



LIBERAL ARTS
TEXAS A&M UNIVERSITY

Public Policy Research Institute

September 2020

Bexar County Indigent Defense System Evaluation

Bexar County Indigent Defense System Evaluation

Public Policy Research Institute - Texas A&M University

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The Honorable Nelson W. Wolff
101 W. Nueva, 10th Floor
San Antonio, Texas 78205

September 7, 2020

Dear Judge Wolff,

Please find enclosed the final report titled “Bexar County Indigent Defense System Evaluation,” reviewing the county’s current indigent defense practices. While the report was requested by the Bexar County Commissioners Court in response to Bexar County court judges approving fee increases for court-appointed attorneys to represent indigent defendants in misdemeanor cases (going into effect on September 1, 2018), the initiative further highlights the determination of the county to improve the quality of the indigent defense system in Bexar County and is in line with other recent efforts the county has embarked on.

This report was the product of collaboration with the Texas Indigent Defense Commission (TIDC), which also shared part of the expenses to help fund the study. Prior to reaching out to the Public Policy Research Institute (PPRI) at Texas A&M University, the county with its leaderships across different departments had embarked on a series of collaborative group meetings to develop a detailed scope of work to help direct the focus of the report. The main objective of the report was to ensure quality representation for indigent defendants by evaluating process and procedures associated with Bexar County’s Court Appointed Counsel system. Quantitative and qualitative analysis were to be conducted to analyze measurable metrics to determine the quality of service and representation (in the county and relative to regional and national standards), compare representation across different providers, and to examine judicial evaluation. Further, the report was to identify current educational and professional requirements for court-appointed counsel practicing in Bexar County, and recommend implementation of specific requirements to improve quality of representation for indigent defendants.

The PPRI has been established by the Texas Legislature in 1983 to conduct research to inform policy-making in Texas and beyond. The institute currently has about 36 full time research staff with different levels of expertise from PhDs in economics, political science, public health, to other applied research experience in criminal justice, education, public health, and other areas. Since its inception, the PPRI has secured more than \$150 million in externally funded projects averaging between \$4 and \$6 million a year. The PPRI has conducted research on behalf of federal, state, private, and international clients such as the Department of Justice, National Science Foundation,

National Institutes of Health, Texas Department of Transportation, Texas Education Agency, Office of Court Administration, Texas Indigent Defense Commission, Arnold Ventures, Robert Wood Johnson Foundation, and the United Nations. Policy reports by PPRI have been featured by national news media outlets, and cited by policy makers such as the Attorney General, Secretary of Education, and the President of the United States.

The PPRI at Texas A&M University took the lead evaluating current indigent defense practices starting in the fall of 2019 and ending in the spring of 2020. All study data collection occurred before the world pandemic caused by COVID-19. Quantitative and qualitative methods were both utilized in the current study including case level data from the Bexar County Justice Information System (CJIS), interviews with judges, county staff, attorneys, and defendants. The research team analyzed more than 90,000 criminal cases in the county, interviewed 11 judges, 19 county staff, 43 attorneys, and 197 defendants. The PPRI would like to express its deepest gratitude to all judges, attorneys, defendants, county staff and officials who have graciously given us their time to answer difficult questions and be as open as possible in their responses.

The report highlights current legal requirements to every metric surrounding indigent defense, the American Bar Association (ABA) best practices, the Bexar County Indigent Defense Plan addressing each metric, current practices in the county, and the research team's recommendations. The PPRI deeply appreciated the opportunity to work with Bexar County officials, and we hope you find this report helpful in guiding the county's next steps in improving the quality of the indigent defense system in the county.

Sincerely,

A handwritten signature in black ink, appearing to read 'G Naufal', written over a horizontal line.

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

Executive Summary

Bexar County court judges increased fee payments to court-appointed attorneys beginning in September 2018. In response, the Bexar County Commissioners Court requested an evaluation to examine quality indigent defense representation in the county. Bexar County is also transitioning to a new data management system, providing an excellent opportunity to evaluate current database measures in the county.

The Public Policy Research Institute (PPRI) at Texas A&M University conducted an evaluation of Bexar County's indigent defense system, utilizing a multi-method approach with quantitative and qualitative data. PPRI evaluated three years of Bexar County criminal case data. In addition, PPRI conducted numerous interviews and surveys with defendants, attorneys, judges, and county officials.

Chapter 3: Quality of Service

Bexar County is meeting statutory timelines for magistration within 48 hours of arrest, but compliance with other statutory timelines are difficult to analyze due to data limitations. Request for counsel, attorney contact, and complaints are not tracked within the current data management system. Any future data system implemented must incorporate these measures. Almost 40% of defendants surveyed stated they first met their attorney in court, and about 40% of defendants did not feel informed about the appointment process.

Chapter 4: Quality of Representation

All stakeholders viewed communication as a key attribute needed to provide quality representation to defendants. PPRI examined Bexar County's indigent defense system using the American Bar Association's Ten Principles of a Public Defense System. Although Bexar County is following many of these principles, several principles could be incorporated with reforms to the current system.

Several quality indicators are not tracked, such as attorney-client contact, complaints, and request for counsel. These issues must be addressed in the new data management system. Bexar County has made significant progress in addressing mental health issues of defendants, but stakeholders felt that more progress needs to be made.

Chapter 5: Comparison of Representation

Bexar County requested an evaluation of outcomes based on counsel type. PPRI examined outcomes between court-appointed and retained counsel. Due to the types of cases and limited caseload of the Bexar County Public Defender Office, comparisons could not be made between all counsel types. Better defendant outcomes result from retained attorneys, with court-appointed counsel less likely to be associated with dismissals relative to retained counsel. Court-appointed attorneys are more likely to be associated with pleas relative to retained counsel, and court-appointed attorneys are more likely to be associated with incarcerations relative to retained counsel.

Chapter 6: Bexar County Public Defender Office

The Bexar County Public Defender Office has a limited caseload, which includes specialized cases. The unique caseload of the Public Defender Office makes comparisons between public defenders, court-appointed attorneys, and retained attorneys problematic; therefore, the public defender caseload is examined independently.

Chapter 7: Judicial Evaluation

Certain courts appoint from the bench more often than others. Reasons for appointment from the bench are not tracked within the current data system. PPRI also examined if attorneys were appointed from the bench without being on the appointment wheel. County courts appeared to appoint attorneys not on the appointment list more than district courts. PPRI also examined requests for investigators and experts. These requests are codes within the current data system, but they do not appear to be utilized. PPRI also interviewed county officials concerning voucher reimbursements. Several indicators are not tracked, such as reasons for reducing voucher payments.

Chapter 8: Recommendations

PPRI made policy and data recommendations based on quantitative and qualitative data gathered from Bexar County. Data recommendations include: implement quality metrics in the new data management system, including *TIDC Recommended Functionality & Data Guidelines for Indigent Defense Technology Projects*. Policy recommendations include: inform attorneys about how the different specialty courts function, employ an Indigent Defense Coordinator program to assist defendants with the appointment process, and implement a Managed Assigned Counsel (MAC) program in conjunction with the Public Defender Office to increase accountability and supervision of court-appointed counsel.

Introduction

Bexar County Court judges approved fee increases for court-appointed attorneys to represent indigent defendants. In their joint order revising the county-wide fee schedule, the judges noted that misdemeanor payment guidelines were constructed to “assure quality representation for indigent persons charged with misdemeanor crimes in Bexar County. The fees set forth by this order take into consideration the time and labor required, the complexity of the cases, and the experience and ability of appointed counsel.”¹ As of September 1, 2018, these amended payments went into effect. Across the board, payments to attorneys taking misdemeanor cases increased by \$40, going from \$140 to \$180. To this end, Bexar County officials need to appreciate that payments to court-appointed attorneys must be sufficient to ensure that attorneys have the necessary resources to find and interview witnesses, obtain and analyze witness testimony, consult with experts, understand relevant case law, and keep close contact with their client.² While it is possible that increased payments may provide attorneys with the resources necessary to pursue the various components of quality representation, it is not clear that these changes will generate better dispositions (dismissals and charge reductions) for clients. Since no performance measures or standards are in place – and the pay rate continues to be low – there is concern that this fee increase will not result in improved quality of representation or improved outcomes for indigent defendants.

The Bexar County Commissioners Court requested an evaluation to be conducted to assess the effect of these changes on defendant outcomes. Bexar County officials have also expressed interest in contextualizing this analysis with a review of the county’s indigent defense practices. Because they anticipate system-wide information technology updates in the immediate future, assessing the availability of data and system efficiencies is vital to that development process. Further, given Texas Indigent Defense Commission (TIDC) monitoring concerns about wheel appointments,³ an evaluation of the fairness of indigent defense delivery and the quality of indigent defense representation is needed. In October 2018, Bexar County officials approached the Public Policy Research Institute (PPRI) at Texas A&M University to partner on a study to evaluate current indigent defense practices. The study began in the fall of 2019 and ended in the spring of 2020. All study data collection occurred before the world pandemic caused by COVID-19. Prior to examining Bexar County’s indigent defense system, a review of the effects of fee increases and quality defense representation literature is needed.

Quality Representation

In 2002, the Spangenberg Group conducted a state-by-state analysis of compensation for court-appointed counsel.⁴ At that time, 12 states left the compensation rates to court-appointed attorneys to be determined at the local level. In Texas today, compensation rates are still left to local jurisdictions. While the research literature on the impacts of fee increases for court-appointed attorneys is fairly small, Roach (2017) found that increases in the fees paid to court-appointed attorneys resulted in better

¹ Joint order revising fee schedule, 2018.

² H. Russell Cort; Jack L. Sammons, *The Search for Good Lawyering: A Concept and Model of Lawyering Competencies*, 29 Clev. St. L. Rev. 397 (1980).

³ Task Force on Indigent Defense, *Review of Bexar County’s Indigent Defense Systems*, 2010.

⁴ The Spangenberg Group, *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview*, Prepared for the American Bar Association, 2002.

outcomes for defendants in New York, including reductions in guilty pleas and convictions.⁵ Schwall (2017) found that court-appointed attorneys expended less effort on their cases when compared to a flat fee versus an hourly rate.⁶

Most research literature regarding quality defense focuses on systems of representation including public defender offices and managed assigned counsel systems (MAC). Since the Texas State Legislature passed the Fair Defense Act of 2001 (FDA)⁷, more attention has focused on improving the quality of indigent defense services while also containing costs. The use of public defender and managed assigned counsel systems is considered a strategy to meet these dual objectives. TIDC has priority program areas including managed assigned counsel systems and public defender offices that put in place mechanisms to ensure quality representation. Prior to the FDA, only five Texas counties operated public defender offices serving adult defendants. Currently, there are 20 public defender offices and three managed assigned counsel programs (shown in Tables 1 and 2).⁸

⁵ Michael A. Roach (2017). Does raising indigent defender pay rates improve defendant outcomes? Evidence from New York, *Applied Economics Letters*, 24:14, 1025-1030, doi: 10.1080/13504851.2016.1248281

⁶ Benjamin Schwall, *More Bang for Your Buck: How to Improve the Incentive Structure for Indigent Defense Counsel*, 14 Ohio St. J. Crim. L. 553 (2017).

⁷ Fair Defense Act 2001 (SB 7).

⁸ Texas Indigent Defense Commission, Indigent Defense Data for Texas, Available at <http://www.tidc.texas.gov/media/46142/direct-client-services-chart-2018.pdf>

Table 1: Texas Public Defender Offices - 2018

Program Name	Services Offered	Year Established	Participating Counties
Travis County Juvenile PDO	Juvenile	1971	Travis
Dallas County PDO	Capital, DNA Exoneration, Felony, Misdemeanor, Juvenile, Padilla Consultation & referrals, CPS & Family Law, Appeals, Mental Health	1983	Dallas
Colorado County Public Defender	Felony, Misdemeanor, Juvenile	1987	Colorado
El Paso County PDO	Capital, Felony, Misdemeanor, Juvenile	1987	El Paso
Webb County PDO	Felony, Misdemeanor, Juvenile	1988	Webb
Wichita County PDO	Felony, Misdemeanor	1989	Wichita
Cameron County Juvenile PDO	Juvenile	1999	Cameron
Bexar County Public Defender	Felony Appellate, Misdemeanor Appellate, Juvenile Appellate, Misdemeanor Mental Health, Felony Mental Health	2005	Bexar
Hidalgo County PDO	Felony, Misdemeanor, Juvenile	2005	Hidalgo
Kaufman County	Felony, Misdemeanor	2007	Kaufman
Travis County MH PDO	Misdemeanor Mental Health	2007	Travis
Bowie County PDO	Felony, Misdemeanor	2008	Bowie
Regional Public Defender Office for Capital Cases	Capital	2008	177 counties
Bee County Regional PDO	Felony, Misdemeanor, Juvenile, Appellate	2009	Bee, Live Oak, McMullen, Refugio, Willacy
Fort Bend County PDO	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2010	Fort Bend
Caprock Regional PDO	Felony, Misdemeanor, Juvenile, Appellate	2011	Briscoe, Cochran, Dickens, Floyd, Hockley, Kent, Motley, Stonewall, Swisher
Harris County PDO	Felony, Juvenile, Felony Appellate, Misdemeanor Appellate, Misdemeanor Mental Health	2011	Harris
Burnet County PDO	Felony, Misdemeanor, Juvenile	2012	Burnet
Starr County Regional PDO	Felony, Misdemeanor, Juvenile, Appellate	2016	Starr, Duval, Jim Hogg
Far West Texas Regional PDO	Felony, Misdemeanor	2018	Brewster, Culberson, Hudspeth, Jeff Davis, Presidio

Table 2: Managed Assigned Counsel Programs - 2018

Program Name	Services Offered	Year Established	Participating Counties
Lubbock Private Defender Office	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2009	Lubbock
Collin County Mental Health Managed Counsel Program	Felony Mental Health, Misdemeanor Mental Health	2013	Collin
Capital Area Private Defender Service	Felony, Misdemeanor, Felony Mental Health, Misdemeanor Mental Health	2014	Travis

It is difficult to establish direct, causal evidence without rigorous experimental design on the impact on quality of indigent defense and the cost-effectiveness of public defender and managed assigned counsel programs due to the inability to observe counties operating a public defender (or managed assigned counsel) program without the existence of such services.⁹ Nevertheless, it is possible to examine the experience of current standing offices. Every Texas county submits data on the number and costs of indigent representation through an annual Indigent Defense Expenditure Report collected by the Texas Indigent Defense Commission. This database, combined with self-reported information about local policies and practices from established public defender and managed counsel offices, provide useful resources for exploring the efficacy of such systems relative to other forms of assigned counsel.

Public defender offices provide budget predictability, uniform representation, and institutional infrastructure. The infrastructure provided by public defender offices include ongoing professional development, established quality standards, improved access to investigators, and close monitoring of attorneys. In public defender offices, caseload criteria and other quality assurance measures are developed and refined over time, creating established performance standards. Clear guidelines help ensure both consistency and quality of legal defense. The chief public defender also provides oversight and guidance for attorneys and can monitor performance to ensure compliance with standards. With a critical mass of criminal defense attorneys operating in a single office, continuing legal education workshops can be offered in-house on topics pertinent to local priorities. Other training opportunities include mentoring for junior defenders in the office and the courtroom, as well as informal group planning and brainstorming exercises to improve departmental operations. Finally, the larger volume of cases processed in public defender offices makes it more feasible to provide in-house access to key resources, such as investigators and professional experts.

A relatively new type of counsel system in Texas is the MAC. The MAC is similar to the public defender model, but the attorneys are not employees of the county and are private contractors. The MAC employs a managing attorney to monitor attorneys and a review committee can also be used to select attorneys to participate in the MAC. Overall benefits of the MAC system include independence, oversight, efficiency, reliability, compliance, and training.¹⁰ The MAC can also provide accountability for attorneys by monitoring caseloads and complaints to ensure quality representation.

⁹ Descriptive studies have shown the positive impacts of public defender and managed assigned counsel programs.

¹⁰ Texas Indigent Defense Commission, *Primer on Managed Assigned Counsel Programs*, 2017.

