people to perform conservation services in public spaces across Harris County, especially focused on the bayous and waterways. Upon successful completion of the Clean & Green Program the offender's case will be dismissed.
   Fees: $240 to American Youth Works; 320 fees waived since program started in 2019
   2019 – 1,003 completions
   2020 – 243 completions

5. **Misdemeanor Marijuana Diversion Program**
   Policy Statement. The Harris County District Attorney's Office is committed to public safety, responsible use of taxpayer money, and equal justice for all. Accordingly, this Office instituted a new policy affecting prosecution of misdemeanor possession of marijuana cases on March 1, 2017, revisions effective April 10, 2019.

   Pursuant to this policy, this Office will use its prosecutorial discretion to divert offenders in possession of misdemeanor amounts of marijuana pre-charge.

The goal of this new policy is to ensure that: (1) the limited resources of this Office, local law enforcement, and the Harris County Jail are used responsibly to increase public safety; and (2) individuals who commit the non-violent crime of possessing a misdemeanor amount of marijuana are not stigmatized by a criminal record that limits their employment, education, and housing opportunities.
During the past decade, this Office prosecuted more than 100,000 cases of misdemeanor possession of marijuana at a cost in excess of $200 million dollars. The endeavor has produced no tangible public safety benefit for the people of Harris County, yet has deprived neighborhoods of officers' time that could be spent patrolling neighborhoods, jail beds that could be used for violent criminals, crime lab resources needed for DNA testing, and judicial court time that should be spent bringing serious criminals to justice.

Additionally, a District Attorney has the duty "not to convict, but to see that justice is done1," and the important function of trying "to reform and improve the administration of justice2." Therefore, it is this Office's responsibility to consider the total impact of arrest and conviction for minor law infractions upon all people, especially when past prosecutions have disproportionately impacted communities of color. Long term, the damage to our workforce, economy and to relations between the people and our criminal justice system is greater than any benefit contemplated by past policy makers.

This Office recognizes that the possession of marijuana is illegal in this State, and that the police, when acting in a constitutional manner, have authority to arrest offenders who break the law. This new policy simply reflects a collaborative effort between the Harris County District Attorney's Office and local law enforcement to direct our efforts at those who commit crimes against people and property. Further, it is a commitment to the greater Houston business and labor communities to keep people in the workforce whenever possible by diverting them around the criminal justice system before they are charged with the crime of misdemeanor possession of marijuana. Accountability for breaking the law will remain an important component of this Office's new policy as all offenders are required to meet eligibility standards and complete a four-hour education program. Otherwise, they will face traditional arrest and charging procedures for their offense.

Finally, this Office recognizes that there are circumstances when the possession of even small amounts of marijuana may threaten the health and welfare of community members, so those offenders who possess marijuana in drug free zones near schools or in correctional facilities will be charged and prosecuted.

Mission Statement. Using the lawful discretion available to prosecutors under Texas law, the Harris County District Attorney's Office will use this pre-charge diversion program, known as the Misdemeanor Marijuana Diversion Program, to use the limited resources of this Office, local law enforcement, and the Harris County Jail responsibly so as to increase public safety; and (2) to aid individuals who commit Class A or B marijuana

possession offenses in avoiding a criminal record that limits their employment, education, and housing opportunities.

Overview. The Misdemeanor Marijuana Diversion Program (MMDP) is a pre-charge diversion program offered by the Harris County District Attorney's Office to Offenders who would otherwise be arrested and charged with possession of misdemeanor marijuana, regardless of criminal history. It is a voluntary program which gives the Offender an opportunity to avoid arrest, jail booking, and the filing of a criminal charge. Download the form at: http://app.dao.hctx.net/OurOffice/MMDP.aspx

When a person is detained by law enforcement for possession of a misdemeanor amount of marijuana, the officer will contact the Intake Bureau to confirm probable cause for the detention. Thereafter, if the Office determines that the person is eligible for the MMDP, the officer will NOT make a DIMS entry, but instead will refer the person to the MMDP. The program consists of attendance at one four-hour "Cognitive Decision Making" class conducted by the Harris County Community Corrections & Supervision Department. The offender will be presented with an "Agreement" by the detaining officer to memorialize the offender's consent.

The MMDP is voluntary. A person is eligible to participate in MMDP if the person is an adult (age seventeen or older), detained for Class A or B Possession of Marijuana, and possesses sufficient identifying information for the arresting officer to confirm the offender's identity. That confirmation is determined by the detaining officer, in accordance with their law enforcement agency's policy.

A person is not eligible for the MMDP if they are currently in the MMDP, possesses marijuana in a "drug free zone" or correctional facility, or is in possession of a concealed handgun and marijuana (in which case the charge will be Unlawfully Carrying a Weapon only and the marijuana will be tagged as evidence). If they are charged with additional crime(s) arising out of the instant detention, other than Class C misdemeanor tickets, the Offender should only be charged with the other crime. In such instances, the marijuana should be tagged by the officer as evidence. The contraband should NOT be submitted to the lab, unless the officer's law enforcement agency requires it.

At the time of the detention, eligible offenders who elect to participate in the MMDP must sign an MMDP agreement provided to them by the detaining officer. This agreement contains the information necessary for the offender to register for a "Cognitive Decision Making" class, instead of facing traditional arrest and prosecution.

Offenders will have 90 calendar days to complete the MMDP. If the offender successfully completes the MMDP, no criminal charge will be filed against the offender and there will be no criminal history of the event. If the offender fails to comply with the MMDP requirements, a formal criminal charge will be entered into DIMS and an arrest warrant or citation will be issued for the offender by the Intake Bureau.

mmm

Eligibility. A person is eligible to participate in the MMDP program if he or she:
• Is an adult, age 17 or older;
• Is detained or arrested for possession of marijuana (Class A & B);
• Possesses sufficient identifying information at the time of detention or arrest according to the intervening law enforcement agency's policy;
• Has no outstanding warrants.
Not Eligible. A person is not eligible to participate in the MMDP program if he or she:
• Is in possession of a concealed handgun and marijuana; in such instances, the Offender will be charged with Unlawfully Carrying A Weapon only; the marijuana will be tagged as evidence and stored by the agency, not submitted to the lab;
• Possesses a misdemeanor amount of marijuana in a "drug free zone;"
• Possesses a misdemeanor amount of marijuana in a corrections facility; or
• Is currently in the MMDP Program 90-day program period, prior to completion of the program.
• Is charged with additional crime(s) arising out of the instant detention, other than Class C misdemeanor tickets; in such instances, the Offender will be charged with the other crime only; the marijuana will be tagged as evidence and stored by the agency, not submitted to the lab.

LAW ENFORCEMENT PROCEDURE FOR
PRE-CHARGE DIVERSION OF ELIGIBLE OFFENDERS
1. Officer downloads the 2-page Program Acknowledgement & Acceptance Form and Program Notice Form at: Download the form at:
http://app.dao.hctx.net/OurOffice/MMDP.aspx
2. Officer conducts an investigation and detains Offender for possession of a misdemeanor amount of marijuana.
3. Officer seizes contraband.
4. Officer reviews Offender's identification to determine and authenticate identity of Offender pursuant to Officer's law enforcement agency policy.
5. Officer runs a criminal history check to determine if the Offender has any outstanding warrants and is eligible to participate in the program, specifically determining he or she:
a. Complete the identifying information on the top portion of the Program Acknowledgement & Acceptance Form;
b. Explain that by signing the Program Acknowledgement & Acceptance Form, the Offender promises to complete the class within 90 calendar days;
c. Explain that the failure to complete the class will result in the filing of a criminal charge, the issuance of a warrant, and the Offender's arrest;
d. Obtain the Offender's signature of acknowledgement and program acceptance on the Program Acknowledgement & Acceptance Form;
e. Give the Offender the Program Notice Form;
f. Release the Offender from detention per law enforcement agency's policies; and
f. NOT file a DIMS report.

10. After the Program Acknowledgement & Acceptance Form is completed, the Officer shall:
a. Assign an Offense Report Number to the case and enter it on the Program Acknowledgement & Acceptance Form.
b. SCAN Program Acknowledgement & Acceptance Form and email it to Email: MarijuanaDiversionProgram@csc.hctx.net or Fax: 713-437-8491.
c. Retain the Program Acknowledgement & Acceptance Form as evidence, along with the contraband, and provide the Offender with Page 2 of the Program Acknowledgement & Acceptance Form at the scene.
d. Complete a brief, detailed offense report with specific probable cause sufficient to draft a 'TO BE WARRANT". Officers are asked to include in their reports a notation that the Offender opted to participate in the MMDP Program.
e. Evidence Retention: OFFICERS SHOULD NOT SUBMIT THE MARIJUANA TO THE CRIME LAB. INSTEAD THEY SHOULD TAG THE MARIJUANA UNDER THE OFFENSE REPORT NUMBER AND INCLUDE THE SCANNED FORM IN THE EVIDENCE ENVELOPE.

f. Evidence Destruction: The Harris County District Attorney's Office will send all local Law Enforcement agencies a monthly Destruction Report to give the agency authorization to destroy the marijuana.

OFFENDER PROCEDURE FOR ACCEPTANCE OF
PRE-CHARGE DIVERSION PROGRAM

Offender must:
• Sign Program Acknowledgement & Acceptance Form acknowledging intent to participate and to complete program within 90 days;
• Complete the MMDP class within 90 calendar days of detention;
• The Participant must:
(1) Not break the law (excluding Class C offenses) prior to completion of the program during the 90 day program period;
(2) Pay a $150 program fee to probation department, which may be waived if Offender is determined by the HCCCS&D to be indigent; and
(3) Complete a 4-hour "Cognitive Decision Making" class through the HCCCS&D.

DEFERRED PROSECUTION POLICY FOR JUVENILES

Juveniles will continue to be diverted through the Juvenile Justice System.

LAW ENFORCEMENT PROCEDURE FOR OFFENDERS WHO ARE ELIGIBLE FOR PRE-CHARGE DIVERSION PROGRAM BUT DECLINE

If the Offender does not wish to participate, the Officer shall explain that the Offender will be taken to jail, the Possession of Marijuana charge will be filed immediately, bond will be set and the case will proceed through the courts. In such instances, the Officer must submit the marijuana to the appropriate Crime Lab for analysis.

ooo

The Officer shall fill out the top portion of the Program Acknowledgement & Acceptance Form and have the Offender initial in the bottom box that he or she does not wish to participate and submit the completed form and Email form to: MarijuanaDiversionProgram@csc.hctx.net or Fax: 713-437-8491.
2019 – 2,494 completions
2020 – 882 completions

6. **DWI PTI PROGRAM** - DWI PTI is a diversion program that is dedicated to give a second chance to first time offenders. All of the participants in the DWI PTI program are charged with DWI 1st and have minimal or no Criminal History. All Defendant are required to maintain compliant with their conditions in order to successfully complete the program. At the end of the program, defendant will have their DWI case dismissed.
   Dwi application process
   Accident, high BAC, or asleep at wheel will require a mitigation packet.
   Chief of Court Screens and approves case for DWI PTI.
   Application is handed to Defense attorney in court.
   Chief screens case and approves for DWI PTI
   Client turns in application and insurance and signs up for an DWIPTI Assessment through the CSCDs Centralized Assessment Unit
   Applicant completes the Assessment and a summary and recommendations are shared with the DA's office.
   DWI PTI sends an agreement Client installs device and pays a $300 DA fee
   Probation fee: $65 ($60 supervision fee, $5 UAA)/month + one-time $12.50 probationer ID card

   CSCD CAST Unit Assessment and Assessment Fee explanation:
   $300 CAST Unit Assessment includes a battery of assessments and screenings including:
   - Client Questionnaire- A self-report questionnaire that provides information regarding the following from the client's perspective: Information regarding the client's psycho-social history, current situation (housing, financial, support, employment etc), mental health issues, motivation to change, beliefs about change, and client's belief as to what is the driving reason for their current situation.
   - Screening and Evaluation for Substance Abuse Problems (both alcohol and drugs illicit and prescription)
   - Impaired Driving Assessment Specific to evaluating risk factors related to DUIs (*e.g*. multiple factors regarding the DUI including, the use of drugs (illicit or prescription) and alcohol combined, DUI involving a crash or serious accident, driving behavior reported (speeding, running stop signs or stop lights, driving the wrong way on a highway, swerving into oncoming traffic, fleeing post-accident, driving records-specific to a recent history of speeding, moving violations, at fault accidents, BAC level, passing out behind the wheel of the car, shooting up drugs and driving.

- Mental Health Screening/Evaluation- identifies potential clinically significant mental health problems that may interfere with the defendant's ability to complete the program successfully and to avoid recidivism.
- Texas Risk Assessment System (TRAS)-Community Supervision Tool- A validated risk assessment that provides an assessment of an individual's risk for general recidivism (risk for new arrest for any charge) and an assessment of the defendant's specific risk/need factors, and any potential barriers (responsivity factors like learning style, mental health issues, basic needs deficits -housing transportation etc.) that should be taken into account in providing services. This ensures individuals are not over-supervised and that they receive the appropriate level of supervision and intervention on specific needs.
- Collateral records gathered and reviewed: TCIC/NCIC, driving records (hx of speeding, moving violations, at fault accidents), offense report, BAC/BrC results, drug testing result, Interlock report violations, bond violations (on County Clerk's Deeds site), Special Needs response Form (orange sheet-flagged with a hx of MH problems), relevant information in the client's notes provided by the CLO or Court.
- If indicated, a full clinical assessment is completed by a Doctoral or Masters level clinician-this includes a review of treatment records, potentially medical records, and may include psychological testing (for individuals who present with severe mental health symptoms needing further differential diagnosis).

For the DWIPTI program, the assessor combines the full battery of screening and assessments into a written report with individualized recommendations for treatment, supervision, and monitoring strategies that increase the likelihood of success and reduce risk for future recidivism. The comprehensive assessment results inform the level of supervision, the treatment needs and level, specific accommodations, and key factors that may need to be addressed to ensure success. In addition to informing treatment and supervision level, the comprehensive assessment provides a full picture that assists in determining the best alcohol monitoring technology and drug testing frequency to ensure public safety and provide the defendant the best chance of success. If defendant experiences challenges (positive drug tests, interlock violations, etc., the assessment team is consulted, updates the assessment as needed, and/or uses the original assessment to assist in making a recommendation for adjustments that may be needed.

The assessment process is built on a body of research regarding best practices for criminal justice, substance abuse, mental health, and studies and publications provided by the National Highway Traffic Safety Administration (NHTSA) and others regarding risk in relation to repeat and fatal DUI/DWIs. The National Institute of Drug Abuse (NIDA) outlines 13 principles that should be followed for individuals involved in the criminal justice system that is based on the scientific literature regarding best practices.

The individuals referred to HCCSCD's assessment unit for the DWI-PTI program are charged with either a Misdemeanor Class A (DWI with BAC ≥ .15 or Class B BAC ≥ .08 and ≤ .15). In Harris

County, historical data shows that approximately 60% of DWI cases have BAC ≥ .15 and many have high risk driving behavior (speeding, running stop signs/stoplights, driving the wrong way on a freeway or access road, swerving into oncoming traffic, or crashes at the time of the DUI arrest. There is an increasing number of DUIs that involve drugged driving or the mixture of drugs and alcohol.

One-time $300 Assessment Fee: The State does not provide basic funding for PTIs like they do for cases placed on deferred or probation. To pay for the CSCD's to provide these diversion programs, State statute allows a fee to be assessed to cover the cost of operating the program and the cost of the services provided. Statute allows a separate maximum fee of $60 for supervision cost. While many departments in the State charge a flat program fee of $300 to $400 dollars (*e.g*. Galveston County CSCD assesses a $400 program fee), Harris County CSCD charges a maximum $300 assessment fee to cover the cost of the battery of (~ 2500 to 3500 referrals and assessments per year) assessments described above and the coordination of the assessments and services (classes/treatment) with the defendant, the DA's office, and the Courts, and the indigency assessments for defendants completed prior to assessment. While Harris County's CSCDs maximum assessment fee for the DWIPTI program is $300, most defendants pay on a sliding scale or pay nothing at all. No defendant referred to CSCD for the DWI/PTI assessment and services is turned away. The assessment is administered for all defendants referred regardless of payment. In 2019, 2,332 new DWIPTI assessments were completed. The average assessment fee collected in 2019 for the 2,332 defendant referrals was $132.00 per defendant, which simply means the majority did not pay $300. For 2019 fees collected breakdown as follows: 20% of the DWIPTI clients paid the full $300, 10% paid nothing at all, and the remaining 70% paid on a sliding scale with over half of the defendants paying $100 or less. 2020 collections were significantly lower because of COVID-19 for the 2,145 new DWIPTI assessments. The average collection for DWIPTI assessment services dropped to $78 per defendant, significantly more people did not pay anything.

Interlock/Portable Alcohol Monitoring Devices

The DA contract requires installation of an interlock device, a portable alcohol monitoring device, or a Secure remote alcohol monitoring device. The type of device depends on the specific needs of the defendant and the cost of the device varies by type of device and the vendor the defendant chooses to install the device. Most defendants have the devices installed as a bond condition prior to resolving the case through the PTIDWI program. Most choose to remain with the original vendor for the PTI DWI program. For individuals who struggle to pay for the device during the diversion program, the CSO typically works with the defendant and the vendor to get a reduced fee or in some cases the vendor will waive the fee. During COVID-19, two vendors offered a reduced fee for all clients. State statute mandates these devices for many DWI cases on bond supervision and for Class A and Class B DWI cases placed on deferred or probation supervision. Per the Contract, the ADA will review progress at 6 months and will allow an individual to remove the device if they are progressing and avoiding violations. It is $5 per month.

Total number completing DWI PTI in 2019 and 2020

2019 1,334 defendants completed the DWI/PTI program *Note that most 2019 completion were placed on DWI/PTI in 2018. Beginning in 2019, the DA's office began offering the

program to more individuals charged with Class A misdemeanor DWIs with BAC ≥ .15 (many with high BACs) which increased the number served and successfully completing in 2020.
2020 2,466 defendants completed the DWI/PTI program
The Average Successful Completion rate for DWIPTI is 92%

Agreement is signed in court
Case notes are important, the status of Clients process will be in case notes
Do not modify the agreement or change the dates without contacting DWI PTI first.
Dismissals should ALWAYS be confirmed with Program Manager
Do not enter agreement without setting up a device.

Dwi pti application

DWI PRE-TRIAL INTERVENTION (DWI PTI) PROGRAM APPLICATION

Complete this form and return to the County Court Chief. The application must stay with the State's file.
PLEASE PRINT LEGIBLY

Full Name (if married, include maiden name): _____ DOB:_____CCCL#_____

SPN#_____ Cause#_____

Defense Attorney_____ Def. Attorney Phone# _____

Defense Attorney e-mail: _____

Current Address: _____
Highest level of education completed: ☐ HS Diploma ☐ Undergraduate ☐ Graduate ☐ GED ☐ Other

Employment Status: ☐ Employed Job Title:_____ ☐ Unemployed
☐ Student (If student please list name and location of school_____

(1) Do you operate a company or work vehicles, i.e., cars, trucks, forklifts? If yes, explain below
(NOTE: DEFENDANTS WHO OPERATE COMPANY VEHICLES OR USE A CDL ENDORESEMENT FOR WORK MAY REQUIRE TWO (2) ALCOHOL-MONITORING DEVICES):
_____

(2) Are you a resident of Harris County, Texas? ☐ Yes ☐ No
If no, which county, state do you live? County _____, State _____

(3) Did you have a valid driver's license (DL) on the date of the DWI? ☐ Yes ☐ No

(4) If DL is suspended because of the pending DWI, will you be able to obtain an occupational license? ☐ Yes ☐ No

(5) Do you have valid insurance for all vehicles you operate? ☐ Yes ☐ No
If yes, please attach a copy of the insurance card that was in effect on the date of the DWI.

(6) Citizenship Status: (Check only the box that applies)
- U.S. Citizen ☐
- Lawful Permanent Resident (Please attach copy of LPR/Green Card) ☐
- Other ICE documented lawful presence in the United States ☐
(If this box is checked, attach documentation, i.e. TPS card, Work Permit, Visa, DACA, etc.)
-**Possesses sufficient identifying information and community contacts** ☐
(If this box is checked, Defendant must complete Exhibit B)

r

ttt

(7) Are you *currently* under indictment or charged by complaint or information with any felony or misdemeanor (other than a misdemeanor offense punishable by fine only), participating in any pre-trial intervention or diversion program, on deferred adjudication community supervision, or on probation or parole for any offense in any jurisdiction?

☐ Yes ☐ No *If your answer is "Yes," please provide details:*

(8) Have you ever *previously* been arrested, indicted, or charged by complaint or information with any felony or misdemeanor (other than a misdemeanor offense punishable by fine only), participated in any pre-trial intervention or diversion program, been placed on deferred adjudication community supervision, or been placed on probation or parole for any offense in any jurisdiction?

Please note that if you have had the records of an arrest expunged by a court of competent jurisdiction, then pursuant to Texas Code of Criminal Procedure art. 55.03(3) you "may state only that the matter in question has been expunged."

☐ Yes ☐ No ☐ Any such matter(s) has (have) been expunged
☐ If your answer is anything other than "No," please provide details in the below provided space.

_____
_____
_____
_____

Defendant acknowledges that the scheduling of an Assessment does not guarantee entry into the DWI PTI Program.

DEFENDANT agrees to remain alcohol and drug free while on bond.

I certify under penalty of perjury that I have completed this application to the best of my ability, reviewed this affidavit in its entirety, and swear that all answers and written statements are true and correct to the best of my knowledge.

_____
Defendant

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 20____.

_____
Deputy Clerk/Notary Public, State of Texas

r

uuu

EXHIBIT A

Written statement from the defendant explaining his/her conduct constituting the offense charged, acceptance of responsibility, an explanation of the events which led to the DWI charge and the events following the arrest (e.g., how much did the defendant drink, where was the defendant coming from, where was the defendant going). The statement must also include factors outlining why the defendant should be considered for DWI Pretrial Intervention and an explanation of why Pretrial Intervention is more appropriate than probation in the case.

If this section is not completed, the Assessment may be canceled.

On the date I was arrested for the pending DWI, I consumed (include what you drank and how many):

_____
_____
_____
_____

On the date I was arrested for the pending DWI, I was driving from:

_____
_____

On the date I was arrested for the pending DWI, I was driving to:

_____
_____

I believe that I should be considered for DWI Pretrial Intervention because:

_____
_____
_____
_____

DWI Pretrial Intervention is more appropriate for me than probation because:

_____
_____
_____
_____

Defendant agrees that if accepted into the DWI PTI Program, before entry into the program, Defendant will submit a sworn to and signed Texas Rule of Evidence 410(4) Waiver. This waiver provides for the admissibility of any of the information contained in the Defendant's application, including the Defendant's acceptance of responsibility statement, as impeachment evidence in the event (1) the pretrial intervention is revoked, (2) the case goes to trial, and (3) Defendant testifies inconsistently with any information contained in the DWI PTI application at trial. Defendants who apply and are not accepted or choose not to enter into the DWI PTI Program will not have their DWI PTI application information subject to this provision.

r

vvv

EXHIBIT B

True Name: _____

Alias Name: _____

Address: _____

City: _____

County: _____

State _____ Zip _____

Home Phone: _____
How long at this address? _____

Cell Phone: _____

Previous Address _____

City _____

County _____

State_____ Zip _____

Home phone: _____

How long at this address? _____

Cell Phone: _____

E-mail Address _____

Birthplace _____

Date of Birth _____

Race _____ Sex _____

Driver's License #: State

Social Security #: _____

Employment Authorization (Work Permit)/ VISA Number: _____

Expiration date: _____

Married __ Single__ Divorced __ Separated___

Employed _____Unemployed _____

Employer: _____

Address _____

City, State, Zip _____

Phone _____

How long employed here? _____

Previous Employer: _____

Address _____

City, State, Zip _____

Phone _____

How long employed there? _____

Does current employer know of DWI PTI Supervision? _____ Yes _____ No

Years of School Completed _____

GED _____Yes _____ No

High School Diploma _____ Yes _____ No

Degree: _____Post Graduate: _____

If Student:

School Name _____

Grade: _____

Personal References

Spouse: _____

Address: _____

Spouse's Cell phone number: _____

Parents:

Name _____

Address _____

Phone _____

Others Who Will Know Your Whereabouts:

Name _____

Address _____

Phone _____

Name _____

Address _____

Phone _____

Financial Affidavits We will need supporting documents at least one 1 week before the scheduled community service date!!! The bottom portion of the affidavit requests for a most

recent paycheck stub, receipts, bills, checks, & other payments that explain payment expenses. Affidavits are based on household income, if the applicant is being supported by someone we'll need supporting documents from those listed. We will NOT be able to process affidavits without supporting documents. *Notarized letter explaining Defendant's living situation will suffice as a supporting document. All Affidavits & supporting documentation can be emailed to cleangreen@dao.hctx.net &/or faxed to (832) 927-0102

Emails:
cleangreen@dao.hctx.net
retailtheft@dao.hctx.net
misdveteranscourt@dao.hctx.net
dwipti@dao.hctx.net
Main Telephones
(713) 274 – 0485
DWI PTI
(713) 274-0484 Staff:
Dalia Campos, Program Manager
Jordan Galloway, Program Manager
Kyla Carter, Program Manager
Cynthia Morales
James Garza
Gloria Hernandez

7. **Pre-trial diversion program for environmental crimes, Class B illegal dumping misdemeanors.** The terms are $240 PTI fee paid to HCDAO + any restitution and 1 day community service at the Houston Food Bank. We dismiss whenever the terms and conditions are completed.
   PTI Offered and Completed for 2019 Environmental Crimes: 96
   PTI Offered and Completed for 2020 Environmental Crimes: 82 [66 (16 additional pending completion)]

CAUSE NO. _____

THE STATE OF TEXAS § IN COUNTY CRIMINAL

VS. § COURT AT LAW NO. ___

_____ § HARRIS COUNTY, T E X A S

COVID-19 AGREEMENT FOR EVIRONMENTAL PRETRIAL INTERVENTION (E-PTI)

NAME AND OFFENSE

My name is _____, and this is my true name, and
_____I have never used or been known by any other name; or
_____I have used or been known by the following names:

My home address is: _____. I shall not
change my home address without first giving notice to the Court and the Environmental Crimes Division at the Harris County District Attorney's Office within five (5) days of such change.

_____My phone number is _____. My email address is _____.

My employer is _____.

I am charged with the offense of Illegal Dumping, a Class B Misdemeanor offense, alleged to
have occurred on or about _____, and punishable by a fine of up to $2000.00
dollars or 180 days in jail, or both.

I am being offered the opportunity to participate in the HCDAO's Environmental Covid19 Pretrial Intervention Program (E-PTI) for Misdemeanor Illegal Dumping Cases, an alternative to traditional prosecution where I shall have an opportunity to have my illegal dumping case dismissed subject to the timely completion of the terms and conditions of this agreement.

Based upon my above representations, the District Attorney and I, hereinafter called the "parties," now enter into the following agreement.

PROGRAM FEES & REQUIREMENTS

(1)_____In order to successfully complete the program, I SHALL:

- Complete a 4.5 hour orientation at the Houston Food Bank through the Houston Food Bank located at 535 Portwall St., Houston, TX 77029, followed by 5 hours of community service performed at the Houston Food Bank. Orientations begin every Tuesday, Thursday, and Saturday at 8:30am, and end at 12:00pm. After the orientation, community service begins from 12:00pm and ends at 5:00pm.
- After completion of community service it can take up to 10 days for the Houston Food Bank to produce proof of completion of the community service hours. The case will not be dismissed until the State receives proof of community service hour completion in the form of a certificate provided by the Defendant.

- Pay the Harris County District Attorney's Office (HCDAO) a statutorily authorized $240.00 E-PTI fee in the form of a Cashier's Check or Money Order prior to signing this agreement. The cashier's check or money order shall be delivered to the Harris County Restitution Center located at 1310 Prairie, Ste. 170, Houston, Texas 77002 with the invoice attached hereto.

(2)_____I will participate in the program for (90) days, beginning on _____ date. During the Program period, I will complete a 4.5 hour orientation at the Houston Food Bank, followed by 5 hours of Community Service at the Houston Food Bank.

(3) I shall call the Houston Food Bank no later than today at (713) 223-3700 to confirm the orientation schedule and the blocks of time available to perform my community service hours at the Houston Food Bank located at 535 Portwall St., Houston, TX 77029.

(4)_____I agree to perform my community service hours at the Houston Food Bank no later than sixty (60) days after signing this agreement.

(5)_____I shall bring a copy of this agreement in addition to a valid Texas ID or Driver's License to the Houston Food Bank at the time when I am scheduled to perform community service.