American Bar Association's Ten Principles of a Public Defense Delivery System

The American Bar Association (ABA) published the Ten Principles of a Public Defense Delivery System in 2002.¹¹ These principles were established in order to provide guidance to government officials to create an effective and quality system to deliver representation to indigent defendants. The ABA principles include:

1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.
2. Where the caseload is sufficiently high, the public defense delivery systems consists of both a defender office and the active participation of the private bar.
3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
5. Defense counsel's workload is controlled to permit the rendering of quality representation.
6. Defense 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 provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

Indigent defense overall is a topic relevant to many states due to lawsuits being filed to create change in indigent defense systems. Class action lawsuits have focused on specific issues established in the ABA Ten Principles, such as excessive attorney caseloads, insufficient attorney compensation, a lack of attorney hiring, training standards, pretrial bond practices, or the absence of oversight mechanisms. Texas counties have already been sued, including Gillespie, Williamson, Dallas, Galveston, and Harris. These lawsuits have been used to achieve reform in indigent defense systems and are becoming more common across the United States. Given these events, it is important to examine quality representation within Bexar County's indigent defense system.

¹¹ American Bar Association, "Ten Principles of a Public Defense Delivery System," February 2002. The State Bar of Texas also has comprehensive guidelines. *See also* State Bar of Texas, "Performance Guidelines for Non-Capital Criminal Defense Representation," January 2011, https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703

Bexar County Indigent Defense System

Bexar County is the 4th largest county in Texas, with a 2018 population estimate of 1,932,383.¹² Bexar County has 10 criminal district courts and 15 county courts. The county has a district court and county court indigent defense plan.¹³ Bexar County also has several specialty courts. Bexar County currently has a court-appointed attorney wheel system and a Public Defender Office to represent indigent clients. The Public Defender Office is made up of the following divisions: appellate, misdemeanor and felony mental health, mental health civil, misdemeanor trial (only operates in courts where judges elect to have the Public Defender) and magistration. The current study focused on Bexar County's adult indigent defense system.

In August 2010, the Task Force on Indigent Defense, now known as the Texas Indigent Defense Commission, published a "Review of Bexar County's Indigent Defense Systems," a full assessment of the indigent defense system in the county. This report found issues with timely appointment of counsel and appointment procedures deviating from the approved indigent defense plan.¹⁴ A follow-up visit to Bexar County in 2012 showed many of the issues found in 2010 had been resolved and were in compliance with TIDC recommendations from the 2010 review.

Bexar County is one of the leaders in the state by providing counsel at magistration. Only four (Bexar, Cameron, Fort Bend, and Harris) counties out of 254 offer counsel at magistration (also known as first appearance). The Bexar County Public Defender Office represents defendants at magistration. According to the Texas Indigent Defense Commission's innovation brief¹⁵, a 150% increase occurred in defendants released on personal bonds. Additionally, mental health personal bonds increased 20% in clients represented by the Bexar County Public Defender Office.

Comparison of the Bexar County Indigent Defense System to Peer Counties

The largest counties in Texas are leaders in innovative practices for indigent defense systems. As previously mentioned, Bexar County is currently one of the leaders in the state by providing counsel at magistration and having multiple specialty courts. The county has a Remote Attorney Visitation (RAV) system and a voucher recommendation committee, which are both innovative and promising practices. Each of these innovations will be discussed in later chapters.

Harris County is a leader in the state by also providing counsel at magistration. Harris County is in the process of implementing a MAC office with support from a TIDC grant and has a public defender office which handles misdemeanor, felony, juvenile, and appellate cases. Travis County is also in the process of implementing a county-wide public defender office with support from a TIDC grant. Dallas County also has a public defender office, which represents misdemeanor, felony, juvenile, and appellate cases.

¹² See Texas Indigent Defense Commission, Indigent Defense Data for Texas, available at <http://tidc.tamu.edu/public.net/Reports/ExpenditureReportResults.aspx>

¹³ Not later than November 1 of each odd-numbered year, every county is mandated by the Texas Legislature to submit to the Texas Indigent Defense Commission (TIDC): (1) a copy of its countywide indigent plan(s) and procedures and any revisions to the plan or forms previously submitted; or (2) a verification that the plan and forms previously submitted still remain in effect. These instructions govern the submission of the plans due to be submitted to the TIDC, pursuant to Section 79.036 of the Texas Government Code. Bexar County's indigent defense plans are shown in Appendix A.

¹⁴ *Supra* note 3.

¹⁵ Texas Indigent Defense Commission, *Indigent Defense Innovation*, 2018.

Tarrant County has an appointment wheel, but the county currently utilizes TechShare as a data management software. This system has been implemented by several counties in Texas. Specifically, this system has an indigent defense application, which was developed in cooperation with TIDC. The largest counties in Texas with the exception of Bexar have indigent defense coordinators. Indigent defense coordinators, one of the first innovations recommended after the Commission was established, now ensure prompt appointment of qualified counsel in 97 counties. Eighty-three percent of counties with population exceeding 300,000 have created this position.¹⁶ All of the large counties in Texas have developed and are utilizing innovative practices, and Bexar County has several promising practices that other counties could benefit from utilizing.

Per-Case Spending

TIDC tracks indigent defense expenditures and the number of cases each county reports. TIDC also requires counties to provide their fee schedules for attorney payments.¹⁷ Tables 3 and 4 display Bexar County indigent defense spending in comparison with other large counties in Texas. In Fiscal Year 2019, Bexar County spent \$15,088,968 on 42,376 indigent defense cases.¹⁸ Bexar County spends the least amount of money per case at \$356.

Table 3: Largest Texas Counties' Indigent Defense Expenditures & Cases in FY 2019¹⁹

County	Current Year Population Estimate (2018)	Total Indigent Defense Expenditures	Total Count of Indigent Defense Cases	Average Cost of Indigent Defense Case	Juvenile Trial-Level Cases Paid	Misdemeanor Trial-Level Cases Paid	Non-Capital Felony Trial-Level Cases Paid	Capital Murder Cases Paid
Bexar	1,932,383	\$15,088,968	42,376	\$356	2,186	22,194	17,751	79
Dallas	2,615,995	\$37,533,215	54,467	\$689	7,307	24,294	22,568	74
Harris	4,582,398	\$55,299,196	62,123	\$890	6,139	19,658	35,842	134
Tarrant	1,995,921	\$21,602,871	33,009	\$654	1,640	15,333	15,644	116
Travis	1,206,427	\$14,555,636	29,474	\$494	2,662	14,950	11,710	26

¹⁶ See <http://tidc.tamu.edu/Public.Net/>

¹⁷ The fee schedules for the largest counties are included in Appendix B. All county indigent defense plans and related documents are available at <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>

¹⁸ Texas Indigent Defense Commission Expenditure Reports, Bexar County FY 2019, available at <http://tidc.tamu.edu/public.net/Reports/ExpenditureReportResults.aspx>

¹⁹ Table does not include cases represented at magistration. Appellate cases and costs are included in total expenses and case counts. These cases counts are available online. See Texas Indigent Defense Commission Expenditure Reports, available at <http://tidc.tamu.edu/public.net/Reports/ExpenditureReportResults.aspx>

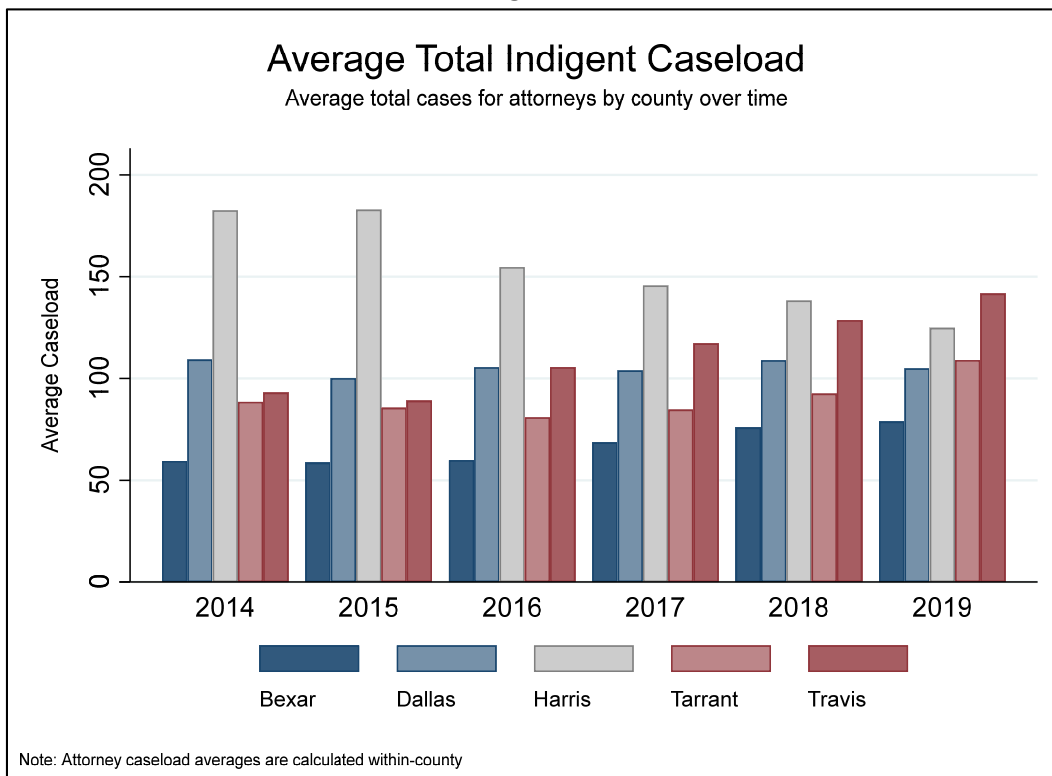
Table 4: Largest Texas Counties' Investigation & Expert Expenditures in FY 2019²⁰

County	Investigation Expenditures	Expert Expenditures
Bexar	\$496,033	\$474,658
Dallas	\$984,019	\$1,099,095
Harris	\$2,031,332	\$1,067,764
Tarrant	\$472,526	\$995,202
Travis	\$220,749	\$578,610

Caseload Comparison

TIDC also collects data concerning attorney caseloads, allowing comparisons of appointed attorney workloads across counties.²¹ Figure 1 presents the average attorney caseload by the largest counties over years. Attorneys in Bexar County represent the least amount of indigent defense cases, on average, compared to attorneys in Harris, Travis, Dallas, and Tarrant across all years. However, the figures in this section only display indigent defense caseloads. These calculations do not include retained cases or cases represented out of county.²²

Figure 1



²⁰ Public defender expenditures are excluded. Appendix C presents investigation and expert expenditures by case type.

²¹ See <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx>

²² This section excludes public defenders.

Cases are broken down into juvenile cases, felony cases, and misdemeanor cases. The average attorney juvenile, misdemeanor, and felony caseloads by county over years is represented in Figures 2, 3, and 4, respectively. Attorneys in Bexar County represent the least amount of juvenile, misdemeanor, and felony cases, on average, across all years. Juvenile caseloads in Bexar County most closely resemble those in Tarrant County. The average juvenile caseload for attorneys over the six years is 4.3 for Bexar County and 5.6 for Tarrant County. Misdemeanor caseloads in Tarrant and Dallas County are similar to those in Bexar County. The average misdemeanor caseload for attorneys over the six years for Bexar County, Tarrant County, and Dallas County is 38.6, 42.1, and 45.3, respectively. Felony caseloads in Bexar County are significantly lower than caseloads in all other counties each year. However, this does not take into account retained cases or appointments in surrounding counties.

Figure 2

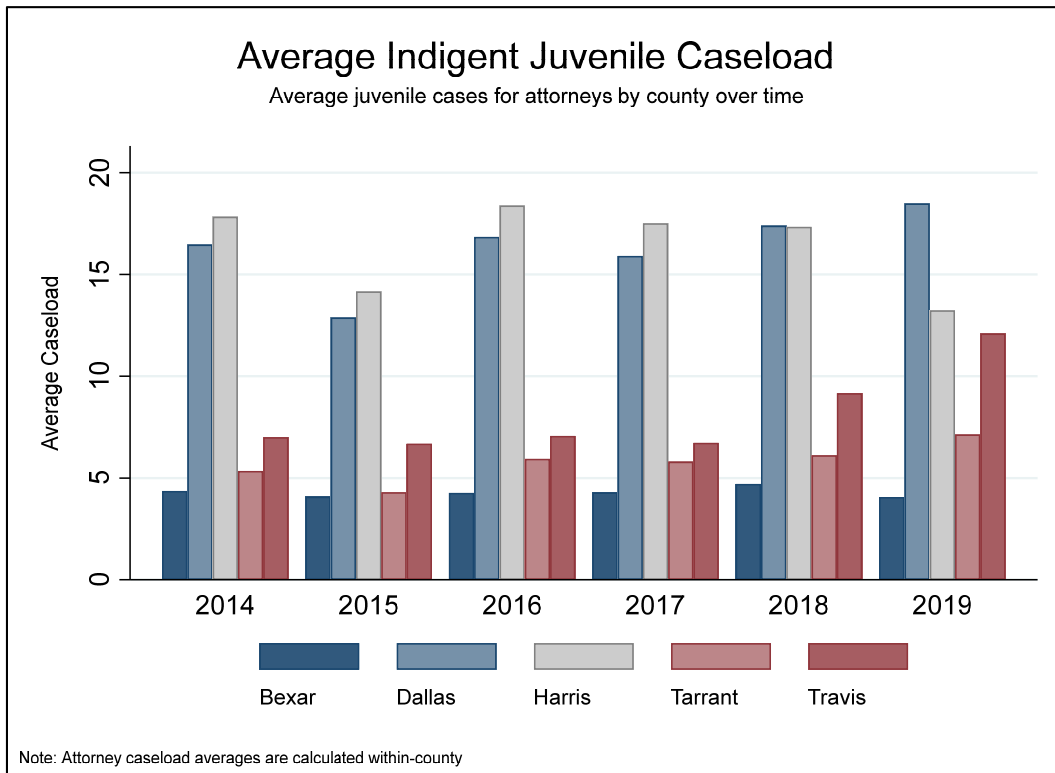


Figure 3

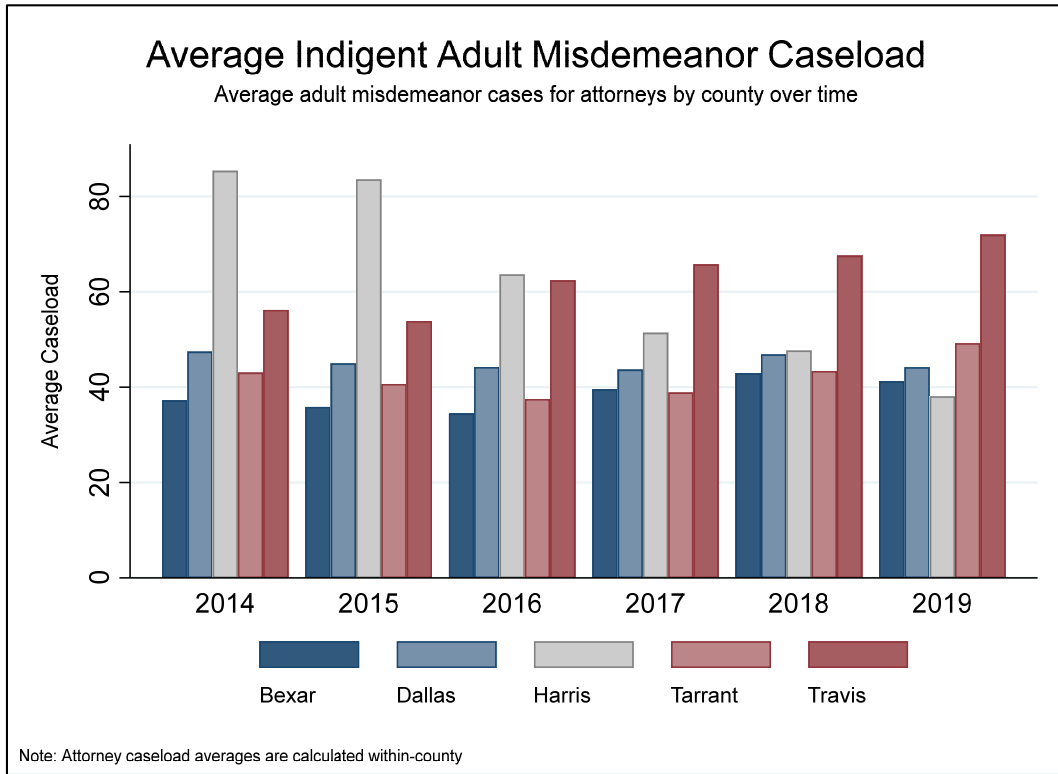


Figure 4

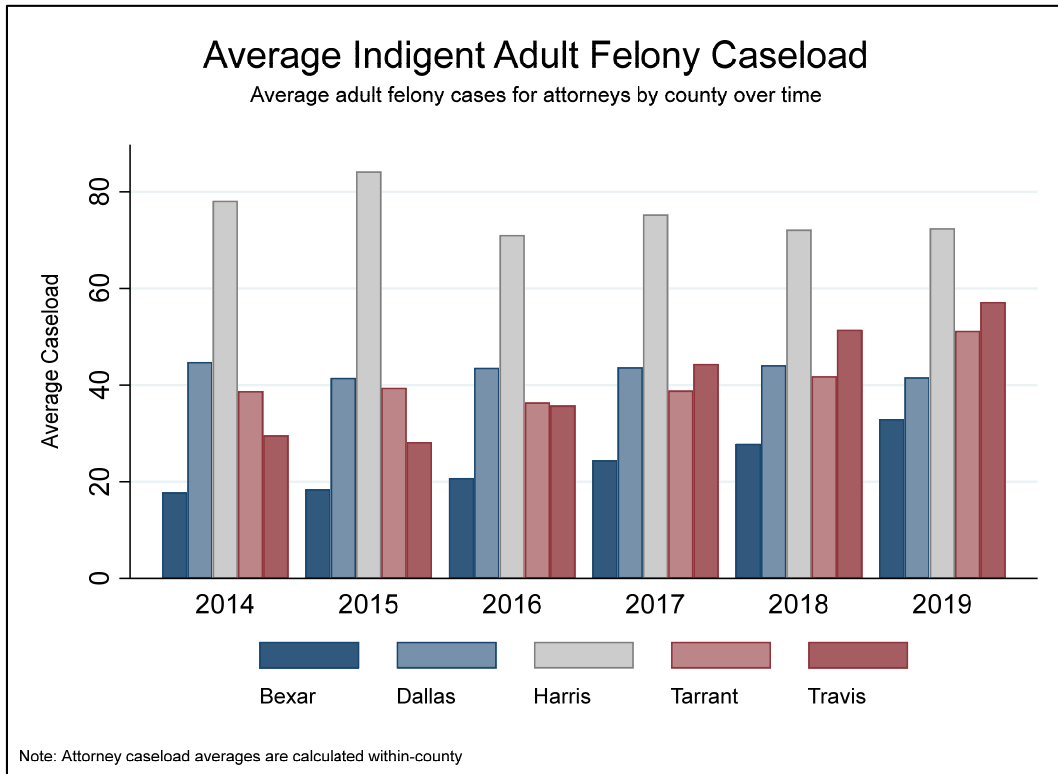


Figure 5 displays the average attorney total caseload payment. Bexar County’s average total payment is lower than the other largest counties across time. Appendix B presents the current fee schedules of the largest counties from their indigent defense plans.

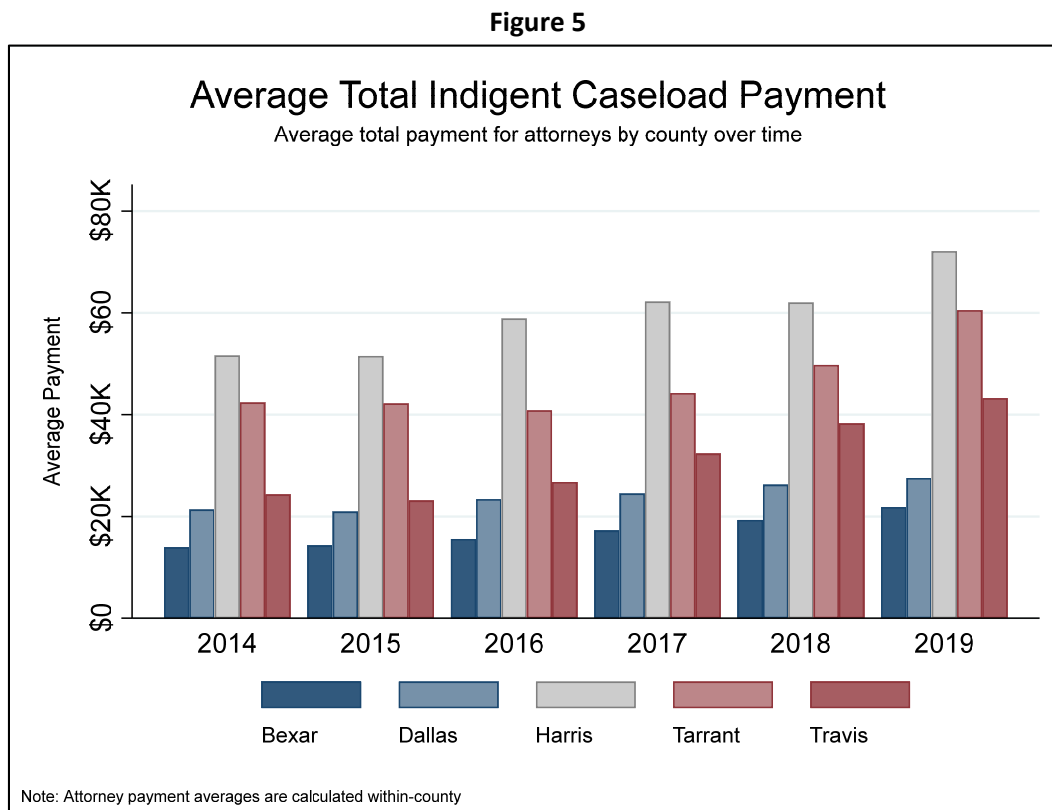


Figure 6 displays the percentage of overburdened attorneys by county, across years.²³ “Overburdened” is defined as an attorney who was paid for more cases (felony, misdemeanor, and appellate) in a year than TIDC’s suggested caseload guidelines (as highlighted by Carmichael et al., 2015).²⁴ Texas’ Weighted Caseload Study²⁵ found that 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 number of overburdened attorneys in Bexar County is less than the number of overburdened attorneys in all other counties, across years. However, the percentage of overburdened attorneys in

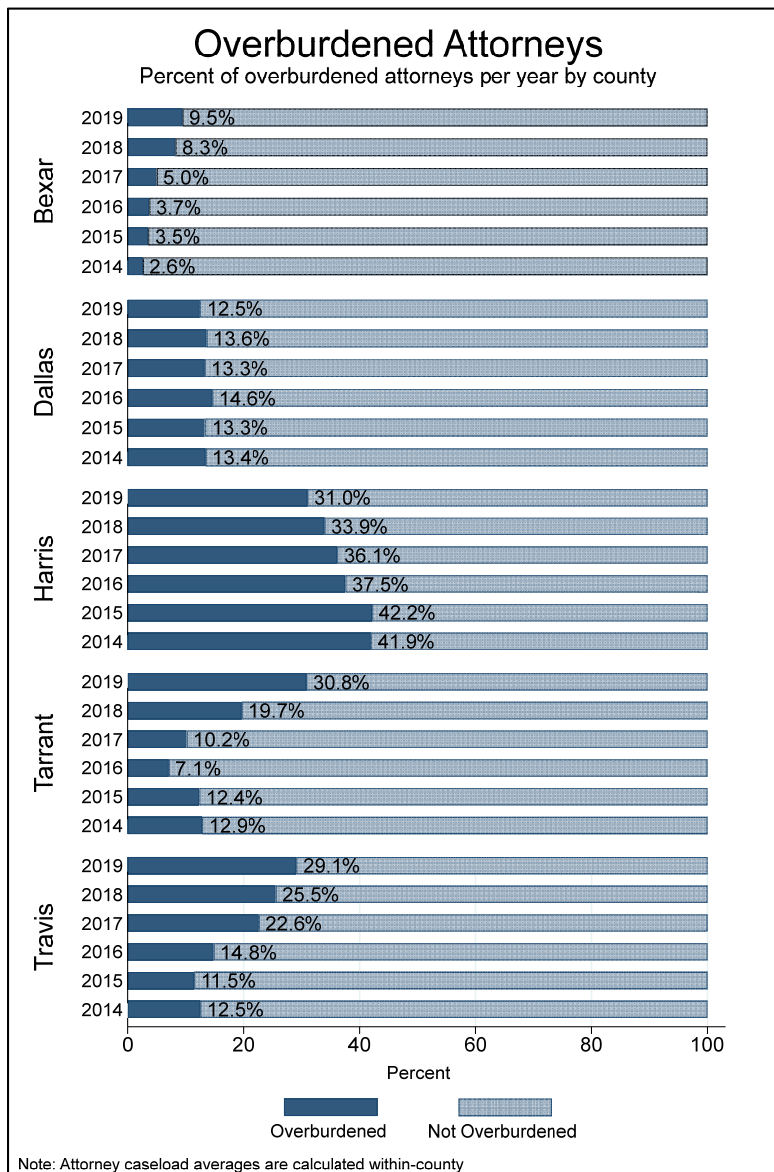
²³ Attorney caseloads were calculated within counties. Across county results were similar.

²⁴ Dottie Carmichael, Austin Clemens, Heather Caspers, Miner Marchbanks, III, Steve Wood, “Guidelines for Indigent Defense Caseloads,” A Report for the Texas Indigent Defense Commission, January 2015.

²⁵ *Supra* note 24.

Bexar County has increased over time, from 2.6% in 2014 to 9.5% in 2019. This steady increase should be monitored closely to ensure attorneys do not become further overburdened. Once again, the caseloads reported in this section only include indigent defense cases, not retained cases.

Figure 6



Court-Appointed Attorney Requirements

All counties in Texas have minimum attorney qualifications specified in their indigent defense plans in order for attorneys to apply to represent court-appointed cases. Appendix D provides the minimum attorney requirements section (as specified in indigent defense plans) of the largest counties to apply and remain on the court appointment wheel. Comparing requirements for applying to be on the appointment wheel across the largest counties, only Harris County utilizes a certification test. Bexar County’s requirements for applying to the court appointment wheel are slightly lower with less trial experience required. Bexar County could increase the trial experience required for attorneys to apply for the appointment wheel. Tarrant County specifies that attorneys taking State Jail Felony cases are

required to be licensed for one year and participate in five jury trials prior to applying for court appointments. Bexar County requires one-year prior experience in criminal litigation and participation in at least three criminal jury trials for State Jail Felony cases. For misdemeanor appointments, the largest counties (except for Bexar County) require attorneys to be licensed for one year prior to applying to represent court-appointed cases. However, Travis County offers attorneys the ability to qualify for the misdemeanor appointment wheel after the successful completion of the Capital Area Private Defender Service (CAPDS) mentorship program. This program allows attorneys to gain experience and still receive supervision and mentoring. Bexar County could implement a similar mentorship program for attorneys. Bexar County is behind Tarrant County in their continuing legal education requirements for attorneys to remain on the court appointment wheel. Tarrant County requires 15 hours of CLEs annually for felony cases, and Bexar County requires 12 hours annually.

In terms of financial implications for new appointment and continuing education and testing requirements, more stringent requirements could reduce the number of attorneys because they cannot complete these additional requirements. This could lead to better quality attorneys taking court-appointed cases in the county. Given this context, PPRI conducted a comprehensive evaluation of Bexar County's indigent defense system.

Organization of the Report

The report is organized with Chapter 2 explaining the methodology of the study and Chapters 3 and 4 covering quality of service and representation, respectively. Chapter 5 covers outcome measures by different types of representation. Chapter 6 examines the Bexar County Public Defender Office. Chapter 7 contains an evaluation of judicial practices. Chapter 8 presents study recommendations.

Methodology

The Public Policy Research Institute at Texas A&M University used a multi-method approach to examine Bexar County's indigent defense system. Quantitative and qualitative methods were both utilized in the current study. Several data sources were used and analyzed to provide a comprehensive evaluation.

Quantitative Data

The Bexar County Office of Criminal Justice Policy, Planning, and Programs provided a data download of disposed adult criminal cases from the Criminal Justice Information Systems (CJIS) Database from January 2016 to April 2019. The sample included 90,049 unique judicial numbers (54,936 as misdemeanors and 35,113 as felonies) of all disposed cases during that time frame. For the purpose of this report, the data was trimmed to include cases with a first related booking no earlier than January 1, 1990. A defendant can get booked on one judicial number or multiple judicial numbers. In this report, a judicial number is a unique case. Hence, a booking with three judicial numbers on the same day for the same defendant is considered a booking with three different cases. This brought a level of complexity in identifying specific parameters for the study. For instance, while the majority of single bookings with multiple cases are bundled together under the highest charge, many cases take unique paths including different attorneys, dispositions, and overall timeline. Throughout the report, a different analysis sample was created to best examine the specific outcome in question. The data from the CJIS Database allows the research team to analyze type of attorney, timelines, outcomes, and other important case related information. The database included all court events associated with each case. While court events are based on event qualifiers represented by specific code events, many events use the same code and are in text form making it extremely difficult to disentangle accurate case information.

PPRI also utilized indigent defense expenditure report data and attorney caseload data from the TIDC.²⁶ The expenditure report and attorney caseload data are yearly county level data. Finally, the research team also collected data on attorney demographics from the State Bar of Texas.

Qualitative Data

PPRI attempted to gather perspectives of stakeholders who are involved in the indigent defense system in Bexar County. Qualitative methods included:

- In-depth interviews with county officials, judges, and attorneys
- Survey of defendants with disposed cases

Interviews

PPRI emailed and called judges and attorneys to inform them about the study and ask for their participation. PPRI received contact information for judges and county officials from the Bexar County Office of Criminal Justice Policy, Planning, and Programs and attorneys from the district and county court administration. PPRI contacted 27 judges and 234 attorneys with request for interviews. Interviews were conducted both in-person and over the telephone. PPRI interviewed 19 county officials, 11 judges, and 43 attorneys. Open-ended interview questions across all interviewees focused on the following themes:

- Quality representation (key attributes)

²⁶ See <http://tidc.tamu.edu/Public.Net/>

- Mental health & opioid issues
- Recommendations for improving the indigent defense system

Additionally, each interviewee group was asked specific questions about their position. Judges were asked about morale, vouchers, complaints and discipline concerning court-appointed counsel, their views on attorney compensation, and attorney caseloads. Attorneys were asked questions about the attorney selection process, attorney compensation, and judicial practices. County officials were asked about their morale and complaints against attorneys.

PPRI visited Bexar County on three site visits in the fall of 2019 and spring of 2020 to interview county officials, judges, attorneys, and survey defendants. PPRI staff also observed district court hearings handling docket work.

Defendant Survey

Using the data download from Bexar County, PPRI extracted SID numbers from a random sample. PPRI was able to match addresses to phone numbers and use these numbers to reach defendants who had no pending or active case in Bexar County. Using its survey lab calling center, PPRI contacted defendants about their experiences with the Bexar County indigent defense system. Using those phone numbers, the survey lab was able to complete 102 surveys.

PPRI also traveled to Bexar County to survey defendants at the probation department. Defendants in waiting areas with no pending cases were approached about the survey and asked if they would like to participate. Defendants were asked about their experiences with court-appointed attorneys. Questions on the survey included attorney-client contact and perceptions of treatment in Bexar County. The research team was able to complete 95 surveys. No identifying information on defendants' demographics, nor their specific case, attorney, or court was collected.

Quality of Service

Local jurisdictions are required by the Fair Defense Act of 2001 to provide legal counsel to defendants who cannot afford an attorney,²⁷ with the important caveat that this representation ought to meet constitutional and ethical obligations to the client. PPRI examined the timelines within Bexar County's indigent defense system, including magistration and appointment of counsel.

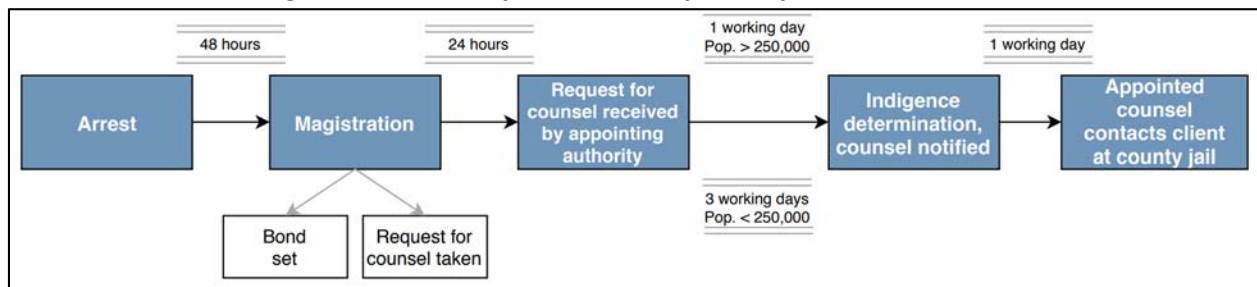
Bexar County Timelines

Bexar County has a central magistration facility where defendants are magistrated. Pretrial Service officers are responsible for conducting risk assessments with defendants pre and post magistration. Pretrial Service officers also initiate the review process to appoint counsel if defendants request a court-appointed attorney.