(6) Prior to signing this agreement I shall pay the Harris County District Attorney's Office a $240 E-PTI fee in the form of a Cashier's Check or Money Order and any other restitution associated with this case. The cashier's check or money order shall be delivered to the Harris

County Restitution Center located at 1310 Prairie, Ste. 170, Houston, Texas 77002 as provided by the invoice attached hereto.

If I am indigent and cannot afford to pay the fee and / or contribution of $240.00 I will notify the Harris County District Attorney's Office Misdemeanor Environmental Diversion Program and will submit indigent paperwork to apply for a waiver.

(7) During the program period, I will not violate any state or federal laws.

(8) I may request termination of this Agreement. I understand that if the Agreement is terminated at my request, the charges will proceed through the court as filed, and I may be convicted of the crime charged.

(9) I understand that if I fail to fulfill the terms of this Agreement, the Harris County District Attorney's Office will terminate this Agreement and the charges will proceed through the court as filed, and I may be convicted of the crime charged.

(10) I understand that I may seek immediate expunction of any law enforcement record upon the dismissal of this case. I agree that if I seek expunction of the charges at the conclusion of the Program, any order of expunction must permit the Harris County District Attorney's Office to retain records of my participation in the Program for the purpose of determining future diversion eligibility.

AFFIRMATION

I, _____, the defendant herein, have read all of the above agreement and hereby swear it is true and correct and represents the total agreement between the District Attorney and me.

Defendant's Signature Assistant District Attorney's Signature

****

Occasionally our office is contacted by someone who is interested in conducting a study about an individual's experiences in pre-trial diversion programs. Would you agree to allow someone to contact you about participating in such a study? You are under no obligation to consent to the initial contact or to consent to the study after hearing the details about the program.

I consent to be contacted by someone conducting a study
I do not consent to be contacted by someone conducting a study

_____

David Mitchem
First Assistant

aaaa

Vivian King
Chief of Staff

Criminal Justice Center
500 Jefferson, 6th Floor
Houston, Texas 77002-1901
HARRIS COUNTY DISTRICT ATTORNEY

KIM K. OGG
Environmental Pretrial Intervention Fee (E-PTI Fee)

CAUSE NUMBERS: _____

DEFENDANT: _____

AMOUNT: $240.00

PAYEE: Harris County D.A.'s Office

TYPE OF PAMENT: HCDAO Environmental Division PTI Fee

DRAFTING & RECEIPT INSTRUCTIONS: Payments shall be made by Cashier's Check or Money Order. The cashier's check or money order shall be made out to Harris County District Attorney's Office. Payment shall be delivered to the Restitution Center located at 1310 Prairie, Ste. 170, Houston, Texas, 77002. The memo of the cashier's check and / or money order shall include the cause number including the words, Environmental Crimes PTI Fee, and this form must be included with payment. Defendant must present a receipt of payment to the prosecutor handling the case.

_____ _____

SIGNATURE - DEFENDANT DATE TENDERED TO RESTITUTION CENTER

8. **Juvenile cases**

Prosecutors in the Juvenile Division of the District Attorney's Office screen new cases and decide whether to file a petition, reject the charge, or refer the juvenile to one of these pre-petition diversion programs. Currently, there are six pre-petition diversion programs for juveniles. Before John Jordan was named Chief of the Juvenile Division, there were two pre-petition diversion programs: DP 90 and DP 180. (DP stands for Deferred Prosecution.) Those two programs started 3/1/2009 and continued until 7/6/2020, when they were effectively replaced by new programs: Second Chance and Diversion 180.

All but one of the current diversion programs are administered by the Harris County Juvenile Probation Department, and the juveniles are supervised by employees of HCJPD who are

classified as “Case Advocates” rather than “Probation Officers,” to avoid attaching the stigma of being on probation to the juvenile. There are no supervision fees and no program fees collected by the DA’s Office or HCJPD. Some of the services administered by outside providers may have fees; most of these are on a sliding scale if the juvenile’s private insurance or Medicaid does not cover them.

Second Chance started July 6, 2020, effectively replacing DP90. The program lasts a maximum of 90 days, and the requirements are roughly the same as DP 90, but the eligibility is slightly different. All first-offense misdemeanors and nonviolent felonies are eligible; in DP 90, no felonies were eligible for participation and violent misdemeanors were also excluded. Some first-time offenses are referred to Diversion 180, described below, depending on the circumstances of the offense.

In non-Pandemic times, juveniles referred to DP 90 were required to attend a program called “Juvenile Consequences” where they heard from a probation officer, a police officer, a DA, a public defender, and a lived-experience speaker, a former juvenile who had been certified to stand trial as an adult and had been to prison. During the Pandemic, juveniles in Second Chance have been required to attend virtual decision making workshops. (If a juvenile has no internet access, an essay about decision making may be substituted.) The juveniles are required to pay restitution to their victims if applicable. If the juveniles attend Juvenile Consequences/a decision making workshop and do not pick up a new case, they are discharged successfully. If the juvenile does not successfully complete Second Chance, a petition may be filed in court.

Diversion 180 started July 6, 2020, effectively replacing DP 180. The program lasts a maximum of 180 days, and the requirements are roughly the same as DP 180, but the eligibility is slightly different. All misdemeanors and all State Jail and Third-Degree felonies are eligible for Diversion 180; in DP 180, no felonies were eligible for participation and violent misdemeanors were also excluded. Juveniles who have previously been referred to Second Chance may be referred to Diversion 180. Juveniles may be referred to Diversion 180 more than once on subsequent misdemeanors but not subsequent felonies. Juveniles who have previously been on probation or deferred adjudication may be referred to Diversion 180.

Like juveniles in Second Chance, juveniles referred to Diversion 180 are required to attend Juvenile Consequences or a decision making workshop. Juveniles in Diversion 180 may be required to attend more and different workshops, too, based on their individual needs as assessed by the probation department. Juveniles are required to pay restitution to their victims if applicable. Juveniles in Diversion 180 are screened for referrals to services in the community like mental health services or drug treatment services. These services are provided by outside vendors and there may be fees on a sliding scale if the juvenile’s private insurance or Medicaid does not cover the services. The hallmark of Diversion 180 is that the program is individualized with the hope of greater success. If the juveniles attend Juvenile Consequences/a decision making workshop and/or any other workshops required or therapies recommended, and they do not pick up a new case, they are discharged successfully. If the juvenile does not successfully complete Diversion 180, a petition may be filed in court.

RTC Diversion, which started in October of 2020, is a pre-petition diversion program for Dual Status juveniles (and non-Dual Status juveniles who are residing in RTC’s) that branched out of Diversion 180. It has the same eligibility and program requirements as Diversion 180, but the

juveniles are assigned to a Community Advocate with special knowledge of Dual Status cases. (Dual Status means the youth is in the Temporary or Permanent Managing Conservatorship of CPS and has been referred to the Juvenile Courts.) Juveniles in RTC Diversion are screened by HCJPD for appropriate services, but often those are already being provided by CPS, and they are careful not to duplicate services. If the juvenile does not successfully complete the RTC Diversion, a petition may be filed in court.

FIRST (Family Intervention Restorative Services of Texas), which started on 2/18/2019, is a pre-petition diversion program for juveniles charged with Assault—Family Member or Deadly Conduct, Terroristic Threat, or Criminal Mischief occurring in the home. (Assault FM cases arising out of dating relationships are excluded, but those are eligible for Second Chance and/or Diversion 180, of course.) Juveniles may be referred to FIRST even if they are already on probation or in another diversion program, and juveniles may be referred to FIRST more than once.

When a juvenile is referred to FIRST, a CA connects the family with MCOT—the Mobile Crisis Outreach Team, a field service of the Harris Center for Mental Health and IDD—usually within less than 24 hours. MCOT assesses the family and refers them to family therapy services in their area. Costs might be incurred based on the ultimate service provider, the family's insurance, etc. When the juveniles complete the therapy program, they are discharged from the program. If the juvenile does not complete the therapy program, a petition may be filed in court.

The juvenile **Marijuana Diversion Program** started August 1, 2019. It is a pre-petition program administered by HCJPD. Officers who find a juvenile in possession of a misdemeanor amount of marijuana may refer the juvenile to this program without a referral from the DA's Office. The officers confiscate the contraband but do not AFIS, photograph, or JOT the juvenile; instead they make a referral directly to HCJPD. The juvenile must attend a drug awareness workshop (which has been virtual during the Pandemic). Once the juvenile has completed the workshop, they are discharged from the diversion program. If the juvenile does not attend the workshop, a petition may be filed in court.

BASE (Building Appropriate Sexual Education), which started on 4/6/2018) is a pre-petition diversion program for juveniles accused of sexual abuse or indecency with a child within a family—siblings, cousins, or sometimes fictive kin if deemed appropriate. This program is administered by the Children's Assessment Center where the juveniles go through a program of intensive therapy. There is no cost to the family. If the juvenile does not complete the therapy program, a petition may be filed in court.

These programs are still evolving and changing as best practices are understood.

Diversion Programs Outcomes, Total Referrals: Raw Numbers

Through December 2020

Diversion Program	Total Referrals	Successfully Completed	Unsuccessful; Petition Filed	Closed; No Petition	Still Open
FIRST *Since 2/18/2019*	*407*	240	10	66	91

dddd

Fifth Ward	25	20	0	4	1
Since 9/23/2019					
Diversion 180	249	29	0	18	202
Since 7/6/2020					
Second Chance	166	87	0	6	73
Since 7/6/2020					
RTC Diversion	13	0	0	0	13
Since 10/2020					
BASE	66	25	0	5	35
Since 4/6/2018					
Marijuana	634	491	0	0	143
Since 8/1/2019					
DP 90	*11,211*	10,634	511	66	0
3/1/2009 to 7/6/2020					
DP 180	5,195	3,823	1,308	64	0
3/1/2009 to 7/6/2020					
Total	**17, 966**	**15,349**	**1,829**	**230**	**558**

Diversion Programs Outcomes, Total Referrals: Percentages

Through December 2020

Diversion Program	Total Referrals	Successfully Completed	Unsuccessful; Petition Filed	Closed; No Petition	Still Open
FIRST	*407*	58.97%	2.46%	16.22%	22.36%
Since 2/18/2019					
Fifth Ward	25	80.0%	0	16.0%	4.0%
Since 9/23/2019					

eeee

Diversion 180	249	11.65%	0	7.23%	81.12%
Since 7/6/2020					
Second Chance	166	52.41%	0	3.61%	43.98%
Since 7/6/2020					
RTC Diversion	13	0	0	0	100%
Since 10/2020					
BASE	66	37.88%	0	9.09%	53.03%
Since 4/6/2018					
Marijuana	634	77.44%	0	0	22.56%
Since 8/1/2019					
DP 90	*11,211*	94.85%	4.56%	0.59%	0
3/1/2009 to 7/6/2020					
DP 180	5,195	73.59%	25.18%	1.23%	0
3/1/2009 to 7/6/2020					
Total	**17,966**	**85.43%**	**10.18%**	**1.28%**	**3.11%**

Diversion Programs Outcomes, Closed Referrals: Percentages

Through December 2020

Diversion Program	Closed Referrals	Successfully Completed	Unsuccessful; Petition Filed	Closed; No Petition
FIRST	*316*	75.95%	3.16%	20.89%
Since 2/18/2019				
Fifth Ward	24	83.33%	0	16.67%
Since 9/23/2019				
Diversion 180	47	61.70%	0	38.30%
Since 7/6/2020				
Second Chance	93	93.55%	0	6.45%

ffff

Since 7/6/2020				
RTC Diversion	0	0	0	0
Since 10/2020				
BASE	31	80.65%	0	19.35%
Since 4/6/2018				
Marijuana	491	100%	0	0
Since 8/1/2019				
DP 90	*11,211*	94.85%	4.56%	0.59%
3/1/2009 to 7/6/2020				
DP 180	5,195	73.59%	25.18%	1.23%
3/1/2009 to 7/6/2020				
Total	**17,408**	**88.07%**	**10.51%**	**1.32%**

gggg

12. Forms used by Magistrate at magistration: Article 15.17 hearing; defendant present and not present (12-17-20); ORDER FOR PRETRIAL SUPERVISION & BOND COND (11/03/17)

Defendant Present

Cause No. _____

CAUSE NO. _____ SPN: _____ DATE/TIME OF ARREST: _____

THE STATE OF TEXAS § IN THE COUNTY CRIMINAL
v. § COURT AT LAW NO. _____
_____ § HARRIS COUNTY, TEXAS
Defendant
DOB: _____

STATUTORY WARNINGS BY MAGISTRATE - PROBABLE CAUSE DETERMINATION – PR BOND/BAIL ORDER

Defendant is accused of a misdemeanor, namely, _____

1. DEFENDANT PRESENT

Defendant was present and appeared ☐ in person or ☐ by video teleconference

2. NOTIFICATION OF RIGHTS

☐ I admonished Defendant as required by Article 15.17 regarding the nature of the offense and Defendant's rights.

3. APPOINTMENT OF COUNSEL FOR ARTICLE 15.17 HEARING

☐ Defendant was represented by Assistant Public Defender _____ (name) at the Article 15.17 hearing, OR

☐ I find that Defendant made a knowing, voluntary, and intelligent waiver of representation for determination of bail and any other matters addressed at the Article 15.17 hearing only; the waiver does not extend beyond this Article 15.17 hearing.

4. REQUEST FOR APPOINTMENT OF COUNSEL IN THE COUNTY CRIMINAL COURT AT LAW

Defendant ☐ requested ☐ did not request counsel. ☐ The Court ORDERS Pretrial Services to help Defendant, if still in custody, prepare the request for counsel, including any paperwork, and forward it to the judge of the court in which the case is pending within 24 hours.

5. CONSULAR NOTIFICATION

☐ I informed Defendant "If you are a non-U.S. citizen, you are entitled to have us notify your country's consular representatives here in the United States. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. For some non-U.S. citizens, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. You are not required to accept their assistance. If mandatory notification applies to you, we will notify your country's consular officials as soon as possible.

"Do you want your country's consular officials to be notified?" ☐ Yes ☐ No The consulate to be notified is: _____.
OR
☐ The Court has determined that the following consulate must be notified of your arrest _____.

PROBABLE CAUSE FINDING AND ORDER

☐ The Court FINDS that probable cause for further detention DOES NOT EXIST. The Court ORDERS the law enforcement agency and officer having custody of Defendant to immediately release Defendant from custody.

☐ The Court FINDS that probable cause for further detention EXISTS. The Court reviewed and/or set Defendant's bond as indicated in the BAIL ORDER below and, in clear and unambiguous language: (1) informed Defendant of the Defendant's rights pursuant to TEX. CODE CRIM. P. Art. 15.17; and (2) provided Defendant with information required by law. The Court ORDERS Defendant committed to the custody of the Sheriff of Harris County, Texas, until Defendant posts the required bond or until further order of the Court.