Statutory Requirements

The statutory timelines governing the appointment of indigent defense counsel are shown in Figure 3-1. Within 48 hours of arrest, the accused must be brought before a magistrate.²⁸ At the Article 15.17 hearing (magistration), the accused must be informed of their rights and the procedures for requesting counsel. Judges must rule on requests for counsel and appoint counsel within one working day of receiving requests in counties with population of 250,000 or more.²⁹

Figure 3-1: Statutory Timelines Required by Fair Defense Act



ABA Principles & Standards

The ABA Ten Principles of a Public Defense Delivery System³⁰ states in its third principle that:

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

²⁷ *Gideon v. Wainwright*, 372 U.S. 335 (1963) applied the right to counsel to felonies; however, the Supreme Court later extended this right to misdemeanor and juvenile cases in *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972) and *In re Gault*, 387 U.S. 1 (1967), respectively.

²⁸ Texas Code of Criminal Procedure 14.06

²⁹ Texas CCP 1.051

³⁰ *Supra* note 11.

The ABA's Pretrial Release Standard³¹ 10-4.1 states that:

"Unless the defendant is released on citation or in some other lawful manner, the defendant should be taken before a judicial officer without unnecessary delay. The defendant should be presented at the next judicial session within [six hours] after arrest. In jurisdictions where this is not possible, the defendant should in no instance be held by police longer than 24 hours without appearing before a judicial officer. Judicial officers should be readily available to conduct first appearances within the time limits established by this Standard.

Where a crime of violence is implicated, an assessment of the risk posed by the defendant to the victim(s) and community should be completed prior to the first appearance; but a defendant's first appearance should not ordinarily be delayed in order to conduct in-custody interrogation or other in-custody investigation. A defendant who is not promptly presented should be entitled to immediate release under appropriate conditions unless pretrial detention is ordered as provided in Standards 10-5.8 through 10-5.10."

Bexar County Indigent Defense Plan

Bexar County's indigent defense plan states that the arrested person will be brought before a magistrate within 48 hours of arrest. Additionally, the plan states that counsel will be appointed no later than the end of the first working day after the date the request was received.³²

Bexar County Current Practice

PPRI examined quantitative data of disposed cases in Bexar County to assess timelines regarding appointment of counsel. To examine case timelines, the sample is restricted to include only cases where the first attorney assigned to the case was court-appointed.³³ Figure 3-2 and Figure 3-3 display timelines for arrest to magistration, magistration to attorney appointment, and attorney appointment to disposition for misdemeanor and felony cases, respectively. The average number of days between arrest and magistration is less than a day for both types of cases.

³¹ ABA Pretrial Release Standards

https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/#10-5.1

³² See Appendix A.

³³ The sample does not include cases where the first attorney appointed was a public defender or defendant retained counsel. The sample also excludes cases that never had an attorney.

Figure 3-2: Bexar County Misdemeanor Timeline

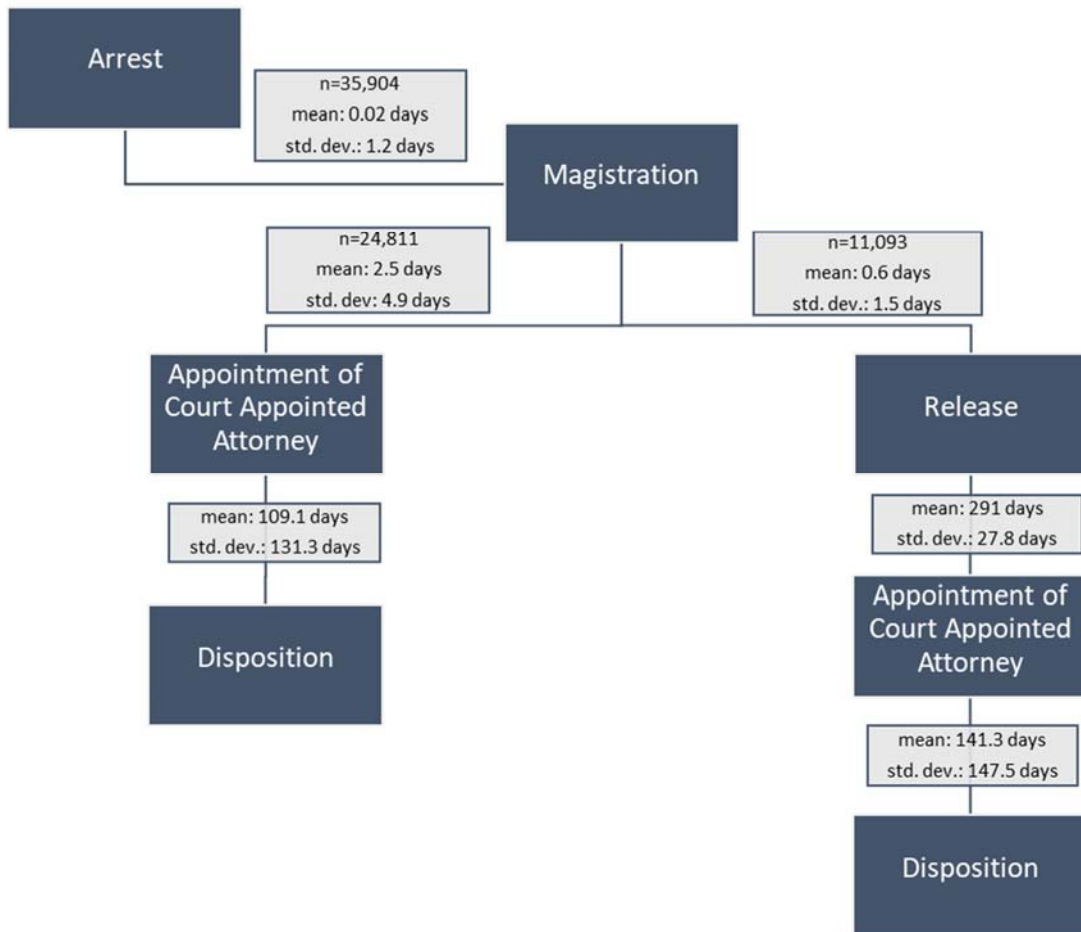
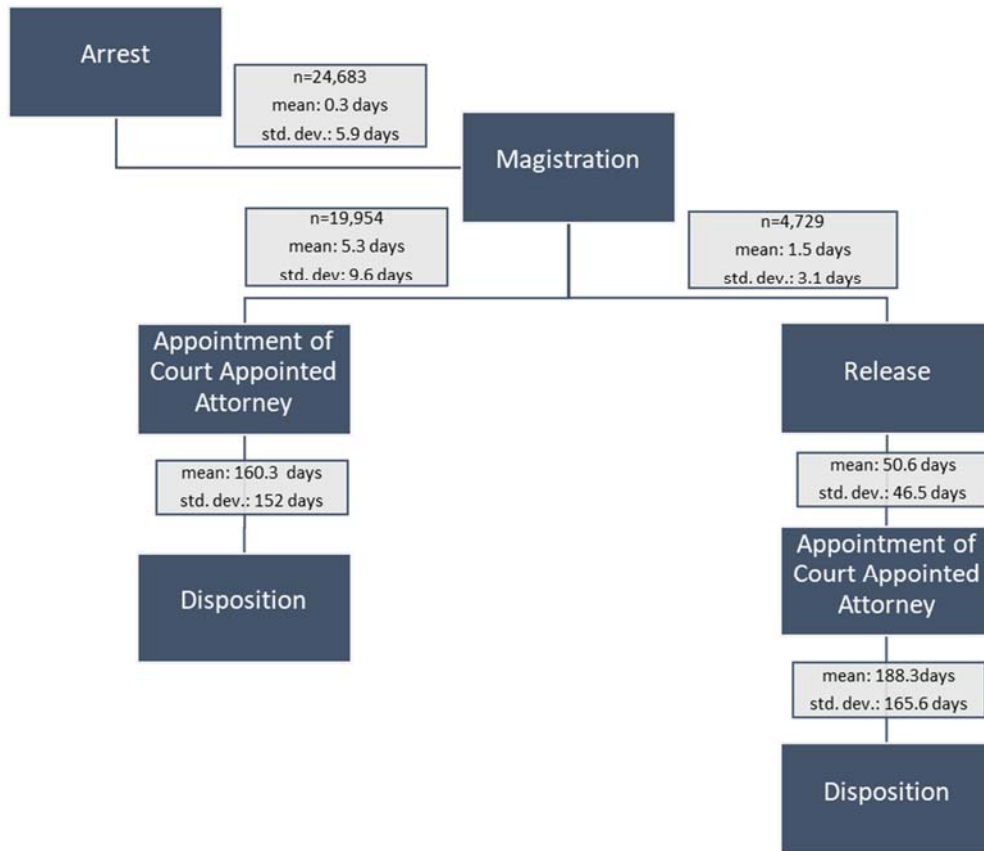


Figure 3-3: Bexar County Felony Timeline



After defendants are magistrates, they may be released before being appointed an attorney. This is the case for 30% of misdemeanor cases and 20% of felony cases. When defendants are released before being appointed an attorney, they will typically be appointed an attorney at their first hearing, which significantly increases the number of days between magistrations and attorney appointment.³⁴ The average number of days between magistrations and attorney appointment for those defendants not released is 2.5 and 5.3 for misdemeanor and felony cases, respectively. For both misdemeanor and felony cases, the average number of days between attorney appointment and disposition is larger for cases that were released before being assigned an attorney. The average number of days for the released cases is 32.2 more days than the 109.1-day average for cases not released for misdemeanors and 28 days more than the 160.3-day average for cases not released for felonies. The average number of days between arrest and disposition for misdemeanors is 129.6 and 179.8 for felonies.

³⁴ Texas Code of Criminal Procedure 1.051 (j) states, “Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.” *Rothgery v. Gillespie County*, 554 US 191 (2008) held, “A criminal defendant’s initial appearance before a magistrate, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Attachment does not also require that a prosecutor (as distinct from a police officer) be aware of that initial proceeding or involved in its conduct.”

Article 17.03 allows defendants to be released on personal bond.³⁵ Additionally, the ABA Standards surrounding pretrial release state “the law favors the release of defendants pending adjudication of charges.”³⁶ Bexar County’s indigent defense plan also states that personal bonds can be utilized to release defendants. Table 3-1 shows additional timelines for misdemeanors and felonies. Most defendants are being released from custody within 10 days for misdemeanors and 50 days for felonies.³⁷

Table 3-1: Bexar County Time Spent in Custody by Misdemeanors and Felonies

	Misdemeanor	Felony
Average Number of Days Spent in Custody	9.4 days (SD=28.4)	46.9 days (SD=84.5)

A complication of the analysis of time between request for counsel and appointment of a court-appointed attorney is the date of request for a court-appointed attorney is not currently recorded electronically. Pretrial services utilizes a separate system to record data. This system records the date of an interview concerning financial resources, but not the specific request for attorney date. The actual request date for appointment of counsel is not recorded within the CJIS database. Free text entry references for request for counsel were found. However, they were not consistent throughout the data, and a specific event code did not exist making it impossible to know with certainty the date. The county shared a data download from the pretrial service system, but merging the new information with the CJIS database was not possible due to missing key elements such as case number.

Recommendations

Bexar County is currently in compliance with statutory requirements, ABA Standards, and the indigent defense plan for magistration within 48 hours of arrest. In order to precisely measure the timeline between request for counsel and appointment of an attorney, Bexar County needs to specifically record the request date. With this data element, the precise timelines can be analyzed and compliance with statutory requirements can be assessed.

³⁵ Texas CCP 17.03

³⁶ ABA Standards of Pretrial Release 10-1.1-10-1.5

³⁷ Average days are calculated by the number of days between arrest and release (for those who were released on bond) and arrest to disposition (for those who were not released on bond). Misdemeanor: $n=54,930$, Felony: $n=35,115$

Attorney-Client Contact

Statutory Requirements

Texas law states that after appointment of counsel is made, counsel must “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.”³⁸

ABA Standards

ABA Criminal Justice Standards for the Defense Function 4-1.3 states that defense attorneys “have a duty to communicate and keep the client informed and advised of significant developments and potential options and outcomes.”³⁹

Bexar County Indigent Defense Plan

Bexar County’s indigent defense plan states that counsel must make every reasonable effort to contact the client within one working day of appointment after the date on which the attorney is appointed.⁴⁰ Additionally, Bexar County’s County Court Plan states that attorneys “shall interview the defendant as soon as practicable after the attorney is appointed; and maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case.” Failure to “twice or more fail to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure,” is grounds for removal from the court appointment wheel. Bexar County’s District Court Plan states that, “when an attorney intentionally or repeatedly violates the requirement that the attorney 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,” then this violation is grounds for removal from the court appointment wheel.

Bexar County Current Practice

Although Bexar County does not record the date of initial client contact in the data management system, a sample of defendants were asked about the appointment process and when they were first contacted by their attorney. A little less than half (41%) of defendants did not feel informed about the appointment process, and Table 3-2 shows almost 40% of defendants met their attorney at their first court hearing. Slightly less than 10% (8.4%) of attorneys reached out to their clients by either a letter or email. One fifth of interviewed defendants had an in-person visit by their attorney.

Further, about 35% of defendants stated that it took more than three days before their attorney first contacted them. Additionally, 40% of defendants stated they felt it was hard to contact their attorney, and the average number of times defendants stated that they spoke with their attorney throughout their case was 3.7.

³⁸ Texas CCP 26.04 (j)

³⁹ Other ABA Standards relating to attorney-client contact include: ABA Standards, Defense Function 4-2.1 and 4-3.2. See https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/

⁴⁰ See Appendix A.

Table 3-2: Method of First Contact

Question		Percent
How did your attorney first contact you? (n=191)	In Court	39.3
	In-Person Visit	20.4
	Phone Call	19.4
	No Response	12.3
	Letter	6.3
	Email	2.1

Attorneys were also asked how often they met with their clients on average. While PPRI did not survey attorneys for quantitative responses about methods in which they used to meet their clients, attorneys did provide some of the ways they first interacted with defendants. The most frequently mentioned were jail visits. Attorneys explained that once they received their appointment they would arrange a visit to the jail to see their client. For cases filed on or after September 1, 2019, appointed attorneys could request an additional \$50 if they visited their client at the jail or through the RAV. Other attorneys mentioned utilizing the RAV or talking to their clients over the phone. The RAV is a videoconferencing technology which allows attorneys to meet with their clients. Attorneys can schedule a time with Bexar County Court Administration to utilize the video equipment to meet with clients when their clients are in custody. Attorneys also answered that they tried to see their clients before court while some said they would meet with them in court. Finally, several attorneys said they contact their clients by fax or letter. It was also discussed that if clients were not in jail sometimes they were difficult to locate with a working phone number or accurate address. Attorneys indicated that this problem was difficult to overcome, as it increased the time it took to contact their clients.

Recommendations

In order to comply with the law and ABA Standards, Bexar County needs to track initial client contact. Due to Bexar County’s indigent defense plan stating that attorneys could be removed from the appointment wheel due to lack of timely contact with the defendant, initial attorney-client contact needs to be included as a database field within the new data management system. Such system should be flexible to reflect the variety of ways attorneys reach out to their clients, allowing the county the ability to create reports by type of case, attorney, method of contact, etc.

Attorney Complaints & Discipline

Statutory Requirements

Texas does not have specific statutory requirements regarding attorney complaints.

ABA Standards

The ABA does not have the authority to handle complaints against attorneys. Each state establishes its own agency to manage these issues. The State Bar of Texas has a disciplinary system, which is governed by Rules of Professional Conduct and Rules of Disciplinary Procedure.⁴¹ These rules govern professional conduct for counsel when representing defendants, and the rules for disciplinary procedure present the method for filing grievances against attorneys.

Bexar County Indigent Defense Plan

The Bexar County's indigent defense plan does not specifically discuss complaints against attorneys, but it does state that attorneys can be removed from cases if defendants can show good cause.

Bexar County Current Practice

Attorney complaints are not tracked within Bexar County's data management system, but county stakeholders were asked specifically about complaints concerning court-appointed attorneys. Most judges stated that defendants can file a grievance with the grievance committee at the State Bar of Texas if they are having an issue with their attorney. County officials and judges mentioned that it is not uncommon for attorneys not to show up in court. Judges stated that this is a primary reason why they appoint another attorney from the bench. County officials claimed many defendants complain they have not heard from their attorney, and that this happens fairly frequently. A specific data entry code does not exist in the Bexar County data management system to track an attorney not showing up for court. Free text entry is being used to indicate attorneys not showing up for court in event qualifiers, but this entry method prevents systematic analysis. Even with a unique data code, data entry is not consistent throughout creating tremendous complexities and uncertainty in understanding court events.

Judges also discussed how they discipline attorneys and the reasons why they discipline them. Judges regularly meet together and decide whether to remove an attorney from the wheel. Often, judges give attorneys an opportunity to appear before them to explain the situation before removing them from the wheel. However, most judges just remove them from the specific case, but in the case of more serious infractions, judges will refer attorneys to the State Bar for disciplinary actions. Before the referral, judges would hold a hearing to discuss issues. Besides removal from the wheel or referral to the State Bar, other options judges used to discipline attorneys include holding attorneys in contempt or placing them on probation.

Recommendations

Bexar County should track complaints about attorneys to ensure attorneys are providing quality representation. Both district and county court administration could keep information about complaints against certain attorneys. If an indigent defense coordinator were employed by the county, this individual could also assist with handling complaints against attorneys. This information could then be provided to judges to better inform their decision-making regarding attorneys on the court appointment

⁴¹ See

<https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/GrievanceEthicsInfo1/default.htm>

wheel. This data element could reflect time sensitive information in which the court needs to be aware of, hence the county should consider the best ways to track defendant complaints in an accurate, secure, and timely manner.

In 2019, Bexar County submitted an improvement grant application to TIDC to implement an indigent defense attorney monitoring program in the felony courts. This program would implement a review committee made up of San Antonio Criminal Defense Lawyers, a managing attorney, an investigator, and an administrative assistant. The program would review complaints about attorneys from defendants and provide continuing legal education seminars. While this kind of program would address some of the issues regarding attorney complaints and dysfunction that are occurring within the indigent defense system, a more robust managed assigned counsel program would more comprehensively address these and other issues identified.

Bail Reduction

Statutory Requirements

Texas statute allows for bond reductions within certain parameters. A measure of quality service is attorneys filing for a bail reduction or a personal bond on felony cases once a defendant has served 90 days in custody without indictment.⁴² At this time, defendants are entitled to a personal bond or a bail reduction.

ABA Standards

The ABA Criminal Justice Standards for the Defense Function 4-3.2 states that, “in every case where the client is detained, defense counsel should discuss with the client, as promptly as possible, the client’s custodial or release status and determine whether release, a change in release conditions, or less restrictive custodial conditions, should be sought. Counsel should be aware of applicable statutes and rules, and all alternatives less restrictive than full institutional detention.”⁴³

Bexar County Indigent Defense Plan

Bexar County’s indigent defense plan does not stipulate any requirements for attorneys to file bail reductions in this situation.

Bexar County Current Practice

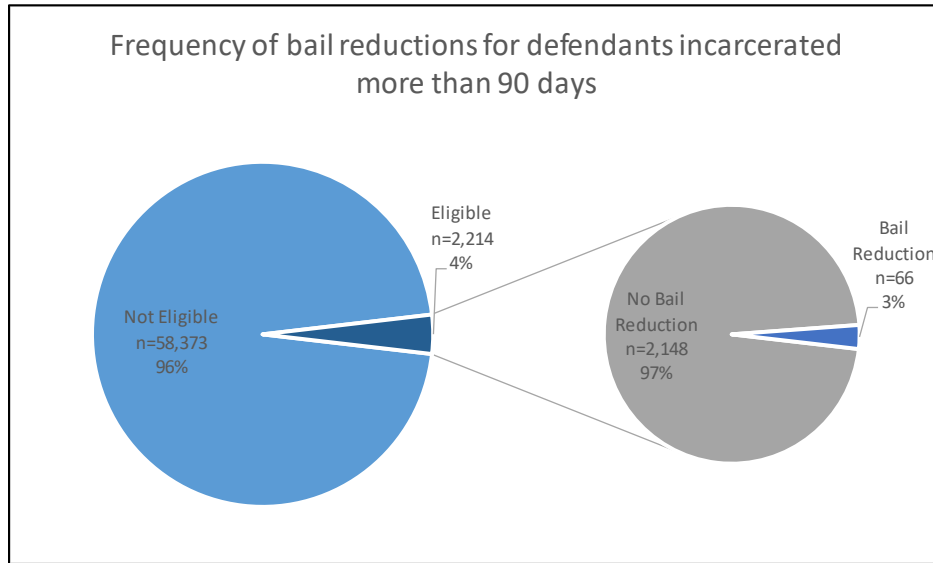
Figure 3-4 shows the frequency of which court-appointed attorneys secure bail reductions for cases that are eligible. Defendants are considered eligible for bail reductions and release if they have been incarcerated more than 90 days without indictment.⁴⁴ Only 4% of cases in the sample are eligible for bail reduction. Of the 2,214 cases eligible for bail reductions, 97% do not receive a reduction. This data indicates that of the eligible cases, attorneys are not filing motions for a bail reduction.

⁴² Texas CCP 17.151

⁴³ See https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/

⁴⁴ Due to data limitations, release on personal bond for this metric could not be examined.

Figure 3-4: Bail Reduction



Recommendations

Texas statute and ABA Standards provide for defendants to be released if the state is not ready to proceed to trial and a defendant is still in custody. If a tracking metric could be placed on a defendant’s case, this could help court coordinators to track this information for the cases that qualify in a particular court.

Conclusion

Although Bexar County is meeting statutory requirements regarding magistration within 48 hours, it is difficult to ascertain compliance with additional requirements due to milestones not tracked within the current Bexar County database. Attorney-client contact and complaints about attorneys are not tracked within the data system. These issues must be addressed in the new data system Bexar County is implementing.

Quality of Representation

In order to evaluate the quality of representation indigent defendants receive, county stakeholders (defendants, judges, county officials, and attorneys) were asked to list key attributes of quality representation. PPRI also examined Bexar County's indigent defense system using the American Bar Association's Ten Principles. Finally, other issues impacting quality representation, including continuing legal education and Bexar County's mental health policies are discussed.

Defendants

PPRI interviewed 197 defendants: 102 over the phone and 95 in person at the probation department and asked defendants three sets of open-ended questions. The first set of questions was, "What does quality representation mean to you? What are the key attributes for good quality representation?" Fifty defendants listed specifically communication or listening were attributes of quality representation in attorneys that they felt were important. Other characteristics mentioned include the attorney cares about and respects the defendant, that they were fair and honest, they provide the same defense as a hired attorney and they explained the case, the court, and the whole process to the defendant.

Table 4-1 shows additional responses concerning quality representation and other perceptions of the criminal justice system from the defendant survey. Almost 50% of defendants felt that their attorney listened to their concerns, and over 50% of defendants felt the outcome of their case was fair.

Defendants overall felt positive towards the judge and prosecutor; however, responses about attorneys investing adequate time on cases, court system explanations, and expressing views in court were more negative.

Table 4-1: Defendant Survey Responses

Questions ⁴⁵	% Answering Yes ⁴⁶
Do you feel like your attorney listened to your concerns? (n=188)	49.5
Do you feel like your attorney invested adequate time on your case? (n=189)	38.6
Whenever the courts didn't hear your case right away, someone explained why you had to wait. (n=194)	35.1
In court, you had the opportunity to express your views. (n=191)	35.1
In court, you understood what was going on. (n=191)	70.7
In court, your defense attorney spoke up on your behalf. (n=190)	67.9
The prosecutor treated you respectfully. (n=192)	61.5
The judge treated you respectfully. (n=192)	83.9
The judge made sure you understood what was going on. (n=192)	79.2
Overall you felt the outcome of your case was fair. (n=192)	56.3
Overall you were treated with respect in court. (n=192)	78.7

⁴⁵ Some survey questions are from Rachel Swaner, Cassandra Ramadath, Andrew Martinez, Josephine Hahn, and Sienna Walker (2018). *What do defendants really think? Procedural Justice and Legitimacy in the Criminal Justice System*. Center for Court Innovation.

⁴⁶ Defendant Survey Responses: Yes, No, Not Sure

Judges & County Officials

Like defendants, judges also cited communication as an important characteristic. Judges stressed the importance of knowing the law, caring about the client, and visiting defendants. Additionally, judges viewed attorneys appearing in court as another essential element of quality representation. Judges mentioned how hearings needed to be reset due to attorneys not showing up in court.

While communication and listening to the client were mentioned by county officials, contact or visiting the client were discussed more. Competency or mental health, advocating for the client, returning the client's phone calls and investigating the case thoroughly were also key attributes stated by county officials. Several county officials also stressed the cost of representation and had concerns about the quality of representation defendants are currently receiving.

Attorneys

Like defendants and judges, attorneys cited communication as a top attribute. Communication was followed by investigation, research, and discovery in cases. Attorneys stressed the importance of explaining the case to the client, visiting or meeting with the client, providing the same defense as they do for their retained clients, understanding the case and knowing the law. Of interest, only one attorney listed showing up for court as an indicator of quality. Based on other qualitative data, this seems to be a key concern for other county stakeholders.

Defining quality of representation is not straightforward as it involves multiple aspects of indigent defense. However, as Table 4-2 below suggests, communication was consistently mentioned across the three main parties of defense: judges, lawyers, and defendants. Thorough investigation was another characteristic highlighted across stakeholders with the exception that defendants did not specifically mention this attribute in their responses.

Table 4-2: Quality of Representation

What are the key attributes of quality representation?	Defendants	Judges	County Officials	Attorneys
Communication	X	X	X	X
Thorough investigation		X	X	X
Appearing in court		X	X	X
Research		X		X
Provide same defense as hired attorney	X			X
Explanation of process/case	X			X
Knowing the law		X		X
Visiting/meeting with the defendant		X		X
Caring/respect	X			
Fair & honest	X			
Competency/mental health issues			X	
Advocate for client			X	
Return phone calls			X	
Discovery				X

Bexar County Indigent Defense System

PPRI examined Bexar County’s indigent defense system using the American Bar Association’s Ten Principles of a Public Defense Delivery System.⁴⁷ Bexar County’s indigent defense system is already fulfilling several of these principles. Currently, a Public Defender Office and the private defense bar represent indigent defendants in Bexar County. Bexar County requires an application where attorneys must provide their qualifications and experience in order to begin taking cases from the appointment wheel. Defense counsel attend continuing legal education courses in order to remain on the appointment wheel.

However, several issues still remain. The public defense function, including requests for investigation, is still currently under the judge’s discretion. In Bexar County, court-appointed attorneys must ask judges for funding to conduct investigations, not an independent entity. Additionally, the private bar’s caseloads are not monitored to ensure attorneys are not overburdened. Most importantly, there does

⁴⁷ *Supra* note 11.

not appear to be an adequate system in place to supervise and review attorney performance for quality and efficiency metrics in Bexar County. Many quality indicators are not currently tracked. Quality indicators that are not tracked include attorney-client contact, complaints about attorneys, and attorneys not appearing in court. Many of these indicators were highlighted qualitatively by stakeholder groups in Table 4-2.

Continuing Legal Education (CLE) Requirements

Statutory Requirements

The Fair Defense Act established requirements regarding attorneys' minimum legal education requirements for indigent defense representation.⁴⁸ Texas Administrative Code Section 174.1. states that an attorney may be appointed only if the attorney:

“Completes a minimum of six hours of continuing legal education pertaining to criminal law during each 12-month reporting period. The judges of criminal courts of the county shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or (2) Is currently certified in criminal law by the Texas Board of Legal Specialization.”⁴⁹

ABA Principles

Two ABA principles are directly related to continuing legal education requirements:

6. Defense counsel's ability, training, and experience match the complexity of the case.
9. Defense counsel is provided with and required to attend continuing legal education.

Bexar County Indigent Defense Plan

Bexar County's County Court indigent defense plan requires:

“An attorney shall complete a minimum of six (6) hours of CLE in the area of Criminal law within 30 days from the date the attorney submits their application to be on the appointment list. In addition to those six (6) hours of CLE in Criminal Law, an attorney must provide proof of either a CLE course in Immigration Law or an Immigration component within another CLE course. There is no minimum required number of hours needed for the Immigration Law requirement. Said attorney shall take any Texas State Bar accredited course dedicated to Criminal Law, including, but not limited to, the San Antonio Criminal Defense Lawyer's Association Annual Nuts & Bolts course;

In addition to the requirements to receive court appointments set out above, attorneys applying for misdemeanor appointments must maintain a minimum of six (6) hours of CLE in Criminal Law and an additional CLE course or component in Immigration law as set forth above annually. All attorneys on the appointment list must submit proof of these hours on an annual basis to County Court Administration (by January 15th each year). Attorneys need only submit a copy of

⁴⁸ See http://www.tidc.texas.gov/media/5922/FDACodified2013FINAL_Revised.pdf

⁴⁹ TAC Sec. 174.1.

their State Bar MCLE page to show proof of these hours. We will accept courses within a one-year period immediately preceding (calendar year) to satisfy these hours. As an alternative to meeting the CLE requirements, an attorney may be currently certified in Criminal Law by the Texas Board of Legal Specialization.”

Bexar County’s District Court indigent defense plan requires:

“1. To qualify for any felony appointment, including appeals and post-conviction writs/DNA motions, an attorney must have completed ten hours of CLE in criminal law or procedure in the past year, including carryover from the previous year only. Also, a State Bar approved Legislative Update Seminar must be attended in any year the Legislature meets.

2. To qualify for the State Jail Felony list, an attorney must have at least one-year prior experience in criminal litigation, and prior experience as lead or co-counsel in at least three criminal jury trials.

3. To qualify for the Second and Third Degree Felony list, an attorney must have at least two years prior experience in criminal litigation, and prior experience as trial counsel in two or more felony jury trials, as lead or co-counsel.

4. To qualify for the First Degree and 3(g) Felony list, an attorney must either be board certified in criminal law, OR

- have at least four years prior experience in criminal litigation; and
- have prior experience as trial counsel in four felony jury trials in the last five years, having served as lead counsel in at least two of those trials; and
- have completed twelve hours of CLE in criminal law or procedure in the last calendar year. Suggested courses are: The Criminal Law Institute (offered annually by the SABA), Advanced Criminal Law Course (offered in San Antonio once every four years), The Short Course (offered annually by the TCDLA). Other courses authorized by the State Bar of Texas in criminal law or procedure are acceptable.”

Bexar County Current Practice

Attorneys on court appointment lists must complete continuing legal education requirements to remain on the appointment wheel. Every year, court-appointed attorneys in Bexar County are required to provide records of their fulfillment of CLE requirements. PPRI extracted a random sample of 100 attorney applications from the appointment list and examined their CLE records for compliance with the CLE standards stated in the county’s indigent defense plan.⁵⁰ All attorneys were current with their CLE requirements.

Recommendations

Bexar County must continue to monitor compliance with continuing legal education requirements. Compliance is currently tracked manually using email submission of documents. If continuing legal education compliance was added to the data management system, tracking of completion of annual requirements would be streamlined easily allowing the creation of reports for judges and other interested parties.

⁵⁰ See Appendix A.

The state of Texas statutorily requires minimum continuing legal education requirements for court appointed attorneys. However, counties can implement more stringent requirements to be on the appointment wheel. As previously discussed, Bexar County could increase the number of continuing legal education hours to apply and remain on the appointment wheel, as other large counties in Texas require. Bexar County could increase the number of hours from 12 to 15 for felony cases. In order to remain an active member of the State Bar of Texas, attorneys must complete 15 hours of CLEs during the compliance year.⁵¹

While no standards specifically mention the number of hours needed to ensure quality representation for court appointed attorneys, it is crucial for all counties to ensure the minimum qualifications are met and examine if the number of hours required should be increased based on attorney performance.