☐ Probable cause was previously determined. The Court ORDERS Defendant committed to the custody of the Sheriff of Harris County, Texas, until Defendant posts the required bond or until further order of the Court.

Magistrate _____ (printed name) (Revised 12-17-2020) Page 1 of 2

hhhh

Cause No. _____

SUMMARY OF BAIL HEARING

Having found that probable cause exists for the further detention of the Defendant, the Court next determined the conditions of release for Defendant to ensure that Defendant will appear and answer before the proper Court and to reasonably protect the safety of the community.

A. Evidence

☐ All information I considered in determining bail conditions, including criminal history, was provided to the defense prior to the hearing.

B. Indigence Determination and Ability to Pay:

☐ Defendant swore to and signed a Financial Affidavit stating that Defendant could afford $_____; OR

☐ Defendant did not swear to and sign a Financial Affidavit.

☐ I find by clear and convincing evidence that Defendant is indigent as defined by Section 17(h) of the O'Donnell Consent Decree and/or cannot afford any amount of secured bail; OR

☐ I find by clear and convincing evidence that Defendant is not indigent and can afford $_____ at the time of this hearing without experiencing hardship in meeting the basic necessities of life.

C. Personal Bond / Bail Requests

District Attorney Request

☐ Personal Bond requested in the amount of $_____ ☐ Opposed ☐ No Position

☐ Secured Bail requested in the amount of $_____

☐ DA requested denial of bail

☐ DA made no bail request

Defendant's Request

☐ Personal Bond requested in the amount of $_____ ☐ Opposed ☐ No Position

☐ Secured Bail requested in the amount of $_____

☐ Defense made no bail request

BAIL ORDER

☐ Defendant is ordered RELEASED on a personal bond in the amount of $_____; OR

☐ The Court ORDERS Defendant committed to the custody of the Sheriff of Harris County, Texas, until Defendant posts the required bond or until further order of the Court, AND:

☐ Defendant must pay $_____ secured bail to be released and I find that Defendant can afford the secured bail amount; OR

☐ Defendant must pay $_____ secured bail to be released. Defendant does not have the ability to pay the amount required, but I considered alternative conditions of release, and by clear and convincing evidence, there was no less-restrictive condition or combination of conditions that could reasonably prevent flight from prosecution and/or reasonably protect the safety of the community. The reasons I have concluded that unaffordable bail is necessary and the evidence I considered in reaching that conclusion are set forth below:

_____
_____
_____
_____
_____
_____

I certify that the procedures and findings required by Local Rule 9 were provided and that I have explained the reasons and evidence relied on for my decision to Defendant and/or counsel, ☐orally, ☐in writing, ☐or both.

_____ _____ _____

Date and Time **Magistrate (Judge or Hearing Officer)** **Interpreter (if applicable)**

Magistrate _____ **(printed name)**

Defendant Not Present

Cause No. _____

CAUSE NO. _____ SPN: _____ DATE/TIME OF ARREST: _____

THE STATE OF TEXAS § IN THE COUNTY CRIMINAL
v. § COURT AT LAW NO. _____
_____ § HARRIS COUNTY, TEXAS
DOB: _____

STATUTORY WARNINGS BY MAGISTRATE - PROBABLE CAUSE DETERMINATION – PR BOND/BAIL ORDER

The Defendant is accused of a misdemeanor, namely, _____

1. DEFENDANT NOT PRESENT

On this date and time the defendant was not present due to ☐ medical condition ☐ mental illness/IDD ☐ other _____,

2. APPOINTMENT OF COUNSEL FOR ARTICLE 15.17 HEARING

☐ Defendant was represented by Assistant Public Defender _____ (name) at the Article 15.17 hearing, OR

☐ I find that Defendant made a knowing, voluntary, and intelligent waiver of representation for determination of bail and any other matters addressed at the Article 15.17 hearing only; the waiver does not extend beyond this Article 15.17 hearing.

PROBABLE CAUSE FINDING AND ORDER

☐ The Court FINDS that probable cause for further detention DOES NOT EXIST. The Court ORDERS the law enforcement agency and officer having custody of the defendant to immediately release the defendant from custody.

☐ The Court FINDS that probable cause for further detention EXISTS. The Court reviewed and/or set the defendant's bond as indicated in the BAIL ORDER below and, in clear and unambiguous language: (1) informed the defendant of his rights pursuant to TEX. CODE CRIM. P. Art. 15.17; and (2) provided the defendant with information required by law. The Court ORDERS the defendant committed to the custody of the Sheriff of Harris County, Texas, until he posts the required bond or until further order of the Court.

☐ Probable cause previously determined. The Court ORDERS the defendant committed to the custody of the Sheriff of Harris County, Texas, until he posts the required bond or until further order of the Court.

SUMMARY OF BAIL HEARING

Having found probable cause exists for the further detention of the Defendant, the Court next determined the conditions of release for the accused to ensure he/she will appear and answer before the proper Court and to reasonably protect the safety of the community.

A. Evidence

☐ All information I considered in determining bail conditions, including criminal history, was provided to the defense prior to the hearing.

B. Indigence Determination and Ability to Pay:

☐ Defendant swore to and signed a Financial Affidavit stating that Defendant could afford $_____; OR
☐ Defendant did not swear to and sign a Financial Affidavit.

☐ I find by clear and convincing evidence that Defendant is indigent as defined by Section 17(h) of the O'Donnell Consent Decree and/or cannot afford any amount of secured bail; OR
☐ I find by clear and convincing evidence that Defendant is not indigent and can afford $_____ at the time of this hearing without experiencing hardship in meeting the basic necessities of life.

Magistrate _____ (printed name) (Revised 12-17-2020) Page 1 of 2

jjjj

Cause No. _____

C. Personal Bond / Bail Requests
District Attorney Request

☐ Personal Bond requested in the amount of $_____ ☐ Opposed ☐ No Position
☐ Secured Bail requested in the amount of $_____
☐ DA requested denial of bail
☐ DA made no bail request

Defendant's Request

☐ Personal Bond requested in the amount of $_____ ☐ Opposed ☐ No Position
☐ Secured Bail requested in the amount of $_____
☐ Defense made no bail request

BAIL ORDER

☐ Defendant is ordered RELEASED on a personal bond in the amount of $_____; OR

☐ The Court ORDERS the defendant committed to the custody of the Sheriff of Harris County, Texas, until he/she posts the required bond or until further order of the Court, AND:

☐ The Defendant must pay $_____ secured bail to be released and I find that the Defendant can afford the secured bail amount; OR

☐ The Defendant must pay $_____ secured bail to be released. The Defendant does not have the ability to pay the amount required, but I considered alternative conditions of release, and by clear and convincing evidence, there was no less-restrictive condition or combination of conditions that could reasonably prevent flight from prosecution and/or reasonably protect the safety of the community. The reasons I have concluded that unaffordable bail is necessary and the evidence I considered in reaching that conclusion are set forth below:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

☐ I certify that the procedures and findings required by Local Rule 9 were provided and that I have explained the reasons and evidence relied on for my decision to Defendant and/or counsel, ☐orally, ☐in writing, ☐or both.

_____ _____ _____
Date and Time Magistrate (Judge or Hearing Officer) Interpreter (if applicable)

kkkk

ORDER FOR PRETRIAL SUPERVISION AND BOND CONDITIONS (11/03/2017)

CAUSE NO.

STATE OF TEXAS § In the _____ District Court
§
v. §
§
§ County Criminal Court at Law No._____
(Defendant) §
§
§
(SPN) § Harris County, Texas

ORDER FOR PRETRIAL SUPERVISION AND BOND CONDITIONS

In addition to appearing in court as instructed, the defendant is **ORDERED** to comply with the following conditions of release on bond. The defendant will be supervised as follows:

• **If released on personal bond or unsecured bond,** the defendant will be supervised by Harris County Pretrial Services (HCPS). The defendant will report to the HCPS Defendant Monitoring Division by _____ and comply with the rules on the Supervision Requirements form and the conditions indicated below until the case is disposed or until the court terminates this supervision. If released on a personal bond, the defendant will pay a personal bond fee of:

$ _____; or
Personal bond fee waived.

• **If released on surety bond or cash bond,** the defendant will be supervised by Harris County Community Supervision and Corrections (HCCSCD). The defendant will report in person to the HCCSCD Bond Supervision Unit beginning _____ and thereafter as directed by the supervision officer until the case is disposed or until the court terminates this supervision. If the defendant does not have a current Texas Driver's License or other valid official government-issued photo identification, the defendant will pay a $12.50 fee to HCCSCD for an ID Card. The defendant will pay to and through HCCSCD a supervision fee of:

$60.00 per month and a $2.00 transaction fee for each payment; or
$40.00 per month and a $2.00 transaction fee for each payment.

Additional conditions (mark those that apply):

Defendant shall personally appear in court, on time, every time this case is set on the Court's docket.
Defendant shall commit no crime and shall not engage in any conduct that could result in his/her arrest.
Defendant shall have no contact with the prosecution's witness(s) / the complainant(s) / the victim(s), specifically:
_____
_____

Defendant shall refrain from going to or near a residence, school, place of employment, or other location, specifically:
_____
_____

Defendant shall not operate a motor vehicle unless it is equipped with a camera-equipped, deep-lung breath analysis mechanism approved by the Texas Department of Public Safety that makes impractical the operation of a motor vehicle if ethyl alcohol is detected in his/her breath. Defendant shall have the device installed on the vehicle owned or most regularly driven by the defendant within _____ calendar days of the defendant's release on bond. Defendant must comply with all required equipment and maintenance service, and to comply with testing protocols. **For HCPS only:** Monitoring fee waived.

 Filed with _____ on _____ At _____ AM/PM BY: _____ Rev. 11/03/2017

IIII

Defendant is required to obtain an approved portable alcohol testing device from a vendor approved by the supervising agency and to begin its use within _____ calendar days, to comply with all required equipment and maintenance services, and to comply with testing protocols.
Defendant is required to submit to drug / alcohol / drug and alcohol testing by authorized agency personnel.
HCPS: Defendant to pay costs of $11.00 per test / $_____ per test / waived.
HCCSCD: Defendant to pay drug testing fee of $10.00 monthly.
Defendant shall not drive without the permission of the court.
Defendant is to surrender his/her passport for temporary deposit with the Treasurer or Registry of the Court, as instructed by the supervising agency, and provide the agency with proof of that surrender.
Defendant's travel is restricted as follows:
Remain within the State of Texas. A request to travel outside the State of Texas must be submitted to your supervising officer at least two business days prior to your travel date.
Remain within Harris County, Texas, and its contiguous counties (Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, and Waller). A request to travel outside these counties must be submitted to your supervising officer at least two business days prior to your planned travel date.
Defendant must not use, possess, or consume marijuana or any controlled substance or dangerous drug unless obtained pursuant to a lawful prescription for the defendant issued by a medical doctor. Defendant will provide a copy of all such prescriptions to his supervising officer in advance.
Facts giving rise to probable cause suggest that alcohol was a factor in this offense. Defendant must not use, possess, or consume alcohol. This includes any food, mouthwash, or over-the-counter medication containing alcohol.
Defendant is required to submit to electronic monitoring (EM) / GPS monitoring, to be installed within _____ calendar days of the defendant's release on bond. Defendant must sign any required agreements, comply with all required equipment and maintenance services, and comply with monitoring protocols, as instructed by the supervising agency. Defendant will observe an initial curfew from _____ until _____, seven days per week.
HCPS: Defendant to pay monitoring costs of $6.00 per day / waived.
HCCSCD: Defendant to pay all necessary fees and costs directly to the electronic monitoring vendor.
Other:
_____
_____
_____
Failure to abide by these bond conditions may result in the Defendant's bond being forfeited or revoked and the Defendant arrested and confined. In addition, the Court has the authority to oversee the enforcement of its Orders, require that proceedings before it be conducted in an orderly and expeditious manner, and to ensure justice is done. *See* TEX. GOV'T CODE §21.001. Disobeying this Order could also constitute contempt, which is punishable by a maximum penalty of a fine of not more than $500.00, confinement in jail for up to six months, or both.
Dated: _____ Judge/Magistrate Signature:
_____
Defendant's Acknowledgment
I understand that the court is ordering my compliance with the conditions listed above as a requirement of my continued release on bond. I agree to these conditions. I understand that my failure to comply with these conditions may result in the forfeiture or revocation of my bond and confinement, and possibly a separate action against me for contempt of court for which I could be separately fined and jailed as detailed above.
Dated: _____ Defendant's Signature:
_____

13. Harris County Public Defender Office data field on each misdemeanor case

file_type	Division case is assigned to (MMH, Felony, Juvenile, Appellate)
file_number	Internal case number
file_sub_type	Motion to adjudicate, motion to revoke
date_opened	Date case was opened at HCPD
case_status_code	As of "today" is this case open or closed (if close how - complete, new attorney, retained attorney), warrant/writ
date_closed	If closed in any manner, date of closure
apd_attorney	Appointed public defender - in general this one for the case but might change if attorney resigns or row is related to a given court setting that a different attorney covered
court_of_appeals_cause_nbr	When applicable, the cause number for an appeal associated with this case
citizenship_status	Client citizenship status (US, Unknown, Lawful Perm. Resident, Visa, Temp Perm Resident, etc)
trial_attorney	When case type is "appeal" then this is the original trial attorney. Not used for original misdemeanor cases.
trial_court_type	Numeric code associated with court level, *e.g.* 002 is County Court at Law
trial_court_cause_nbr	Cause Number used by CCL
first_entry_date	Date of record creation
case_worker	Caseworker assigned to client/cause number
court_code	CCL number
last_name	Client last name
first_name	Client first name
middle_name	Client middle name
dob	Client date of birth
spn	Client's SPN number - a unique identifer for the Harris County justice system
jail_location	Location of client for a given entry including Processing or specific alpha-numeric code
language	Language client most comfortably communicates in (Spanish, Vietnamese, Arabic, Sign Language, Other, or Blank - assume this is English)
gender_code	Client gender
ethnicity	Client ethnicity (White, Black, Hispanic, Unknown, Asian, Pacific Islander, Other, American Indian)
address1	Street address or HOMELESS
address2	Second line of street address, as needed
city	Address City
state	Address State

zip	Address Zip Code
diagnosis	MH/SubAbuse Diagnosis - free text - for each diagnsosis
diagnosed_by	Name of Diagnostician
diagnosis_date	Date of Diagnosis for each diagnosis
diagnosis_comment	Details of diagnsosis, includes refused treatment
assitance_requested	Client inquiry, placement, medication, mental status or blank
referral_type	For every referral type - includes basic needs, financial, housing, transportion, medication, employment, MH, SubAbuse
referral_name	For every referral type, the place of the referral (MHMRA, a hospital, a nonprofit, etc)
referral_description	Free type entry describing the referral
referral_date	The date of the referral for every referral
referral_status	Completed, declined, client not ready, unknown, not appropriate, unknown, and empty
referral_closed	Date the referral was closed
arrest_date	Date of arrest for this offense
arrest_date_sequence	For the original arrest = 1, each subsequent arrest during the case lifespan adds +1
filed_date	Date the case was filed in CCL
bond_date	Date the client was released on bond for each bond
bond_date_sequence	For the original bond release = 1, each subsequent bond release during the case lifespan adds +1
charging_offense_code	Numerical code for the offense associated with this case/cause number
charging_offense_descr	Literal offense for the numerical code for the offense associated with this case/cause number
charging_offense_level_degree	MB, MA, M* for the numeriical code for the offense associated with this case/cause number
conviction_offense_code	If convicted, the numerical code fo rthe offense associated with this case/cause number (may be the same, reduced, or enhanced if offense found enhanceable post filing)
conviction_offense_descr	If convicted, the literal offense for the offense associated with this case/cause number (may be the same, reduced, or enhanced if offense found enhanceable post filing)
conviction_offense_level_degree	If convicted, the misdemeanor level (MB, MA, M*) for the offense associated with this case/cause number (may be

	the same, reduced, or enhanced if offense found enhanceable post filing)
offense_group	Offense group this offense is associated with on the Office of Court Administration Misdemeanor Activity Detail Report (normed for the entire state)
disposition_code	How disposed with most common entries: dismissed (request of complaining witness, missing witness, convicted in other case, etc), plea of guilt, nolo plea, guilty at trial (by judge or jury), acquittal at trial (by judge, by jury, or directed verdict), Motion to Adjudicate and Motion to Revoke Results
sentence_code	County Jail, Probation, Deferred Adjudication, Fine Only
mandate_type	Affirm or Dismiss Brief for associated appeal
new_disposition	New disposition following appeal
new_sentence	New sentence following appeal
sentence_length	Length of incarcerative sentence
sentence_length_units	Unit of incarcerative sentence (d, m, y) - use with length to calculate the sentence
sentence_credit	Length of sentence credit earned prior to incarceration
sentence_credit_units	Unit of sentence credit earned prior to incarceration (d, m, y) - use with credit length to calculate the sentence credit
sentence_probated	Length of supervised sentence
sentence_probated_units	Unit of supervised sentence (d, m, y) - use with length to calculate the sentence
sentence_fine	Fine, if any, associated with sentence for those found/plead guilty
event_type_code	Any event entered for a given cause number and type including court setting and description, motion for new trial filed, incompent (one row for each)
event_subject	Details associated with the event type code
event_date	Date the event type code and event subject were entered
event_attorney	The attorney entering the event type code, subject, and date
event_user	The person entering the event information above - may be a social worker, administrative person, investigator, etc
time_keeping_flag	Y - time keeping flag; N - not time keeping; If Yes, the event user is entering the hours they spent on an event in "event_duration"- use to calculate time on case
ssn	Client social security number
event_duration	Time spent doing events entered with eventy_type_code, event_date, event_user if time_keeping_flag = Y

SID	Client's state identification number (SID) which is a number Texas Department of Public Safety uses to record criminal justice records
book_date	Date client was booked into jail for each booking
book_date_sequence	Sequence of jail bookings for a client during the lifespan of a given case/cause number
investigator	Investigator assigned to case
referral_source	How the client came to qualify for the MH Public Defender representation (Y, N, Incomp, Prev Algorithm, Prev MH)
incident_date	Date incident leading to arrest occurred
related_last_name	Person related to case last name
related_first_name	Person related to case first name
related_role	Person related to the CASE or the CLIENT (parent, spouse, witness, complainant)

14. Sample case management policies from Kentucky public defender program

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.00	Total Pages: 3
	Original Date Issued: June 3, 2002	Last Revision Date: October 1, 2012
References	Subject: Case Management System – Definition of CMS and Limits on Access to Information	

I. Introduction

The Case Management System (CMS) is the informational backbone of DPA. DPA leaders and staff, as well as policymakers in the Executive and Legislative Branches, must be able to rely on information stored in the CMS. Proper data management and data integrity are essential to the reliability and usefulness of the case management system. All DPA employees must ensure that the integrity of data in the CMS is maintained.

II. Definition of Case Management System

The DPA Case Management System (CMS) is a unified database used to store and capture data on cases opened in all DPA offices in the Trial and Post-Trial Divisions, including cases assigned to contract attorneys. The data stored in CMS is used for information on a particular case or client, as well as to analyze trends and caseload statistics for individual attorneys, offices, branches, regions, or DPA as a whole.

III. Access to Information in CMS

While the database is unified, a user's access to information within the database is determined by his or her role in DPA.

A. CMS Administrator

CMS Administrators are LOPS personnel who are designated by the Public Advocate or the LOPS Division Director as the only persons having full access to all portions of the CMS system, in terms of both the program and its underlying code and the database tables where the data is stored. CMS Administrators are also the only individuals with the ability to add and remove authorized users from CMS. CMS Administrators may be requested to provide data reports to DPA leaders.

B. Limited Administrator

Limited administrators are employees outside LOPS who have limited administrative rights within the CMS. These rights may include writing reports, composing documents, creating business rules, adding or deleting field options or other non-programming functions. Limited administrators shall have only the administrative rights granted them by a CMS Administrator and such rights may be expanded, limited, or eliminated at any time.

rrrr

C. DPA Leadership Team

The Public Advocate, Deputy Public Advocate, General Counsel, and LOPS Division Director shall have access to all portions of CMS data. The Trial Division Director and Post-Trial Division Director shall each have access to all data for their respective divisions, but not the other division's data, without permission from the other division's director.

D. Directing Attorneys, Unit Supervisors, and Branch Managers

Directing attorneys, unit supervisors, and branch managers shall have access to only the data in their office or branch. In the Trial Division, regional managers have access to data from all offices in their region. If a division director determines that access to data of another unit by a branch manager is not appropriate, the director may request the CMS Administrator to limit or eliminate such access.

E. End Users

End users are DPA employees or approved designees who have login credentials to the CMS and who may input or view data within the system. End users' access to view, edit or input data may be limited based on their position, work unit or other factors. Upon designation by the Public Advocate, an end user may have greater access for the purpose of compiling and providing information.

IV. Limitations of Access or Use of CMS Information

The technical ability to access information does not eliminate limitations based on factors other than technology. No data shall be requested if receipt or research of such data would result in a violation of:

A. Any DPA Policy, including Policy 14.00: Responsibility for Legal and Ethical Confidentiality,
B. The Kentucky Rules of Professional Conduct, including rules relating to conflicts of interest.

The CMS is to be used for DPA business purposes only. No information gathered from the case management system, other than information related to a specific case, shall be used in any way to the detriment of DPA.

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.01	Total Pages: 2
	Original Date Issued: October 1, 2012	Last Revision Date:
References	Subject: Expectations for Users of the Case Management System	

I. Statement of Purpose

The reliability of the case management system is dependent upon consistent entry of data and reliable usage of the system. All users entering data into the CMS shall follow standard procedures established and described through training provided by the CMS vendor, a DPA CMS Administrator, the Education Branch, or other approved CMS trainers. In the policies within this Chapter, the phrase "established and trained procedures" refers only to those procedures which are taught through CMS training or materials approved by DPA leadership or the CMS Administrator.

Below are the minimum specific expectations for users of DPA's case management system.

XII. All Users - All users are expected to meet the following requirements:

A. Accuracy - All data entered into the system should be accurate. Users should not enter any data without a reasonable good-faith belief that the information is accurate. No data should be entered as a "placeholder" or as a "best guess". If data is required to be entered, the user bears the responsibility to determine the accurate information to be entered.

B. Completeness - Users may be required, by the system or by a supervisor, to enter particular elements of data into the system. All required data elements must be entered. Users shall not skip required data fields to complete case entries more quickly.

C. Diligence - Case information must be entered in a timely manner. Cases should not be held for data to be entered at a later time. Once cases are completed, all involved users shall ensure that the case is closed in the CMS in a timely manner.

D. Training - All users are required to attend training in the case management system. Dates, times, and locations of training may be provided by the Education Branch, Law Operations Division, or a Division Director. Travel may be required to attend training. Unexcused failure to attend CMS training may result in discipline.

E. Consistent Procedure - All users are expected to follow the established and trained procedures as instructed and are not permitted to develop alternative practices that are inconsistent with those taught in training.

F. Feedback - All users are expected and encouraged to provide specific feedback on all elements of the case management system and its usage. Feedback should be provided to a Division Director and to a CMS Administrator by submitting an IT Help Desk Ticket. All feedback will be considered for future modifications to the CMS or training.

G. No Alterations to the System - Users are not permitted to delete, move, or remove any information from the CMS without advance permission of the CMS Administrator.

II. Users Who Open and Close Cases - These additional expectations apply to those staff members whose job duties include opening and closing cases in the CMS:

A. Timeliness – Cases must be opened and closed in a timely manner. For the integrity of reporting Cases Handled during any timeframe, the CMS must be able to accurately report cases that are Open or Closed on any day.

B. Disposition – Disposition information must be accurately entered. It is the responsibility of the assigned attorney to provide sufficient information for accurate entry of the disposition. If the staff member closing the case does not have sufficient information, he or she shall acquire the information before proceeding to close the case. If necessary, a supervisor shall ensure that cases are closed timely with complete and accurate information.

Compliance with these expectations may be monitored by the auditing functions of the Case Management System or by any other means. If an employee is identified as failing to meet any expectation in this policy, the employee and his or shall develop a plan to address the failure.

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.02	Total Pages: 1
	Original Date Issued: October 1, 2012	Last Revision Date:
References	Subject: Entry into CMS of Cases Involving Contract Attorneys or Conflicts of Interest	

Every case to which DPA is appointed shall be tracked in the CMS. This includes cases that have been assigned to private attorneys pursuant to a contract with DPA. Further, in cases involving an actual or potential conflict of interest, the CMS shall be used to track information relating to the conflict.

I. Cases Assigned to Contract Counsel

When a DPA case is assigned to a private contract attorney, the assigning office shall ensure that the CMS accurately reflects the attorney to whom the case is assigned and the date of the assignment. Other information, such as contact information, may also be required by the program. If the reason for assignment to private counsel is a conflict of interest, the assigning office shall follow the established and trained procedure to indicate in the CMS the reason for the conflict.

Contract attorneys should be required under their contract to provide disposition information to the assigning office at the conclusion of the case. The assigning office shall provide the attorney with information or forms sufficient to educate the contract attorney on what information is expected (*i.e.* sentence length, guilty plea or trial, etc.).

II. Cases Assigned to Other DPA Offices

If a DPA office assigns a case from its service area (Trial Division) or area of responsibility (Post-Trial Division) to another DPA office, the assigning office shall open the case in the CMS and follow the established and trained procedure for transferring the case to the other DPA office. If the reason for assignment of another office is a conflict of interest, the grounds for the conflict shall be indicated in the CMS prior to the transfer of the case.

Once transferred, the originating office shall have no further access to the case, unless continued access is authorized by the Branch Manager. The newly assigned

office shall maintain the case and is responsible for all further information relating to the case, including disposition.

III. Conflict Cases Maintained in the Local Office

If a case creates an actual or potential conflict of interest and the DPA office elects to proceed with representation under Rule of Criminal Procedure 8.30, the existence of the conflict and the execution of a written waiver shall be indicated within the CMS, using the established and trained procedure.

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.04	Total Pages: 7
	Original Date Issued: June 3, 2002	Last Revision Date: October 1, 2012
References	Subject: Case Counting in the Case Management System	

i. Introduction

Accurate case counting is vital to the ongoing operations of DPA. Leaders within DPA depend on caseload numbers to allocate resources from existing funds and to communicate specific needs for additional funds. All representations of DPA caseloads, whether agency-wide or by division, branch, or work unit, shall be calculated in compliance with this policy.

ii. Methods of Counting Cases

Depending on the context, case counts may be reported in one of two methods:

A. New Cases Opened – Traditionally, DPA caseloads have been reported as the number of new cases opened during a timeframe. This method of reporting allows comparison of DPA caseloads to the national standards created by the National Advisory Commission on Criminal Justice Standards and to prior reported caseloads of DPA.

B. Cases Handled – On December 4, 2009, the Kentucky Bar Association Criminal Justice Roundtable unanimously recommended that the defenders and prosecutors "should identify total cases as the number of cases opened each year, plus the cases carried over into the next year." This method allows for a better measurement of workload as long-term cases, like capital cases or complex felony cases may continue for years before resolution. When reported by DPA, cases handled will include all new cases opened during a timeframe and all cases that were open at the beginning of the timeframe.

iii. Trial Division Case Counting Guidelines

A. General Principles

i. A case consists of a single accused, having one or more charges, allegations or proceedings arising out of one event or a group of related contemporaneous events.

ii. In most cases, a single case is assigned to DPA under a single unique AOC case number.

iii. Cases are based upon defendants – one individual may be party to one or more cases, but no case has more than one defendant. In the event two appointed defendants are charged under one AOC number, a separate case shall be opened for each defendant.

iv. With the exception of actual representation commenced under *West v. Commonwealth*, 887 S.W.2d 338 (KY 1994), a formal appointment by a court or administrative body with appropriate jurisdiction is required for a case to be counted as a "case" for Trial Division statistical purposes.

v. An individual attorney's actions do not constitute a "case" (for agency statistical purposes) if the activity is brief, strictly routine (e.g. standing in for arraignment purposes at a regularly scheduled motion hour, responding to inmate correspondence) and performed as a courtesy to the court or another attorney.

vi. It is the responsibility of every DPA employee to ensure that all assigned cases are entered into the CMS. Attorneys assigned cases must provide information to the appropriate staff to assure entry of required data into the CMS.

vii. Some events do not qualify as independent cases, even though they may be labor-intensive (e.g. Shock Probation Hearings – see Subparagraph C below).

viii. 90-Day Rule – In limited circumstances, a 90-day break in representation of a client prior to the commencement of a new proceeding will be deemed to create a new case upon the resumption of proceedings. For example, if a defendant's representation is interrupted by his/her failure to appear (*i.e.* bench warrant issued); the original case shall be closed after an absence of 90 days. A subsequent case shall be opened upon his/her return. The subsequent case opened will include any bail jumping/failure to appear charges. The 90-day rule applies only when authorized by this policy.

ix. A "capital eligible" case, is a case in which an accused is charged with at least one count of kidnapping or murder with a qualifying aggravator identified under KRS 532.025(2)(a). Because cases must be entered and categorized upon assignment, prior receipt of notice from the Commonwealth's Attorney that the death penalty will be sought is not required.

x. Cases bound over to the Grand Jury will be closed in District Court after the Grand Jury has returned an indictment, moving the charges to Circuit Court (and then re-opened as a new case in Circuit Court). If the Grand Jury remands the case to District Court, the original case is maintained.