Mental Health & Opioid Issues

Statutory Requirements

Article 16.22 of the Texas Code of Criminal Procedure provides procedures for early identification of defendants suspected of having mental health illness or Intellectual disability.⁵² The statute states:

“Not later than 12 hours after the sheriff or municipal jailer having custody of a defendant for an offense punishable as a Class B misdemeanor or any higher category of offense receives credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability, the sheriff or municipal jailer shall provide written or electronic notice to the magistrate. The notice must include any information related to the sheriff's or municipal jailer's determination, such as information regarding the defendant's behavior immediately before, during, and after the defendant's arrest and, if applicable, the results of any previous assessment of the defendant.”

Additionally, Article 17.032 provides for the release of defendants on personal bond with a mental illness or intellectual disability.⁵³

ABA Standards

ABA Criminal Justice Standards for the Defense Function 4-5.2 (c) states that:

“If defense counsel has a good faith doubt regarding the client's competence to make important decisions, counsel should consider seeking an expert evaluation from a mental health professional, within the protection of confidentiality and privilege rules if applicable.”⁵⁴

Bexar County Indigent Defense Plan

The Bexar County's indigent defense plan discusses the Bexar County Public Defender Office handling mental health cases.

⁵¹ See

https://www.texasbar.com/AM/Template.cfm?Section=Definition_of_MCLE_Credit&Template=/CM/HTMLDisplay.cfm&ContentID=49945

⁵² Texas CCP 16.22

⁵³ Texas CCP 17.032

⁵⁴ See https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/

The County Court Plan states:

“Public Defender’s Office for Mental Health Cases - Any defendant charged with a misdemeanor offense who 1) has been deemed to have mental health issues, 2) who is found to be indigent, and 3) who requests a court appointed attorney, may be assigned to the Bexar County Public Defender’s Office. The Pre-trial or booking officer will enter an "M" code on all cases that request a court appointed attorney and who have been identified as having mental health issues. The "M" Code will appoint the Public Defender's Office to represent those mental health cases for each misdemeanor category of offense. All other cases will be passed on to the "attorney rotation wheel" as set forth in Section III.”

The District Court Plan states:

“By standing order, the Bexar County Public Defender's Office is appointed to represent indigent arrested persons and/or arrested persons who suffer from a mental illness during the arrested person's appearance before the magistrate at the Central Magistration (CMAG) facility, if the arrested person requests counsel, does not already have counsel on record, and financially qualifies. The appointment of the Bexar County Public Defender's Office shall be for the limited purpose of representation of the mentally ill and/or indigent arrested person during the magistration process and related solely to the determination of the bond and the conditions of the bond for the arrested person. The limited appointment of the Bexar County Public Defender's Office is concluded upon the termination of the magistration proceedings and no motion to withdraw is necessary. At that point the indigent arrested person shall be appointed counsel according to the procedures outlined in this plan, to represent that person for the remainder of the case.”

Bexar County Current Practice

Another aspect of quality representation is providing adequate assistance to defendants with mental health issues. Bexar County has invested a great deal of resources to assist defendants with mental health issues. Bexar County established a Mental Health Consortium, with involvement from community resource groups and criminal justice system stakeholders. Some of the community resources include the Center for Health Care Services and the Methodist Healthcare Ministries. The Reentry Center is also another resource in the community that provides wraparound services to defendants. The Reentry Center was created by the Bexar County Reentry Council in 2016, a working group to address issues with reentry. Additionally, Bexar County has a Specialty Courts Coalition, which includes Mental Health Courts, Drug Courts, DWI Courts, Veteran’s Court, a Domestic Violence Specialty Court, and Esperanza Court (Prostitution Prevention Court). The Bexar County Public Defender Office has felony and misdemeanor mental health attorneys who specialize in these issues and practice in the mental health courts.

Bexar County stakeholders were asked about mental health issues and the opioid crisis. County officials stated Bexar County is in the midst of a lawsuit against pharmaceutical companies.⁵⁵ County officials did not comment due to the ongoing litigation. Attorneys also did not want to comment on the opioid crisis,

⁵⁵ Quixem Ramirez and Joe Galli, 2019, Bexar County suing for over \$1 billion in opioid case; trial date set for 2020, available at <https://news4sanantonio.com/news/local/bexar-county-seeking-over-1-billion-in-opioid-case-trial-date-set-for-2020>

but others felt that some other drugs (heroin, meth, and synthetic cannabis) are a bigger problem or crisis than opioids.

Judges approached mental health issues from a fiscal perspective, stating that there was still not enough funding or resources for Bexar County to adequately address mental health issues. Attorneys felt Bexar County did well assisting defendants with mental health issues, yet most attorneys added there was room for improvement. Several attorneys observed the benefits of mental health programs were helping with diverting some defendants from jail. Other county officials who were asked about Bexar County's mental health programs noted that there were questions on arrest intake forms now to specifically address the mental health of defendants. Several officials also noted that there had been several deaths in the jail indicating the mental health problems had not yet been adequately addressed.

Defendants were not asked specifically how they thought the Bexar County criminal justice system handles mental health issues; however, several commented that they felt their own mental health issue was not addressed. They also noted there was a lack of communication with defendants who were mentally ill as well as a lack of training in how to treat defendants with mental illness by the police. Overall, defendants felt that their mental health issues were not adequately handled by Bexar County staff.

Recommendations

Bexar County has invested a great deal of resources in mental health services for defendants according to judges, attorneys, and county officials. However, more resources may be needed based on stakeholder feedback. Other counties specifically utilize a mental health appointment wheel. Attorneys on the mental health wheel have specific training requirements in order to qualify for appointment to mental health cases. Bexar County currently utilizes the Public Defender Office for mental health cases.

Conclusion

Defendants felt positive towards many aspects of the Bexar County indigent defense system, but there were still significant issues mentioned. While stakeholders differed on the metrics they valued as components of quality representation, communication was a key attribute across all stakeholder groups. Bexar County is attempting to address these issues, but other issues still remain. Most importantly, key quality metrics concerning initial attorney-client contact and attorneys not appearing in court are not tracked within the current data system.

Comparison of Representation

As previously discussed, Bexar County requested an evaluation concerning the types of representation utilized within the county. Bexar County currently has three types of representation: court-appointed counsel, retained counsel, and the Public Defender Office. However, due to the lack of comparative data for the Bexar County Public Defender Office, results for the Public Defender Office are presented in a separate chapter.

Statutory Requirements

Section 79.036 of the Texas Government Code states that counties must provide indigent defense plans to the Texas Indigent Defense Commission. These plans must describe all of the procedures utilized by the county to provide indigent defendants with counsel.⁵⁶

ABA Principles

The ABA Ten Principles of a Public Defense Delivery System⁵⁷ states in its second principle that:

2. Where the caseload is sufficiently high, the public defense delivery systems consists of both a defender office and the active participation of the private bar.

Bexar County Indigent Defense Plan

The Bexar County indigent defense plan provides provisions for the Bexar County Public Defender Office to be appointed to represent mental health cases. All other cases are to be handled by court appointed attorneys from the rotation wheel.

Bexar County Current Practice

The mechanisms driving disparities in case outcomes are multifaceted. Discerning these potential facets and the extent to which they influence case outcomes is crucial to the success and wellbeing of defendants and the indigent defense system. Cases with court-appointed counsel often result in less favorable outcomes than cases represented by retained counsel or public defenders. However, it cannot be assumed that disparities in outcomes are solely attributed to type of representation. Since indigent defendants cannot afford to bond out of jail, they are more likely to remain incarcerated during the pretrial portion of their case. In order to get out of jail quickly, an incarcerated indigent defendant is more likely to accept a plea deal. There may be systematic differences in defendant, case, and attorney characteristics between assigned and retained counsel, making it difficult to disentangle the factors driving the representation gap in case outcomes.⁵⁸

Tables 5-1 to 5-9 provide summaries of defendant, case, and attorney characters broken down by the type of the last attorney representing the case before the first disposition for misdemeanor and felony cases, respectively.⁵⁹ The sample includes only cases that were booked between January 1, 2016 and

⁵⁶ Texas Government Code Sec. 79.036

⁵⁷ *Supra* note 11.

⁵⁸ The multivariate section in this chapter does in fact control for these systematic differences. The findings suggest examined outcomes (dismissal, guilty plea, and incarceration) of defendants represented by court-appointed attorneys are on average worse than those represented by retained counsel. Detailed results are available upon request.

⁵⁹ The last attorney on a case is assumed to have the most impact on case outcomes.

April 30, 2019 with an offense date on or after January 1, 1990. Overall, there are 71,249 unique cases, 60% being misdemeanor cases and the remaining felonies. Approximately 80% of misdemeanor and felony cases are represented by court-appointed counsel.

PPRI examined the apparent differences in observable defendant and case characteristics, represented in Tables 5-1 and 5-2. Defendants are relatively similar in regards to age and gender across attorney types for misdemeanor cases. Both types of attorneys represent mostly males in their early to mid-30's. Defendants represented by retained counsel are more likely to be white and less likely to be black than those represented by court-appointed attorneys. Defendants who retain counsel are about 8 percentage points less likely to be black than defendants who are represented by court-appointed counsel.

Table 5-1: Misdemeanor Defendant Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=34,038)	Retained (n=8,243)
A. Defendant Characteristics		
	Mean	Mean
Male	73.6%	74.2%
Age at Offense	32.3	32.4
White	45%	56.1%
Black	17.7%	9.5%
Hispanic	36.2%	32.5%
Charges per Booking Day	1.2	1.0
Previous Charges	0.9	0.4

When a defendant is booked, the average number of charges a defendant has is similar across attorney types. However, defendants represented by retained counsel have fewer previous charges than defendants represented by court-appointed counsel, implying that court-appointed counsel represent defendants with more serious criminal histories. Retained counsel are also more likely to represent cases with higher level charges.

Table 5-2: Misdemeanor Case Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=34,038)	Retained (n=8,243)
B. Case Characteristics		
	Mean	Mean
MA	45.7%	51.3%
MB	54.3%	48.7%

Table 5-3 reveals differences in attorney characteristics across attorney type. Two measures are used to examine experience – years since law school graduation and the number of cases previously represented, both measured at the date of attorney appointment. Looking at years since graduation, court-appointed and retained counsel have a similar level of experience.

When looking at previous cases, court-appointed attorneys have more experience than retained counsel for misdemeanors. The number of cases previously represented within a year is used to measure

caseload at the time of appointment. For misdemeanors, when a court-appointed attorney is assigned a case, they have represented 43.3 more cases that year than retained counsel, on average.

Table 5-3: Misdemeanor Attorney Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=34,038)	Retained (n=8,243)
C. Attorney Characteristics		
	Mean	Mean
Years of Experience	19.1	19.3
Previous Cases	148.9	105.6
Percent Misdemeanors	74.4%	60.2%
Percent Assigned	93.3%	41.1%

Table 5-4 suggests that cases represented by assigned counsel result in worse outcomes. Misdemeanor cases represented by retained counsel are more likely to be dismissed and receive deferred adjudication than cases represented by assigned counsel. Cases represented by retained counsel are 13.3 percentage points more likely to be dismissed than cases represented by court-appointed counsel. The percentage point difference between defendants incarcerated with retained counsel and defendants incarcerated with assigned counsel is largest for misdemeanor cases. Defendants represented by retained counsel are 32.5 percentage points less likely to be incarcerated than defendants represented by assigned counsel. The average sentence length for defendants represented by court-appointed counsel is 20 days longer than the average sentence length for defendants who retained counsel.

Table 5-4: Misdemeanor Case Outcomes for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=34,038)	Retained (n=8,243)
D. Case Outcomes		
	Mean	Mean
Guilty Plea/Nolo Contendere	47.0%	27.5%
Guilty by Trial	<1%	<1%
Acquittal by Trial	<1%	<1%
Deferred Adjudication	17.7%	23.7%
Dismissal	34.9%	48.2%
Probation	<1%	15.3%
Incarcerated	47.1%	14.6%
Sentence (Days)	29.3	9.3

Another component of the driving force behind disparities in outcomes for cases with different types of representation is attorney effort. The amount of effort exerted on a case by counsel is not directly observable; however, two possible indicators of attorney effort are the length of time between arrest and first disposition and if there are hearing resets after counsel is assigned/retained.

Shorter case lengths can allow jailed defendants to avoid losing employment if they remained in custody. However, some defendants may enter pleas quickly to avoid these outcomes and get out of jail. Shorter case length may also be motivated by caseloads and payment. Because the county does not limit the number of cases that assigned counsel can receive, court-appointed counsel may take on a

large number of cases, making it difficult to provide quality representation due to time constraints. Low compensation paid on a flat fee basis can also result in a decrease in the amount of time spent on cases if the compensation does not justify the additional effort required to spend the appropriate amount of time on a case. From Table 5-5, court-appointed counsel resolve cases 105 days sooner than retained counsel for misdemeanors and 80 days sooner than retained counsel for felonies. Cases represented by retained counsel are 20 percentage points more likely to have a hearing reset for misdemeanors, while the percentage of hearing resets between retained and assigned counsel is similar for felony cases. Hearing resets may indicate that counsel is not appearing in court or they are not ready to proceed with the case because they need to conduct further investigation. Another reason for a hearing reset is discovery information has not been made available to defense counsel. However, in the CJIS database, case resets are not shown by party, meaning the system does not indicate whether the prosecution or defense is requesting the delay. Additionally, bail reductions are similar for misdemeanors across attorney type; however, retained attorneys are more likely to secure bail reductions in felony cases for their clients compared to court-appointed attorneys.

Table 5-5: Measures of Attorney Effort by Court-Appointed and Retained Counsel for Misdemeanors and Felonies

	Court-appointed		Retained	
	Mean		Mean	
	Misdemeanors			
	(n=34,038)		(n=8,243)	
Hearing Reset After Appointment	15.1%		35.0%	
Case Length (days)	126.6		231.7	
Bail Reduction	0.9%		0.6%	
	Felonies			
	(n=23,315)		(n=5,653)	
Hearing Reset After Appointment	36.5%		35.8%	
Case Length (days)	173.3		253.6	
Bail Reduction	1.4%		2.7%	

PPRI examined the apparent differences in observable defendant and case characteristics for felonies, represented in Tables 5-6 and 5-7. Defendants are relatively similar in regards to age and gender across attorney types for felony cases. Both types of attorneys represent mostly males in their early to mid-30's. Defendants represented by retained counsel are more likely to be white and less likely to be black than those represented by court-appointed attorneys. Additionally, state jail felonies are more likely to be represented by court-appointed counsel; however, first degree felonies are more likely to be represented by retained counsel. Similar to misdemeanors, defendants represented by retained counsel have fewer previous charges than defendants represented by court-appointed counsel, implying that court-appointed counsel represent defendants with more serious criminal histories in felony cases.

Table 5-6: Felony Defendant Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=23,315)	Retained (n=5,653)
A. Defendant Characteristics		
	Mean	Mean
Male	76.7%	80.2%
Age at Offense	34.7	33.9
White	35.8%	45.1%
Black	16.7%	11.6%
Hispanic	46.7%	42.2%
Charges per Booking Day	1.4	1.4
Previous Charges	1.2	0.9

Table 5-7: Felony Case Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=23,315)	Retained (n=5,653)
B. Case Characteristics		
	Mean	Mean
FC	0.1%	0.1%
F1	8.1%	14.0%
F2	14.5%	16.4%
F3	30.4%	40.1%
FS	47.4%	31.2%

Table 5-8 displays attorney characteristics for felony cases. Both retained and court-appointed counsel have similar years of experience, with retained counsel only slightly higher.

Table 5-8: Felony Attorney Characteristics for Court-Appointed Counsel and Retained Counsel

	Court-appointed (n=23,315)	Retained (n=5,653)
C. Attorney Characteristics		
	Mean	Mean
Years of Experience	21.6	22.3
Previous Cases	122.6	136.4
Percent Misdemeanors	47.1%	47.3%
Percent Assigned	87.4%	41.2%

Table 5-9 displays felony cases outcomes by attorney type. Cases with retained counsel are 11.7 percentage points more likely to be dismissed. Cases represented by retained counsel are also less likely to have a guilty plea/nolo contendere and less likely to result in incarceration. The average sentence length for defendants represented by court-appointed counsel is 75.5 days longer than the average sentence length for defendants who retained counsel.