B. Specific Examples of Events Counted as a Single New Case

i. One defendant, one AOC case (regardless of number of charges)

ii. Indictment in Circuit Court after being held over to Grand Jury – District Court case is closed and new case opened in Circuit Court

iii. Contempt of court, other than contempt arising out of pretrial or preadjudication terms of release or contempt for nonpayment of fines or restitution in a criminal case. Contempt cases resulting from nonpayment of child support or other civil financial obligations that leads to DPA appointment under *Lewis v. Lewis*, 875 S.W.2d 862 (1993), shall be counted as new cases.

iv. Appeal to Circuit Court from District Court conviction

v. Extradition/Interstate fugitive hearings

vi. Interrupted Representation – If original representation was interrupted for a period of at least 90 days due to a client's failure to appear or retention of a private attorney, a new case is opened upon resumption of representation or reappointment of DPA

vii. Involuntary Commitment petition

viii. Original action filed in a higher court seeking extraordinary relief (e.g. writ of mandamus, habeas corpus)

ix. Probation, diversion or conditional discharge revocation proceeding

x. Parole or post-incarceration supervision revocation proceeding

xi. Retrial or resentencing proceedings after remand from an appellate court

xii. Special juvenile hearings unrelated to a specific pending case (e.g. termination of DJJ commitment, challenge conditions of confinement, supervised placement revocation hearing, etc.)

xiii. Youthful offender resentencing at age 18, if more than 90 days have passed since original sentencing

C. Specific Examples of Events Not Counted as a New Case

i. Remand to District Court after Grand Jury fails to indict on a felony, if case was already opened in District Court

ii. Brief consultations with a defendant when no appointment of DPA has been made, including standing in for arraignment or communicating with a defendant as a courtesy for the court (Attorneys should be cautious in providing legal advice in such circumstances. If legal advice is sought by the defendant, the attorney should advise the defendant to request appointment of counsel.)

iii. Post-sentencing hearings, if the case was originally handled by DPA, including forfeiture hearings, shock probation hearings or show cause hearings for non-payment of fines or restitution. (Appointments to represent defendants at these hearings in cases where DPA did not handle the original case would be counted as new cases.)

IV. Post-Trial Division Case Counting Guidelines

The Post-Trial Division counts cases in several different ways. First, PTD counts "cases handled" in a manner similar to that used in the Trial Division. Second, several PTD units have an intake function which counts issues opened by the client. Finally, consistent with the Kentucky Attorney General, PTD also counts the documents filed on behalf of clients. Each case counting system is distinct from the other, and counts different types of work.

A. Guidelines for Counting Cases Handled

1. The case shall be counted when it is initially assigned to post-trial counsel after the filing of a notice of appeal or the filing of a post-conviction action, a post-disposition action, or an original civil action, subject to the following provisions:

    a. A case which is not in court cannot be counted as a case handled, even if preparatory work is being done on it.
    b. Cases in the 31.110 review process, whether in the trial court or on appeal, shall be counted separately, and shall not be treated as a new assigned case until counsel is actually assigned.

2. Once assigned, the case shall remain open until one of the following occurs:

    a. DPA is withdrawn from the case.
    b. Counsel has filed a notice of appeal where applicable.
    c. A motion for discretionary review or a petition for certiorari has been granted where applicable.
    d. Finality has attached to the case, except where counsel informs his/her superior that a petition for writ of certiorari is likely to be filed in the case by either side.

3. If a notice of appeal is filed, the appeal shall be counted as a new case, except as provided in part 1.b. of this rule.

4. If a motion for discretionary review or petition for certiorari is granted, the case shall be counted as a new case in the new court.

5. A post-conviction action seeking to vacate the judgment, however styled, which is filed in the same county and case number as the trial, shall be treated as a new case. Successive actions shall be counted as follows:

    a. If such a post-conviction action is already pending in the trial court and a second post-conviction motion is filed also seeking to vacate the judgment, even if that motion is filed under a different rule, the second case shall not be counted as a separate case for case counting purposes.
    b. If the case opened as a result of the prior motion has been closed, and a new motion seeking to vacate the judgment is filed, the new motion shall be treated as a separate case for case counting purposes.
    c. A post-conviction action seeking relief other than vacating the judgment shall be treated as a separate case.

6. A state or federal habeas corpus action shall be treated as a new case when filed. It shall remain open subject to the rules described in part 2 of this rule.

7. Cases filed on behalf of several clients in the same civil complaint shall be treated as a single case.

B. Guidelines for Counting Intake Cases

1. Pursuant to the *M.K. v. Wallace* consent decree, the Juvenile Post-Disposition Branch shall count each open issue as a fact, duration or conditions of confinement issue. The issue shall remain open until one of the following occurs:

    a. The underlying complaint is resolved;
    b. Litigation is filed arising out of the complaint; or
    c. Until the client has turned 18 and been permanently discharged from the custody of the Department of Juvenile Justice

2. The Kentucky Innocence Project shall count each open application as a separate intake case. Cases shall be closed when the investigation is concluded, or when litigation is filed in the case challenging the applicant's conviction.

C. Guidelines for Counting Documents Filed

1. Consistent with the Kentucky Attorney General, each work until shall count the number of “briefs filed” and the number of issues in those briefs. For the purpose of this provision, “briefs filed” includes:

    a. Original briefs in the Kentucky Court of Appeals, the Kentucky Supreme Court, the Sixth Circuit Court of Appeals, or the United States Supreme Court

    b. Original motions for relief under RCr 11.42 and CR 60.02

    c. Original petition for writ of habeas corpus

2. In addition, each unit shall count all pertinent documents and hearings required for monthly reporting purposes.

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.08	Total Pages: 3
	Original Date Issued: June 3, 2002	Last Revision Date: October 1, 2012
References	Subject: Quarterly Caseload Reports and DPA Annual Report	

I. Quarterly Reporting in the Case Management System

A. Importance of Accurate Data Entry

Accuracy is crucial for case data input into CMS. First, the individual case being entered needs to be as complete as possible to maximize client service and the usefulness of the system to track the case. Second, and just as importantly, each data detail may be used for DPA Leadership analysis of agency trends.

B. Submission Deadlines

Besides any ad hoc data requests and reports that are performed, both the Trial and Post-Trial Division caseload data is to be reported to the Public Advocate each quarter of the Fiscal Year. This data is compiled by the designated LOPS CMS Administrator, and accurate and timely data entry by the offices and branches is essential to this process. Listed below are the quarterly periods and the deadline for each quarter's data entry. The deadline is ten calendar days after the end of the quarter. If a deadline falls on a weekend or a designated work holiday, the deadline shall be the first DPA workday after the normal deadline. The report for any quarter will be cumulative (*i.e.*, it will include data from previous quarters within the same fiscal year in addition to the most recent quarter).

First Quarter: July 1 – Sept. 30 Submission Deadline:
Oct. 10

Second Quarter: Oct. 1 – Dec. 31 Submission Deadline:
Jan. 10

Third Quarter: Jan. 1 – March 31 Submission Deadline:
April 10

Fourth Quarter: April 1 – June 30 Submission Deadline:
July 10

ddddd

C. Trial Division Capital Cases

While complete information is essential for any case entered into CMS, it is particularly important for capital cases. All capital-eligible cases entered into Trial CMS shall be designated as such. Also, all other additional fields should be completed in the CMS case record if at all possible. Field offices shall report to the Branch Manager of the Capital Trial Branch all cases that are (1) opened as capital eligible, and (2) eventually prosecuted as a capital case. Additionally, the field offices shall report the disposition of all such cases. This reporting is in addition to any CMS entry on the cases, and shall be performed by the field office directing attorney or his/her designee.

D. Trial Division Conflict Attorney Cases

Field offices shall report quarterly to the Trial Division Director all cases in which an actual or potential conflict of interest exists. This report shall include the number of cases assigned to private counsel, assigned to another DPA office, and the number of cases handled internally with a written waiver under RCr 8.30.

E. Post-Trial Division Conflict and Contract Cases

Any type of Post-Trial Division case requiring a conflict or contract attorney shall be reported to the Post-Trial Division Director by the branch manager whose branch is responsible for the case. The responsible branch shall enter these cases into CMS per the case entry procedures for that branch. Both the report to the division director and the CMS entry shall be completed as soon as is practicable so that the division director or any other appropriate person will have access to timely and accurate data.

II. Annual Defender Caseload Report

A. Definition and Scope

At the end of each fiscal year, the designated individual(s) within LOPS shall compile fiscal year caseload data for both the Trial Division and Post- Trial Division from the Case Management System. This data shall be produced in printed format in one volume entitled the “Annual Defender Caseload Report” and shall state on its cover which fiscal year’s data it contains. This report shall also contain analysis of the data, as well as sufficient budgetary information and charts, graphs, etc. to assist the reader in speedy comprehension of the data and its implications.

B. Editing Process and Distribution

Initial case tracking data will be compiled and sent in draft form to the Public Advocate, the Deputy Public Advocate, and the following individuals:

Trial Division: Trial Division Director, Regional Managers, and their designees.

Post-Trial Division: Post-Trial Division Director, Branch Managers, and their designees.

Those who review the draft figures will address any questions or data discrepancies within the allotted time. After this deadline has passed, a draft version of the Report will be submitted to the Public Advocate, Deputy Public Advocate, and all Division Directors for final approval. Once any revisions are made from this review, the final version of the Annual Defender Caseload Report will be produced. The Report shall be distributed to the DPA Leadership Team, Division Directors, Branch Managers, Regional Managers, Directing Attorneys, and any other individuals both inside and outside DPA as determined by the Public Advocate.

C. Deadlines

Since each fiscal year ends on June 30, the following deadlines are established for production and distribution of the Annual Defender Caseload Report:

Case Tracking information for up through June 30 entered into CMS: July 10

Initial Case Tracking Compilation Draft Distributed: July20

Draft Review Comments Due Back to Report Compiler: August 10

Draft Version of Annual Defender Caseload Report submitted to Public Advocate, Deputy Public

Advocate, and all Division Directors: August 31

Drafts with corrections submitted back to

Report Compiler: September 10

Report Distributed Internally: September 20

Report Distributed Externally: September 25

If a deadline listed above falls on a weekend or a designated work holiday, the first DPA workday after the normal deadline.

PUBLIC ADVOCACY POLICIES and PROCEDURES	Policy 9.09	Total Pages: 2
	Original Date Issued: June 3, 2002	Last Revision Date: October 1, 2012
References	Subject: Use of CMS Data in Leadership	

I. Defender leaders shall use caseload data as a means to more effectively lead DPA by achieving the following objectives:

A. Timely and accurately report caseload data and regularly review it to assure effective representation of all DPA clients;

B. Actively confront case performance problems and ensure that available resources are distributed equitably to maximize the representation of all DPA clients statewide; and

C. Communicate reliable, statewide caseload information to the Executive and Legislative Branches for their decision-making on funding and other matters.

II. To achieve these objectives, defender leaders shall use the caseload data to assist in managing, deciding and budgeting.

A. Managing Assignment of Cases

Within a work unit, a supervisor should actively manage the workloads of staff to maximize the effective representation of the work unit's docket. Emphasis should be placed on such issues as: number of cases assigned, number of conflict cases, comparative workloads created by misdemeanors as opposed to felonies, capital cases, outside factors impacting workload capacity, special responsibilities created by juvenile and capital cases, reasons for differing workload capacities among attorneys, ways to improve workload performance, and meeting and exceeding DPA performance standards.

B. Managing Personnel

At least quarterly, each supervisor, manager and director shall actively review caseload data and analyze it compared to historical data as well as current data in other offices, regions, work units and the state. These individuals should identify what changes in staffing patterns, county assignments and docket responsibilities should be made to equitably distribute resources.

Relevant factors to consider include: the experience levels of the attorneys in the office, how that experience level affects the workload capacity of the office, the average caseloads in an office/work unit, the average office/work unit in a region/state compared to others in the region/state, which attorneys are carrying the most or fewest cases, how best to represent juvenile and capital clients, whether there should be any redistribution of cases or dockets among attorneys, and whether there be any reassigning of attorney positions or dockets within a region/state.

C. Annual and Biennial Budgeting

At least annually, in consultation with supervisors and managers, the directors and the Public Advocate shall review caseload data statewide and identify trends, needs for additional staff, necessary realignment and adjustments of current positions and staffing patterns and make budgetary decisions.

For this analysis, these leaders should consider the following: the average cost per case in a work unit/office vs. that of other work units/offices and contracts, identifying the inequities in distribution of resources, determining what can be adjusted in the upcoming year, how DPA can better meet its responsibility to effectively represent all clients it is charged with representing (with a special view toward conflict cases), developing realistic requests to the Cabinet, OSBD and the General Assembly for additional staffing, asking what the data reveals about major DPA initiatives and analyzing the impact of new laws.

III. To ensure ongoing accuracy and integrity of the CMS data, defender leaders shall regularly monitor compliance with the Expectations listed in Policy 9.01 through the use of auditing functions with the CMS or any other means. Leaders shall notify their Division Director and the CMS Administrator if any data may be inaccurate or unreliable.

DPA Reports in JustWare

ALL Reports - A complete listing of all reports in JustWare with links is now available here.

Personal Caseload and Calendar Reports | *Office Caseload and Calendar Reports* | *Office Case Analysis Reports*

Post-Trial Reports | *Reports for a Specific Case* | *Investigation Tools* | *JustWare Usage Reports*

Report Name	*Description*	*Data Used in Report*
	Personal Caseload and Calendar Reports	
Active Cases of a DPA User	Shows Open (or other non-Closed) Cases of a Selected DPA Person, grouped by Case Status with Open cases first, followed by Warrant, Social Worker Oversight, etc.	Case Status, Future Event Dates, Trial Date
Active Cases of a DPA User by Age Active Cases of Conflict / Former DPA	Shows all Open cases of a Current DPA User (or Conflict Attorney or Former DPA), sorted from the oldest to the most recent. This report should be helpful in cleaning up old cases that should have been closed already.	Event Dates, Trial Date, DPA Appointment Date
Active Juvenile Cases of a DPA User	Shows all Open Juvenile Cases of a selected DPA User with the full name of the juvenile client	Case Type, Event Dates, Court
All Cases of a DPA User	Shows all cases, including Closed Cases, of a selected DPA User, sorted by status	
Calendar of Events - Person	Shows all events involving a selected person during a date range.	Event Dates, Court
My Tasks	Lists all pending tasks for the current user	Task, Task Date, Task Status, Task Notes
Case Assignments by Attorney	Shows JustWare Cases Assigned to Attorneys, both DPA and Conflict Attorneys, in a Date Range	Attorney Involvement Date, Case Type
	Office Caseload and Calendar Reports	
Case Assignments by Office	Shows JustWare Cases Assigned to Offices in a Date Range	DPA Appointment Date, Case Type
Trial Office Caseload (DPA Policy) (links now to the right)	Shows caseload numbers (and lists of cases) for DPA Offices applying DPA Case Counting Policy. To improve speed, links to specific versions of the report follow: Attorneys and Case Type · Attorneys and County · Attorneys and Court Attorneys and Judge · Attorneys and Most Serious Offense · Case Types and Attorneys Case Types and Court · County and Attorney · Court and Attorney Judge and Attorney · Most Serious Charge and Attorney	DPA Appointment Date, Charges, Case Status Update Date
Case Openings and Closings by Attorney	Shows the number of JustWare cases opened and closed within a date range. This should be helpful to see who is making progress or falling behind on closing cases.	Case Status Date, Case Status, Case Involved Person
Client In Custody Report	Shows clients in custody grouped by Office and Attorney, with Jail Location	Custody Status, Custody Location
Non-Attorney Caseload - Open Cases Non-Attorney Caseload - Assignments	Shows open cases or assignments within a date range of Investigators, Social Workers, Mitigation Specialists, and other Non-Attorney roles in JustWare.	Most Serious Charge, Active Date, Court, Case Involved Person
ASW Case Involvements Report	Shows all cases of ASW in the selected office, including court, case status, Plan Date, Anchor Date, and Follow Up Date	ASW Involvement, Active Date
ASW Caseload Report	List of ASW Cases with a Plan Filed Event during the date range	ASP Filed Event, ASP Filed Date
ASW Referrals by Attorney	Shows JustWare Referrals Assigned to an ASW by Attorney, both DPA and Conflict Attorneys, in a Date Range	ASW Involvement, Active Date, Type of ASW Case
ASW Monthly Report	Statistical Report summarizing the work done by ASW within a date range, by month	Active/Inactive Date, Case Status, ASP/Anchor Events, Type of ASW Case
Active Cases by Office Staff (graph)	Displays by graph the active caseloads of all staff members	Case Involvements, Case Status
Case Count by Type by Month	Displays a Chart with a count of each Case Type assigned to a selected DPA Office (or offices) by month within a date range.	Case Type, DPA Appointment Date
Active Cases in a DPA Office	Shows all Open cases in a selected DPA office with the next Trial Date	Case Status, Trial Date, Court
Unique Clients Report	Shows the number (and links to the Name Records) of unique clients with cases assigned to each office within a Date Range	Name Records, DPA Assignment Date
DPA Office Calendar (My Office)	Shows all upcoming events involving members of the User's office	Events, Court
DPA Office Calendar (Select Office)	Shows upcoming events in another DPA office (if the User has security access to that office; i.e. Regional Managers)	Events, Court
Event Search	Allows User to Search for occurrences of upcoming or past specific events, such as Jury Trials, Oral Arguments, etc.	Events, Dates, Event Status
Client Contact Report	Shows all Client Visits within a date range, by office and by attorney	Client Visit Events, Event-Involved Persons

jjjjj

Office Case Analysis Reports		
Annual Report Clean-Up Needs	Report to identify data clean up issues	Case Type, Charge, Case Owned By
60-Day Report	Shows open cases where a preliminary hearing has been held, but no indictment returned	Custody Status, Preliminary Hearing Event, Case Status, "CR" Case Number
Client Information - Race, Gender, Age	These three reports show by graph and by list the breakdown of the office's clients by race, gender, or age range.	Client Name Record Information
Age of Active Cases in Office	Breaks down the age of Open cases within an office, by Court.	DPA Appointment Date, Case Status, Court
Inactive Cases	Shows all Open cases in which no JustWare activity has been recorded during a date range.	Case Status
Case Search	Shows all cases in a selected office (or offices) with a chosen Case Type or Status or both within a date range (ex. All cases closed with a Warrant in the past 30 days)	Case Type, Case Status, Office, DPA Appointment Date
Conflict Attorney Assignments	Shows a count and list of all cases assigned to Conflict Attorneys within a date range.	Case Involvement, Conflict Attorney Active Date, DPA Office Agency
Conflict Cases	Shows the number of conflict cases by office, with the reasons for the conflicts	Conflict Case Attribute
County Assignments	Shows the number of cases with a DPA Appointment date within a date range assigned in each selected county, broken down by District, Circuit, or Family Court	Court Agency, DPA Appointment Date
Method of Disposition	Shows the general method of Dispositions (Dismissal, Jury Trial, Adjudication Hearing, etc.) within a date range by Office	Disposition Method
Office Disposition Methods	Shows the general and more specific method of Dispositions for all the attorneys in a selected office.	Disposition Method
PV or Contempt Cases with No Charge Date	This report shows cases where a Probation Violation, Conditional Discharge Violation, Parole Violation, or Contempt Charge has been added without a Charge Date. Unless a date is added, the revocation case may not be counted correctly in caseload reports.	Counts, Charge Date
Post-Trial Reports		
Juvenile Placement Report	Shows all juveniles who are at a selected juvenile facility (as entered using the Physical Location function of JustWare)	Physical Location, Date Added
Capital Post-Conviction Report	Shows the current status of all open (or assigned within a date range) capital post-conviction cases	Court, Events, Type of Post-Conviction Action
JPDB Monthly Report	Statistical Report summarizing the work done by JPDB within a date range, by month, with links to cases	Events, Documents
Appeals Caseload Report	Statistical Report summarizing the work done by the Appeals Branch within a date range	Events, Documents

3/5/2021 9:15:21 AM

kkkkk

Appeals Workload Score Report	This report applies the Appeals Branch workload measurement to the Branch's cases	Events, Documents
Appeals Case Assignment Report	Lists all Appeals case assignments in a date range	Received Date, Appointment Date
Appeals Workload Points Assigned	Lists the workload points assigned by attorney during a date range	Events, Size of Record
Calendar of Events - Person for PTD	Shows all events involving a selected person during a date range.	Events, Court
Record Size	Shows the size and video length of Appellate Records assigned during a date range.	TE and TR Case Attributes, DPA Appointment Date
KIP Applications Report	Details the applications received by KIP, by status during a date range	Documents, Events
KIP Current Open Cases Report	Count of current open KIP cases	Case Status, DPA Appointment Date
KIP Detailed Closure Report	Details cases closed by KIP during a date range	Disposition Method
KIP New Cases Report	Count of new KIP cases during a date range	Case Type, DPA Appointment Date
Reports for a Specific Case		
Case Notes (for specific case)	Shows all the entries in the Notes tab or Notes fields in a single selected case; Would be helpful in capital cases or cases with extensive investigation or mitigation work.	Notes, Events
Investigation Tools		
Involved Person Contact Info	Lists all Case Involved Persons with their contact information from a specific case (CaseID required)	Name Record contact information, Case Record Involved Persons
My Tasks	Lists all pending tasks for the current user	Task, Task Date, Task Status, Task Notes
JustWare Usage Reports		
Summary of JustWare Usage By User	Shows a Count of different JW usage activities for a specific user during a date range	Log files of cases and name record edits
JustWare Information Entry Statistics	Shows the Top 20 Charges, Documents, Events and Case Types entered within a date range in an office as well as a count of Names and Cases added during the date range	Charges, Events, Notes, Attributes, Case Types
User Login History	Shows the JustWare Login activity for selected users during a date range (NOTE: If someone remains logged into JustWare, this report may not reflect activity over days after a person logs in)	Login/Logoff activity
User Usage Details Log	Shows all JustWare activity for a selected user during a date range	All case records and name records views or edited

IIIII

15. Additional training and implementation recommendations after receipt of final report

NAPD is an organization of practicing public defenders which has over 22,000 members nationally, representing all public defense professionals and practicing in all 50 states. It includes 25 statewide programs and more than 100 county-administered offices/agencies.

Training is available on client-centered holistic representation. The training approach will consist of: Providing MAC management and staff an understanding of the client-centered holistic model and accompanying best practices. General topics include:

What is client-centered representation
What is holistic representation and why implement it?

- What is Team Defense and how do I assemble an interdisciplinary team?
- What is social work, and what does a social worker bring the table?
- What role does a social worker play on a defense team?

In addition, training will be provided to MAC social services staff. Assuming social work staff have limited experience in a forensic setting. General topics include:

- Overall description of Harris County judicial system and key figures/stakeholders
- What is public defense?
- What is the client centered holistic model?
- What role(s) can a social worker play within the model?
- What is an alternative sentencing plan?
- What is mitigation?
- Motivational Interviewing refresher (depending on clinical skill/training)

16. NAPD Assessment Team Members and their Professional Experience

Sarah Buchanan and her experience

Sarah Buchanan, PhD, LCSW has focused much of her career on better understanding and defining best practices in holistic defense. Her interest in forensic social work, in general, developed early, prompting completion of field placements at the State of Tennessee Board of Probation and Parole and the Knox County Public Defender's Community Law Office (CLO) while earning her BSSW from the University of Tennessee and at the State of Michigan Center for Forensic Psychiatry while earning her MSW degree. She returned to Tennessee after graduating from the University of Michigan and worked in community mental health in a rural Appalachian community before returning to the CLO as a staff forensic social worker in 2012. She served as Director of Social Services for the CLO from 2016-2019.

Despite the growing prevalence of social workers in public defense settings, Dr. Buchanan quickly became aware that little work had been done to define and describe the roles and

mmmmm

services social workers might offer in this setting. Little attention had been given to identifying relevant practice outcomes. As she spoke with others across the country, it became clear that social work roles within public defense systems were expanding, but this did not necessarily arise out of a theoretical framework, and little empirical evidence supported ongoing practice. She returned to the University of Tennessee in 2014 to pursue a PhD and take steps at better understanding and defining how social work intervention impacts not only client's lives, but the legal system itself. Her dissertation, defended in October 2017, is titled *Social Work Practice in Public Defense*. Statistically significant findings include that clients who received social work services incurred fewer total misdemeanors (and specifically fewer A misdemeanors) and had a lower probability of incurring them during the 2-year follow-up period despite the understanding that they presented to social workers with lengthier criminal histories (suggestive of greater life disruption and more psychosocial concerns).

Dr. Buchanan sought a research partnership when a grant opportunity arose in 2018 offering social workers to public defender offices in three new Tennessee jurisdictions. She partnered with researchers at Harvard Law School's Access to Justice Lab to conduct a randomized controlled trial in four public defense settings covering seven Tennessee counties, a natural next step following her dissertation. Study enrollment began in late 2018 and is anticipated to end in early summer 2020 once 2,200 participants have been enrolled.

Dr. Buchanan also sought and received grant funding from the Tennessee Bar Foundation on behalf of The Justice Initiative, a non-profit for which she served as Executive Director on a volunteer, part-time basis until early 2020 and as part-time Program Director until summer 2020. A Holistic Legal Incubator program was designed to train both new lawyers and social workers to develop sustainable practices that complement each other. The 18-month program launched on September 3, 2019 with 3 lawyer participants and 1 social work student participant.

Dr. Buchanan currently serves as Project Director for the State of Tennessee and has been tasked with designing and implementing social work programs in seven public defender offices across the state on behalf of the Tennessee District Public Defenders Conference.

Ed Monahan and his experience

Ed Monahan is a national criminal defense consultant with thirty-seven-years as a public defender in Kentucky. As Chief public defender from September 1, 2008 – September 15, 2017 for Kentucky's statewide public defender program, the Department of Public Advocacy, which represented clients in 162,485 cases in FY17 in all of the state's 120 counties at all levels, district court, circuit court, Court of Appeals, Kentucky Supreme Court, including state capital trial, appeal, postconviction and federal capital habeas petition and appeal responsibilities with 545 staff and an annual budget of $57 million. Duties beyond management of the Department and its functions, making policy recommendations to the General Assembly and the Secretary of the Justice and Public Safety Cabinet, Commonwealth of Kentucky, liaison with other key Justice Cabinet commissioners and directors, developing community service provider networks, liaison with community corrections agencies, and jails. Major initiatives included:

- Pretrial release: DPA attorneys present for first appearances, seeking the decision on appointment *before* the release ruling and then immediately advocating for the pretrial release of our clients. Because of this and changes in the law and a number of other advances, the pretrial release rate increased statewide since 2011 while the public safety rate and failure to appear rate have stayed the same or improved, saving counties scores of millions of dollars. On September 16, 2013 the National Association of Pretrial Service Agencies' John C. Hendricks Pioneer Award was presented to the DPA for the statewide public defender program's strategic commitment to advance public defender pretrial release advocacy across Kentucky.
- Expansion of DPA's Alternative Sentencing Worker (ASW) program, developed from a pilot of 5 in 2006 to 45 ASWs who presented over 3,293 alternative sentencing plans in FY 17 with a return of $3.76-$5.66 for every $1 invested. This program offset over $10 million in incarceration costs. This initiative has received three national awards:
    - National Criminal Justice Association 2011 Outstanding Criminal Justice Program Award;
    - Harvard University's John F. Kennedy School of Government Ash Center for Democratic Governance and Innovation Top 25 Innovation in Government Award in 2013;
    - The American Bar Association's Section of State and Local Government Law 2017 Jefferson Fordham Society Accomplishment Award.