**Table 5-9: Felony Case Outcomes for
Court-Appointed Counsel and Retained Counsel**

	Court-appointed (n=23,315)	Retained (n=5,653)
D. Case Outcomes		
	Mean	Mean
Guilty Plea/Nolo Contendere	41.8%	31.0%
Guilty by Trial	<1%	<1%
Acquittal by Trial	<1%	<1%
Dismissal	49.8%	61.5%
Probation	<1%	11.8%
Incarcerated	41.5%	22.4%
Sentence (Days)	479.0	403.5

Recommendations

Bexar County officials need to monitor attorney performance. Indicators of attorney performance apart from case length and outcomes include hearing resets and attorneys not appearing in court. However, hearing resets can indicate additional factors are occurring in the case, such as investigation. In the current data system, hearing resets are tracked, but the party requesting the reset is not. Additionally, attorneys not appearing in court are not tracked. If these variables were included in the data management system, the metrics could provide valuable and timely insight into attorney performance.

Multivariate Logistic Regression Analysis

This section briefly summarizes the results from a multivariate logistic regression analysis. A multivariate logistic regression allows us to identify whether court appointed attorneys influence case outcomes while accounting for other possible factors (such as case, defendant, and attorney characteristics), which could also affect those outcomes. Accounting for these factors allows us to examine if disparities in outcomes persist when the same attorney is representing cases as assigned and retained counsel in the same year. Case outcomes evaluated in this section are dismissal, guilty/nolo contendere plea, and incarceration. The findings are summarized below:

- In terms of dismissals:
 - Court-appointed attorneys are less likely to be associated with dismissals relative to retained counsel.
- In terms of pleas:
 - Court-appointed attorneys are more likely to be associated with pleas relative to retained counsel.
- In terms of incarcerations:
 - Court-appointed attorneys are more likely to be associated with incarcerations relative to retained counsel.

Conclusion

PPRI examined case elements and outcomes by attorney type, using multivariate regression analysis to account for other factors, which could influence disparities in outcomes. The findings suggest examined outcomes (dismissal, guilty plea, and incarceration) of defendants represented by court-appointed attorneys are on average worse than those represented by retained counsel.

Bexar County Public Defender Office

As previously mentioned, the Public Defender Office is made up of the following divisions: appellate, misdemeanor and felony mental health, mental health civil, misdemeanor trial (only operates in courts where judges elect to have the Public Defender) and magistration. As of the Fall of 2019, the Bexar County Public Defender Office was comprised of 13 attorneys (one of which is the Chief Public Defender). In order to contact clients, the Bexar County Public Defender Office requested and has their own private RAV station for the public defenders to utilize.

Currently, the Bexar County Public Defender has a limited and specialized caseload, representing mental health cases. These cases are often very complex and present unique challenges. The office could represent more cases; however, qualitative interviews indicated that not all courts utilized the Public Defender Office as a resource. It should also be noted that public defenders represent misdemeanor cases, but their caseload is very small compared to court-appointed and retained counsel.⁶⁰

Due to differences in representation and the significantly different number of observations across all attorney types, direct comparisons between outcomes for court-appointed, retained counsel, and public defenders could not be completed. Descriptive analysis of the Public Defender's Office's defendants, case and attorney characteristics, and outcomes are presented independently in this chapter. In order to fully evaluate the Bexar County Public Defender Office, a different research approach would be required.

Statutory Requirements

Article 26.044 of the Texas Code of Criminal Procedure provides statutes relating to operating a public defender office. Additionally, Article 26.04 (a) and (f) provide for the priority appointment of a public defender office. Article 26.04 (f) states:

“In a county with a public defender's office, the court or the courts' designee shall give priority in appointing that office to represent the defendant in the criminal proceeding, including a proceeding in a capital murder case. However, the court is not required to appoint the public defender's office if:

- (1) the court makes a finding of good cause for appointing other counsel, provided that in a capital murder case, the court makes a finding of good cause on the record for appointing that counsel;
- (2) the appointment would be contrary to the office's written plan under Article 26.044;
- (3) the office is prohibited from accepting the appointment under Article 26.044(j).”⁶¹

ABA Principles

The ABA Ten Principles of a Public Defense Delivery System⁶² states in its second principle that:

2. Where the caseload is sufficiently high, the public defense delivery systems consists of both a defender office and the active participation of the private bar.

⁶⁰ The Bexar County Public Defender Office represents felony cases; however, the number of cases is 6.

⁶¹ Texas CCP 26.04

⁶² *Supra* note 11.

Bexar County Indigent Defense Plan

The Bexar County indigent defense plan provides provisions for the Bexar County Public Defender Office to be appointed to represent mental health cases. All other cases are to be handled by court appointed attorneys from the rotation wheel.

Bexar County's County Court Plan states:

“Public Defender's Office – According to CCP 26.04(a), the procedures for appointing counsel for an indigent defendant must provide for the priority appointment of a public defender's office. At this time, the Chief Public Defender in Bexar County has indicated that the Public Defender's Office will not seek any additional appointments pursuant to CCP 26.04 (effective 9/1/19), other than the ones their office is currently receiving from the appointment wheel.

Pursuant to CCP, Art. 26.04(f), the court is not required to appoint the public defender's office if:

1. The court makes a finding of good cause for appointing other counsel;
2. The appointment would be contrary to the office's written plan under Article 26.044;
3. The office is prohibited from accepting the appointment under Article 26.044(j); or
4. A managed assigned counsel program also exists in the county and an attorney will be appointed under that program.

Pursuant to CCP 26.044(j), the Public Defender's office may not accept an appointment if:

1. A conflict of interest exists that has not been waived by the client;
2. The office has insufficient resources to provide adequate representation for the defendant;
3. The office is incapable of providing representation in accordance with the rules of professional conduct;
4. Acceptance of the appointment would violate the maximum allowable caseloads established for the office; or
5. The office shows other good cause for not accepting the appointment.”

Bexar County's District Court Plan states:

“By standing order, the Bexar County Public Defender's Office is appointed to represent indigent arrested persons and/or arrested persons who suffer from a mental illness during the arrested person's appearance before the magistrate at the Central Magistration (CMAG) facility, if the arrested person requests counsel, does not already have counsel on record, and financially qualifies. The appointment of the Bexar County Public Defender's Office shall be for the limited purpose of representation of the mentally ill and/or indigent arrested person during the magistration process and related solely to the determination of the bond and the conditions of the bond for the arrested person. The limited appointment of the Bexar County Public Defender's Office is concluded upon the termination of the magistration proceedings and no motion to withdraw is necessary. At that point, the indigent arrested person shall be appointed counsel according to the procedures outlined in this plan, to represent that person for the remainder of the case.

With respect to the foregoing appointments which are in accordance with the Bexar County Public Defender's Office plan:

- The Public Defender’s office is given priority appointment to those types cases referenced above. The judges hearing criminal cases shall consult with the chief public defender to determine what percentage of cases to appoint to the public defender’s office. Absent a finding of good cause, the judges shall appoint the public defender’s office accordingly.

The Public Defender’s Office may refuse to accept appointment to a case, if:

- A conflict of interest exists;
- The office has insufficient resources to provide adequate representation;
- The office is incapable of providing representation in accordance with the rules of professional conduct;
- Acceptance of the appointment would violate the maximum allowable caseloads established for the office; or
- The office shows other good cause for refusing appointment.”

Bexar County Current Practice

Tables 6-1 to 6-5 provide descriptive analysis regarding the Public Defender Office. Table 6-1 displays defendant characteristics for Public Defender Office misdemeanor cases. Defendants represented by the Public Defender Office are mostly males in their mid 30’s. The largest proportion of their clients are white.

Table 6-1: Defendant Characteristics for Public Defender Misdemeanor Cases

		Public Defender (n=921)
A. Defendant Characteristics		
		Mean
Male		70.0%
Age at Offense		33.4
White		41.8%
Black		18.2%
Hispanic		38.5%
Charges per Booking Day		1.1
Previous Charges		1.0

Table 6-2 displays case characteristics for the Public Defender Office. About 70% of their caseload is comprised of less serious misdemeanor offenses, Class B Misdemeanors.

Table 6-2: Case Characteristics for Public Defender Misdemeanor Cases

		Public Defender (n=921)
B. Case Characteristics		
		Mean
MA		29.6%
MB		70.4%

Table 6-3 displays attorney characteristics. Public defenders have approximately eight years of experience, on average. The average number of previous cases is exceptionally large for public defenders; however, this is most likely due to the way cases are assigned to public defenders.⁶³

Table 6-3: Attorney Characteristics for Public Defender Misdemeanor Cases

		Public Defender (n=921)
C. Attorney Characteristics		
		Mean
Years of Experience		8.0
Previous Cases		203.4
Percent Misdemeanors		97.9%
Percent Assigned		99.2%

Table 6-4 presents case outcomes for Public Defender Office cases. The majority of their cases end in pleas and incarceration.⁶⁴

Table 6-4: Case Outcomes for Public Defender Misdemeanor Cases

		Public Defender (n=921)
D. Case Outcomes		
		Mean
Guilty Plea/Nolo Contendere		47.1%
Guilty by Trial		<1%
Acquittal by Trial		<1%
Deferred Adjudication		22.9%
Dismissal		29.9%
Probation		<1%
Incarcerated		47.5%
Sentence (Days)		22.0

Table 6-5 displays measures of attorney effort for public defenders. Due to the small number of felony cases in the sample, results are only displayed for misdemeanor cases. The case length for public defender cases is slightly over three months, and a small percentage of their cases (less than 30%) have a hearing reset.

⁶³ Qualitative interviews indicate that the process for appointing the public defender is slightly different. The Chief PD's name is listed on order appointing attorney, then the case is reassigned in the office.

⁶⁴ In order to participate in mental health court (County Court at Law 12), defendants must plea guilty or no contest with 12 months probation. This court is primarily where the public defenders operate.

Table 6-5: Measures of Attorney Effort for Public Defender Misdemeanor Cases

	Public Defender
	Mean
	Misdemeanors
	(n=921)
Hearing Reset After Appointment	26.5%
Case Length (days)	109.1
Bail Reduction	0.8%
	Felonies
	n/a
Hearing Reset After Appointment	n/a
Case Length (days)	n/a
Bail Reduction	n/a

County Court at Law 12

The public defenders primarily operate in County Court at Law 12, the misdemeanor mental health court. During the sample period, County Court 12 exclusively dealt with mental health cases. The mission of the mental health court is “to advocate for individuals with mental illness and to provide access to mental health treatment, community resources, and support to reduce their involvement in the criminal justice system.”⁶⁵

The cases in County Court 12 are assigned to public defenders until all defenders have reached a maximum amount of cases. In the sample consisting of 54,918 county court cases, public defenders are appointed 3,081 times. Of the 3,081 public defender appointments, 65% were appointed in County Court 12. Public defenders are appointed in 47% of the cases in County Court 12. In all other county courts, the percentage of cases with public defender appointments is less than 3%. In the data, public defenders are always appointed from the rotation wheel.

Recommendations

Based on statutory requirements, judges must provide a documented reason on the record for not appointing the public defender. These reasons must be documented within the new data system. Given the data limitations on cases represented by the Public Defender Office, this report refrains from articulating specific recommendations for the Public Defender Office. In order to offer constructive recommendations, researchers would need to fully evaluate the office, which lies beyond the scope of this study.

Conclusion

Due to the specialized and limited caseload of the Public Defender Office, comparisons could not be made between retained and court-appointed counsel. Therefore, descriptive information about the Public Defender Office caseload was presented separately in this chapter.

⁶⁵ See <https://www.bexar.org/1991/Mental-Health-Court>

Judicial Evaluation

While Bexar County was primarily interested in an evaluation regarding quality representation, judges also play a critical role in indigent defense practices in the county. Specifically, it is crucial to understand judges' practices in appointing from the bench and handling indigent defense cases, including voucher reimbursements. PPRI analyzed qualitative and quantitative data to examine judicial practices within Bexar County.

Judge & County Officials' Morale

PPRI asked judges how they would rate their morale with respect to working with indigent defense in Bexar County. Most of the judges stated their morale was high. Unanimously, judges explained they enjoy their job, are happy to come to work, and love being a judge. PPRI asked the same question to county officials and had a much different response. The county officials rated their morale as neutral to low with respect to indigent defense. They described their role as mainly influenced by judges, being busy with a large number of duties or simply not being involved at all.

Bench Appointments

Statutory Requirements

Article 26.04 of the Texas Code of Criminal Procedure states:

“The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 15.18, 26.05, and 26.052 and must provide for the priority appointment of a public defender's office as described by Subsection (f). A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.”⁶⁶

ABA Standards

The American Bar Association has published the Model Code of Judicial Conduct. Rule 2.13⁶⁷ states that:

“In making administrative appointments, a judge:
(1) shall exercise the power of appointment impartially and on the basis of merit; and
(2) shall avoid nepotism, favoritism, and unnecessary appointments.”

⁶⁶ Texas CCP 26.04

⁶⁷ See ABA, Model Code of Judicial Conduct Rule 2.13

https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/model_code_of_judicial_conduct_canon_2/rule2_13administrativeappointments/

Additionally, ABA Standards, Providing Defense Services 5-2.1-5-2.3 provide standards relating to rotational assignment.⁶⁸

Bexar County Indigent Defense Plan

Bexar County's District Court Plan states that:

"At any time, a defendant may appear before the judge presiding over the defendant's case and request a court appointed attorney, and the judge has the discretion to appoint a qualified attorney or a qualified member of the Bexar County Public Defender's Office to represent that defendant. The attorney or member of the Bexar County Public Defender's Office must be qualified to take that degree of offense, and may be chosen from the next five names on the wheel, as provided by the Criminal District Courts Administration Office, or a request can be made for the system to make an automatic appointment. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney or a qualified, willing member of the Bexar County Public Defender's Office, regardless of whether the attorney's name is among the next five names on the appropriate list. "Qualified" in the context of this rule means that the particular individual attorney filled out the appropriate application form, met all of the qualifying appointment requirements, and was approved by a majority of the Criminal District Court Judges."

Bexar County's County Court Plan states that:

"The Judges or Judge's Designee (appointing authority) will use the "attorney rotation wheel" discussed in Section III (Minimum Attorney Qualifications), unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

- The defendant requesting counsel does not speak and understand the English language, or that the defendant is deaf, then the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.
- The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
- Other good cause exists for varying from the list or "attorney rotation wheel."

Additionally, both plans state "the judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal."⁶⁹

Bexar County Current Practice

A key component of judicial evaluation is to examine if courts are following proper appointment procedures and are not bypassing the court-appointment wheel. Two approaches were used to determine to what extent courts are bypassing the court-appointment rotation wheel. PPRI examined the number of times a court had a case where there was at least one bench appointment. Figure 7-1 displays the number of percentage points each county and district court is over or under the overall

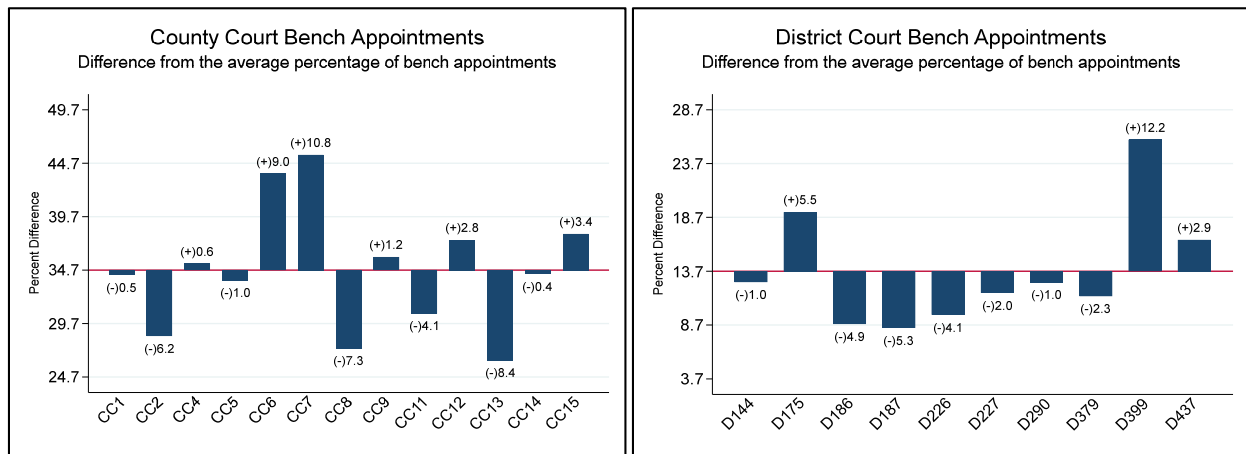
⁶⁸See ABA Standards, Providing Defense Services 5-2.1-5-2.3
https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf

⁶⁹ See Appendix A.

average percent of cases with bench appointments, respectively. For example, the average percentage of bench appointments for county courts and district courts is 34.7% and 13.7%, respectively. From Figure 7-1, County Court at Law 12 is 2.8 percentage points over the 34.7% average for county courts. Similarly, County Court at Law 13 is 8.4 percentage points below the 34.7% county court average.