Monahan served as the Kentucky DPA Training Director from 1980-2001 and upon becoming Deputy Public Advocate in 1996 continued to directly supervise the Kentucky defender education branch. He led the development and production of nationally recognized defender education, using a lecture-practice-feedback methodology. He served as the Chair of the Kentucky Association of Criminal Defense Lawyers Education Committee, 1987, 1989-1994; 2008-2016. He was Chair of the National Association for Public Defense Education Committee from 2013 -2018. He led development of a 7-week online course on resilient leadership for public defender leaders. As Vice-Chair of the NLADA Training Section, he was a co-drafter of the 1997 NLADA Defender Training and Development Standards. Monahan is a member of the Pretrial Justice Institute's Research Advisory Committee; a member and vice-chair of the ABA Government and Public Sector Lawyers Division Council, served on the ABA Death Penalty Due Process Review Project Steering Committee, 2014- 2017, and on the ABA Task Force on Preservation of the Justice System, 2011 to 2012, co-chaired by Ted Olsen and David Boies. He is a member of the Steering Committee of the National Association for Public Defense; a member of the National Association of Criminal Defense Lawyers and co-chairs its Subcommittee on Pretrial Release Advocacy; past chair of the Kentucky Bar Association's Criminal Law Section; a member of the KBA Ethics Committee (2000–2007; 2008–2011); and past chair of the NLADA American Council of Chief Defenders. He is co-editor of the ABA's *Tell the Client's Story: Mitigation in Criminal and Death Penalty Cases* (May 2017); co-authored with James J. Clark, *Mitigation is the Heart and Soul of Just and Merciful Sentencing*, ABA Human Rights magazine, Vol. 42 No. 4 p. 17; author of *Children are Constitutionally Different: Neuroscience Developments Bring Smart Changes*, American Bar Association Government and

ooooo

Public Sector Lawyers Division, The Public Lawyer, Vol. 24 No. 2 (Summer 2016) p. 6; co-authored with James J. Clark *Excessive Workload* ethics chapter in ABA Ethics Manual for Public Defenders (Rodney J. Uphoff, ed., 1995).He has written about and presented on the importance of training according to national standards. With Jim Clark, Ph.D., he wrote on the critical need for case reviews, a superior form of education in defender offices. See, Chapter 6, "Creating and Leading the Mitigation Team," *Telling the Client's Story: Mitigation in Criminal and Death Penalty Cases* (2017). In his work as a testifying and consulting expert, he uses training standards to evaluate public defense programs. His national assessment and consultation work includes:

- Texas Office of Capital and Forensic Writs *Assessment of the Office of Capital and Forensic Writs* (April 2018)
- Chief defender selection consultation services, Harris County, TX; Kansas
- Testifying expert, Nevada; South Carolina

Mark Stephens and his experience

Mark Stephens has been practicing law for a little over 40 years. The last thirty (30) of those he had the honor to serve as the elected Public Defender for the Sixth Judicial District of Tennessee (Knoxville, Tennessee). And as Knox County's Public Defender, he watched his staff represent approximately ten thousand (10,000) clients each year - three hundred thousand (300,000) clients over the course of his career, who, for the most part, were living in the most challenging of circumstances, before they were charged with a crime. To many of the clients, the chaotic conditions that was their life, relegated the crime for which they were charged and the potential loss of their liberty, from their personal top ten most pressing problems list. Approximately 72% of all arrests in a year in Knoxville are for misdemeanor offenses. As you know, misdemeanor offenses carry less than one (1) year in jail. Most public defender clients cycle in and out of our local jails, exacerbating the dysfunction that is their life, and at great expense to taxpayers. Early in his public defender career he realized that the legal challenges facing most of my clients were of a nature that he could handle with relative ease, and if he couldn't, a short time on the job quickly made him an 'expert.' But what he also realized, was that if he did not address the underlying dynamics that are negatively affecting my client's behaviors, he'll get to address those same legal challenges over and over again. A public defender quickly learns that there will be no behavior modification without effectively addressing the underlying dynamics driving that behavior. Consequently, the men and women at the Knox County Public Defender's Community Law Office (CLO) adopted a representation model they refer to as "holistic, client-centered, legal representation." This model advocates for a fair and just process within the criminal justice system, increase self-sufficiency and integration of clients into the community, and positively impact the quality of life in Knox County.

To be sure, this is a unique representation model for a public defender office operating within the confines of a statewide delivery system. This model is driven by the premise that most of the criminal behavior in our community is symptomatic of the personal, psychological and social dynamics that have coalesced in the life of an individual resulting in that person engaging

in criminal activity. And if that premise is accurate, a representation model that only provides legal representation, while ignoring the debilitating impact of poverty, and the other social and psychological dynamics on the lives of the people we represent, will not bring about positive, long-term, solutions for our clients. While a disposition of the client's criminal case might afford a client a temporary opportunity out of the criminal justice system, the "traditional public defense model" fails to provide the client the needed blueprint and skill-set to remain out of custody. When the socio-economic and psychological factors that contributed to the client engaging in the behaviors that resulted in him being in the criminal justice system in the first instance, continue to exist, recidivism studies consistently show that around two-thirds of the individuals who come into the criminal justice system return.

The CLO's client-centered, holistic model is innovative, comprehensive, and timely as jail and prison populations continue to grow at alarming rates. The CLO's model assures the individual client that his constitutional right to counsel will be protected by a zealous advocate, highly skilled at addressing his legal case, but who also cares about the client's ability to remain out of the criminal justice system.

The CLO model embraces an interdisciplinary team approach that not only addresses the legal needs of the client's case, but also addresses the needs of the whole person. This innovative model seeks justice, while preventing crime, reducing recidivism, and empowering clients to become productive members of their community.

The CLO model from its inception has reflected what The Center for Holistic Defense identifies as: The Four Pillars of Holistic Defense:

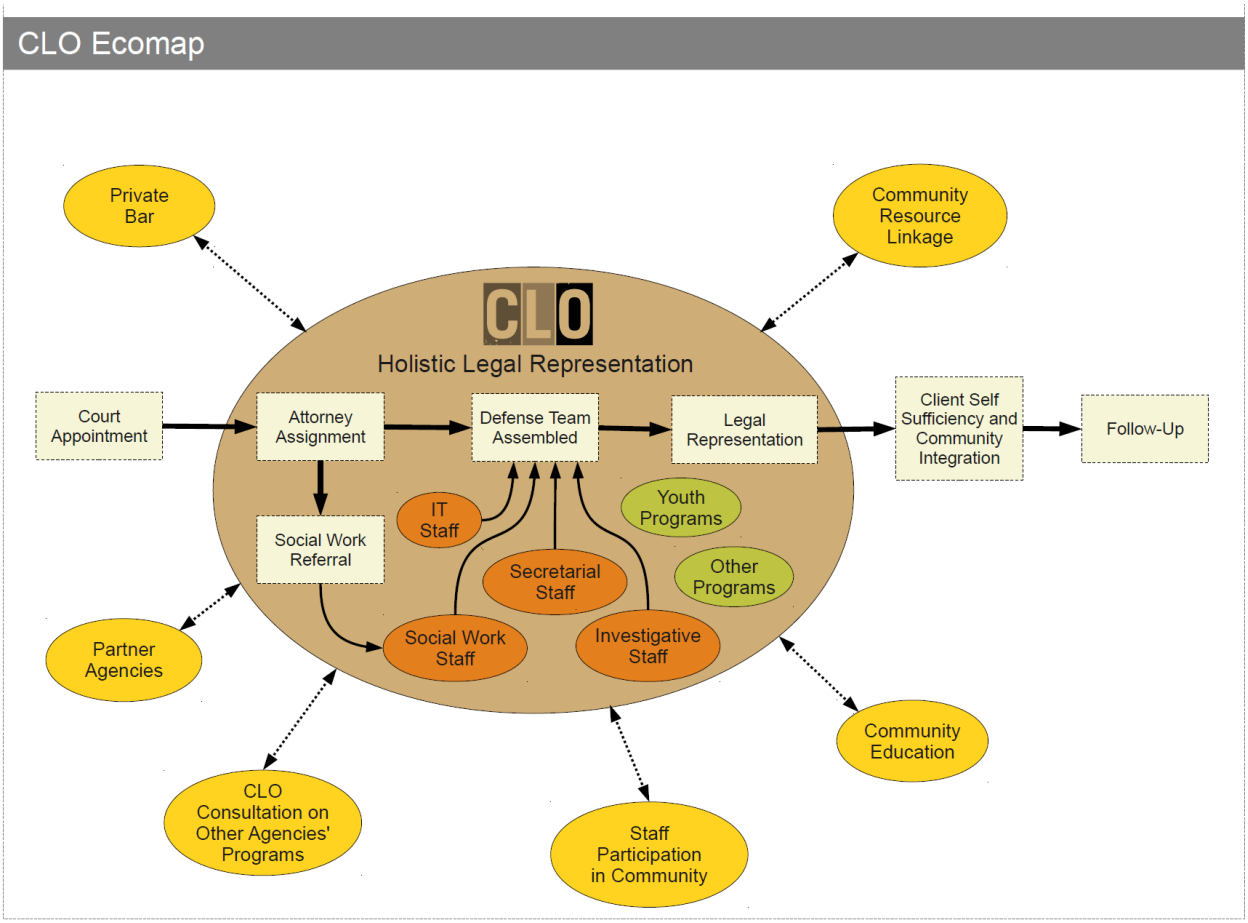
1. **Seamless access to services that meet client's legal and support needs.** CLO attorneys, social workers, and support staff are committed to comprehensive assessment and action plans. From the first contact while incarcerated to entering the CLO lobby, clients are made aware of available services. Staff are mindful of the fact that successful referral requires skill beyond simply informing the client. Connecting techniques, including calls to the agency, client preparation, introductions and follow-up are routinely practiced.

2. **Dynamic, interdisciplinary communication.** The CLO uses a team vertical representation model that includes, attorneys, social workers, investigators, IT, and support staff. Dynamic communication occurs in team meetings, through a fully integrated, and remotely accessible, electronic case management system, and frequently, in day to day case discussions and exchanges about defense strategies, alternative sentencing plans, legal issues and challenges, or other exchange of ideas and information.

3. **Advocate with an interdisciplinary skill set.** The concept of the Community Law Office incorporates an integration of legal and social services, as opposed to working in a parallel fashion leading to comprehensive, integrated services. Early in its history, the CLO offered workshops focused on understanding mental illness and working with different type personalities. In addition, concepts of motivational interviewing have been

taught by social workers at the CLO. Likewise, lawyers teach the social workers about legal systems and structures. Social workers participate in CLO staff meetings. All new employees whether attorneys or social workers attend orientation sessions to learn about the respective services.

4. **A robust understanding of and connection to the community served.** The CLO recognizes that the successful implementation of their holistic representation model requires access to resources beyond what any public defender office or criminal justice system could provide. The CLO maintains that criminal justice is a community responsibility. The more the community understands and involves itself with efforts to understand the people in the system, the better the community will be equipped to positively impact those people. Increased community awareness and support results in greater opportunities for our clients.



Jessy Tyler and her experience
Senior Director for Justice Research | Meadows Mental Health Policy Institute

Jessy Tyler has fifteen years of experience in Texas criminal justice policy, with an extensive background in data analysis and visualization and policymaking. During her tenure with MMHPI,

rrrrr

Jessy has worked with data from a number of counties, e.g. Galveston and Dallas, to model their compliance with Texas laws related to identification of the mental health population within the criminal justice process and forecast the impact of county specific solutions to complex justice and mental health system changes. She has also worked with multiple Texas counties on assessments of indigent defense delivery options, e.g. Lubbock, Harris, Williamson, and El Paso counties. She developed a method to assess person based (defendant level) criminal disposition outcomes to tell the full story of a person's criminal justice involvement and outcome from representation.

Jessy Tyler was on the committee to select measurement data and evaluation metrics for the Travis County MAC which is something the MAC will need to have when setting up a case management software system. She also completed the only study ever done on the Lubbock Private Defender Office – the state's first MAC – which is the only outside evaluation ever done of a MAC in Texas.

Harris County Public Defense

- Harris County Public Defense Tenth Year Report (2020)
- DOJ: BJA Evaluation of Future Assigned Counsel Training (FACT) for HCPD
- Improving Indigent Defense: Evaluation of the Harris County Public Defender evaluation of HCPD startup (2013)

Harris County in General

- Harris County Probation (multiple reports 2014 conclusion)
- Harris County Parole
- Harris County Five County Recidivism Report (2011-13)

County Level Public Defense in Texas (not Harris County)

- El Paso Quantitative and Qualitative Report (2020)
- Lubbock County Private Defender Office *Looking Back, Looking Forward* (2018) – a nine year data book on office outcomes
- Travis County Summary of Finding and Recommendations, Travis County District Attorney: Review of Drug Possession Case Dispositions 2016-2017 and Recidivism Analysis 2014-2015 (2018) which lead directly to creation of an adult public defender office in Travis County (Austin)
- Travis County Managed Assigned Counsel Metrics Board to determine variables to be collected prior to MAC start-up
- Williamson County Indigent Defense Systems Assessment (2014) following *Heckman, et al. v. Williamson County* to help the county assess alignment with TIDC standards and make recommendations

State Level Public Defense in Texas

- Texas Indigent Defense Commission Texas Roundtable on Representation of Defendants with Mental Illness (2019) presenting "Texas Indigent Defense Commission Texas Roundtable on Representation of Defendants with Mental Illness"
- National Association for Public Defense co-presenter on pretrial risk assessments (2019)
- Texas Indigent Defense Commission retreat junior facilitator (2018)
- ACT Smart representative for data availability in Texas *in general* and as the Dallas County data representative (due to work in Dallas, not as a Dallas employee) (2017)
- Texas Indigent Defense Commission Legislative Update Conference presenter (2013, 2017)
- Weighted Caseload Study committee member (2014)

Doug Wilson and his experience
Chief Defender Aurora Public Defender's Office

Doug has spent his career as a criminal defense attorney serving the poor in Colorado. In 1970, the shootings at Kent State were a call to action for him to fight for social justice and human rights. Growing up in Ohio, that was a defining moment for him as he chose to work for people accused of crimes who could not afford counsel. He has dedicated much of his legal career to fighting the death penalty and has represented the accused in capital cases across the state. Doug's passion and conviction to help and represent people who suffer from mental health conditions has also defined his career.

On November 1, 2006, Doug was appointed as the sixth Colorado State Public Defender, where he was responsible for leading a state-wide public defender system with a $90 million-dollar budget, over 800 employees and 170,000 active cases. He was honored by the Public Defender System on two occasions for his steadfast service to his clients and his ongoing work in opposition to the death penalty. He received the prestigious David F. Vela Award in 1998 and was chosen as Attorney of the Year in 2001. In 1999 the Colorado Criminal Defense Bar honored him with the Jonathan Olom Award. Doug retired July 31, 2018 after leading the Colorado system for 12 years.

On January 8, 2020, Doug was appointed as the Chief Public Defender for the City of Aurora, CO. Where he is responsible for leading a team of 16 in the representation of indigent clients accused of municipal ordinance violations.