In the sample, the number of cases assigned to each county court ranges from 4,046 to 4,462. County Court at Law 6 and County Court at Law 7 have the highest percentage of bench appointments. County Court 6 is 9 and County Court 7 is 10.8 percentage points over the 34.7% average for county courts. The number of cases assigned to each district court is between 1,601 and 2,565. All but three district courts fall below the 13.7% average of bench appointments. The 399th District Court is 12.2 percentage points over the average. Table 7-1 displays the top three attorneys that were appointed from the bench for County Court 6, County Court 7, and the 399th District Court and the number of times the court appointed each attorney for years 2016, 2017, and 2018. In November 2016 and 2018, Bexar County’s elections led to changes within the judiciary for both district and county courts. Some judges are relatively new to the bench and others have been there prior to 2016; therefore, court numbers do not necessarily reflect bench appointments by the same judge.⁷⁰

Figure 7-1



⁷⁰ The following courts did not have changes in the judiciary due to elections from 2016 to 2019: 186th, 227th, 379th, and the 437th District Courts and County Courts at Law 6 and 11.

Table 7-1

	County Court 6		County Court 7		399 th District Court	
	Bar Number	Appointments	Bar Number	Appointments	Bar Number	Appointments
2016	Atty-A	72	Atty-E	31	Atty-K	72
	Atty-B	50	Atty-F	29	Atty-M	50
	Atty-C	39	Atty-G	20	Atty-N	39
2017	Atty-B	118	Atty-F	42	Atty-L	118
	Atty-A	112	Atty-H	39	Atty-O	112
	Atty-D	76	Atty-I	35	Atty-K	76
2018	Atty-A	121	Atty-I	36	Atty-P	121
	Atty-D	104	Atty-F	30	Atty-L	104
	Atty-B	102	Atty-J	28	Atty-Q	102

Judges appointing attorneys from the bench may not always indicate a disregard for the court-appointment rotation wheel. Courts may also appoint from the bench if defendants have multiple cases. Bexar County’s indigent defense plan specifies that judges do have discretion to deviate from the appointment wheel as long as the reason is documented on the record. The CJIS database does not document a reason why a judge appoints from the bench; therefore, PPRI could not identify such reasons. However, judges were asked qualitatively about why they appoint from the bench.⁷¹ Reasons included:

- Attorney does not show up for court
- Moving their docket
- Defendant asks for a new attorney
- Client control/handling defendant
- Mental health issues of defendant
- Race/gender issues
- Attorney ability to handle caseload
- Pro se defendants

Another way to examine the extent to which courts are bypassing the court appointment wheel is the frequency with which courts switch attorneys appointed from the court appointment wheel with attorneys appointed from the bench. Cases where a bench appointment occurs within 6 months after a rotation wheel appointment are examined. PPRI used this timeframe to examine judicial favoritism, assuming the farther out the assignment of an attorney from the bench is, the increase in the probability that case/defendant characteristics are the reason as opposed to judicial preference. Figure 7-2 displays the number of percentage points each county and district court is over or under the overall average percent of cases with appointments that change from the rotation wheel to the bench. The percent of cases with rotation wheel to bench appointments for all district courts never exceeds 2 percentage points above or below the 3.7% average for district courts. The average percentage of cases with at least one rotation wheel to bench appointment is 9.9% for county courts. The percentage of cases with rotation wheel to bench appointments either falls below or never exceeds 4 percentage

⁷¹ See Appendix A for reasons specified in the indigent defense plan.

points above the 9.9% average for all other county courts, with the exception of County Court 12 and County Court 6, which are 6 and 10.2 percentage points over the average for county courts, respectively.⁷²

Figure 7-2

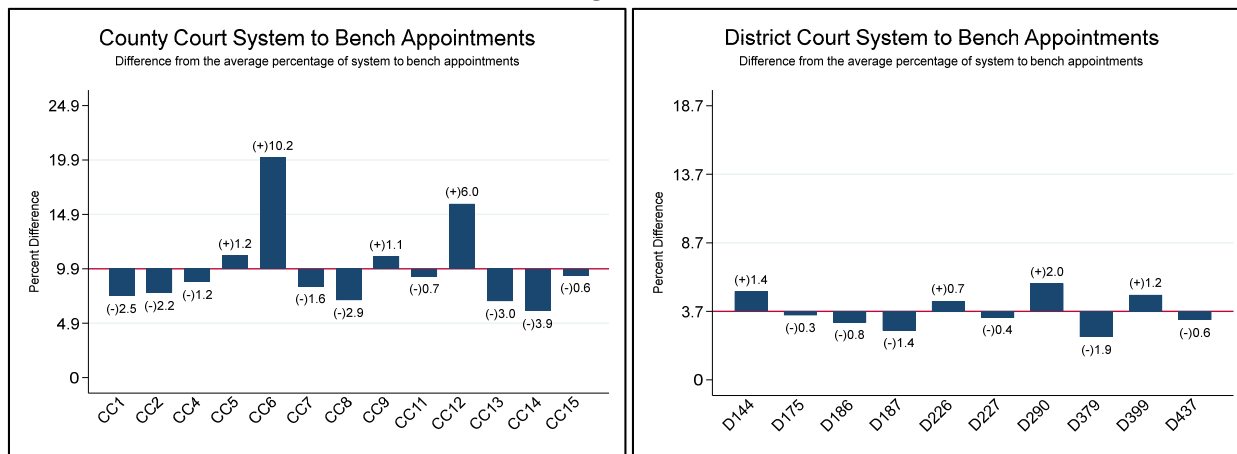


Table 7-2

	County Court 6		County Court 12	
	Bar Number	Appointments	Bar Number	Appointments
2016	Atty-A	22	Atty-T	38
	Atty-C	19	Atty-U	21
	Atty-B	16	Atty-V	12
2017	Atty-B	51	Atty-T	39
	Atty-A	49	Atty-U	23
	Atty-D	32	Atty-V	17
2018	Atty-A	57	Atty-W	54
	Atty-D	43	Atty-X	13
	Atty-B	40	Atty-V	10

The relatively high percentage of cases with rotation wheel to bench appointments in County Court 12 may be misleading.⁷³ In County Court 12, 47% of cases have a rotation wheel appointment, and therefore may be more likely to have wheel to bench appointments than the other county courts with small percentages of public defender appointments. Although, the percentage of rotation wheel appointments that are not public defenders is lower for County Court 12 than the remaining county courts, it is not low enough to account for the large number of wheel to bench appointments coming

⁷² In November 2016 and 2018, Bexar County’s elections led to changes within the judiciary for both district and county courts. Some judges are relatively new to the bench and others have been there prior to 2016; therefore, court numbers do not necessarily reflect bench appointments by the same judge. The following courts did not have changes in the judiciary due to elections from 2016 to 2019: 186th, 227th, 379th, and the 437th District Courts and County Courts at Law 6 and 11.

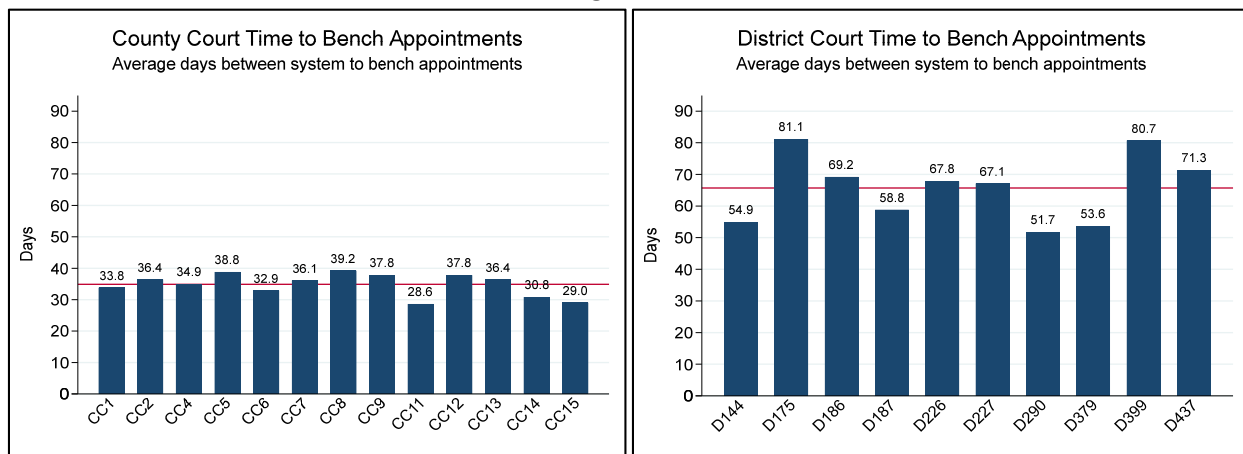
⁷³ See Chapter 6 for information about the Public Defender Office operating in County Court at Law 12. A new judge was elected for County Court at Law 12 in November 2018. This judge assumed office in January 2019.

from public defender appointments. The percentage of cases with wheel to bench appointments in County Court 12 is 11% more than the corresponding average percentage in the remaining county courts. Once public defenders are assigned the maximum amount of cases allowed in County Court 12, cases are supposed to be assigned to an attorney from the rotation wheel. However, of the 497 cases where there was an attorney appointed after a public defender, 99% were bench appointments.

Referring back to Figure 7-2, County Court 6 has the highest percentage of cases with rotation wheel to bench appointments – 10.2 percentage points over the 9.9% average for county courts. Comparing Figure 7-1 to Figure 7-2, we see that County Court 6 is the only court with a high percentage of bench appointments and rotation wheel to bench appointments. Table 7-2 displays the top three attorneys that were appointed from the bench after a rotation wheel appointment for County Court 6 and County Court 12, and the number of times that attorney was appointed from the bench after a rotation wheel appointment for years 2016, 2017, and 2018. Comparing the results from Table 7-1 with Table 7-2 for County Court 6, the attorneys are practically the same across all three years.

PPRI also examined the number of days between wheel and bench appointments. Figure 7-3 presents the average number of days between rotation wheel and bench appointments for county and district courts. The average number of days between rotation wheel and bench appointments for county courts is similar across courts, with a total average of 34.8 days. The average number of days between rotation wheel and bench appointments for district courts is 65.6. The 175th District Court and the 399th District Court have a longer time between rotation wheel and bench appointments—81.1 and 80.7 days, respectively. When switching from a rotation wheel appointment to a bench appointment, district courts wait longer than county courts on average. However, district courts cannot proceed with cases until they are indicted.

Figure 7-3



Recommendations

Bexar County must track the reasons for deviating from the wheel to better understand judicial behavior in a database format. Statutory requirements and the Bexar County indigent defense plan state that a reason must be documented on the record. Recording judicial appointment decisions in a database format would allow for analysis of judicial benchmarks across courts, time, case type, and beyond.

Wheel vs. Non-Wheel Appointments

Statutory Requirements

Article 26.04 (a) of the Texas Code of Criminal Procedure stipulates that courts must appoint attorneys from a public appointment list.⁷⁴

ABA Standards

ABA Standards, Providing Defense Services 5-2.1 states:

“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.”⁷⁵

Bexar County Indigent Defense Plan

The Bexar County’s indigent defense plan states that attorneys will be appointed from a rotational wheel.

Bexar County Current Practice

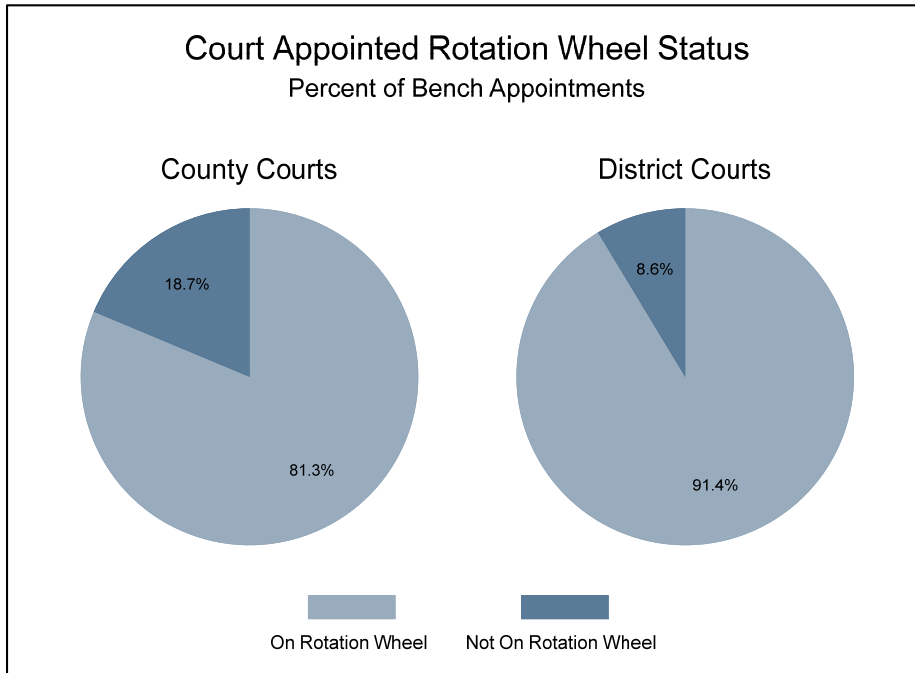
PPRI examined bench appointments from the CJIS database in 2019 and matched the attorneys who were on the 2019 court-appointed attorney lists provided by Bexar County Court Administration. Results are shown for County and District Courts in Figure 7-4. The percentage of bench appointed attorneys that were not on the court-appointed rotation wheel is larger in County Courts than in District Courts in 2019. 18.7% of bench appointments in County Courts were not on the court-appointed attorney list, while the equivalent measure in District Courts was 8.6%.

⁷⁴ Texas CCP 26.04 (a)

⁷⁵ See

https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf

Figure 7-4



Recommendations

These findings indicate that most judges are appointing attorneys from the court appointment lists, as stated in the Texas Code of Criminal Procedure. However, almost 20% of judges in the county courts are still appointing attorneys not on the appointment list. Bexar County needs to monitor this situation closely to ensure appointments are to attorneys on the appointment list.

Vertical Representation

Many factors can influence case outcomes. One potential factor is the number of attorney substitutions throughout a case. An effective attorney-client relationship cannot be created or maintained if attorneys are substituted throughout a case. Vertical representation is the continuity of representation throughout a case.

Statutory Requirements

Texas does not have specific statutory requirements regarding vertical representation (continuity of representation).

ABA Standards & Principles

The seventh ABA principle⁷⁶ focuses on the importance of vertical representation in order to obtain a better outcome for a defendant:

7. The same attorney continuously represents the client until completion of the case.

⁷⁶ *Supra* note 11.

ABA Standards, Providing Defense Services 5-6.2 states:

“Counsel should be provided at every stage of the proceedings, including sentencing, appeal, certiorari and postconviction review. In capital cases, counsel also should be provided in clemency proceedings. Counsel initially provided should continue to represent the defendant throughout the trial court proceedings and should preserve the defendant's right to appeal, if necessary.”⁷⁷

Bexar County Indigent Defense Plan

Bexar County’s indigent defense plan does not specifically mention vertical representation.

Bexar County Current Practice

PPRI examined the number of attorney changes between arrest and disposition per case regardless of attorney type.⁷⁸ Of the 90,045 cases, 97% were represented by at least one attorney. Of these cases, about 20% had at least one change in representation, with the maximum number of attorney changes for any given case being six. The frequency of the number of attorney changes between arrest and disposition is displayed in Table 7-3. 17% of the 20% of cases with at least one attorney change had only one change in counsel.

Table 7-3: Attorney Substitutions

Number of Attorney Changes	Percent
0	81.2
1	17.1
2	1.5
3	0.2
4	0.03

Just as there are many factors that influence case outcomes, there are also many factors that influence a change in counsel. Changes in representation may be attributed to court/assigned counsel or defendant characteristics. Whether the change resulted from court/assigned counsel or defendant characteristics and the assumption of the corresponding effect on case outcomes may be inferred by the types of attorneys involved in the change. A change from retained to court-appointed and retained to retained most likely results solely from defendant characteristics and is not an indication of problems with courts or their assigned counsel. Changes from court-appointed to court-appointed is assumed to be the result of court/assigned counsel characteristics. Switching from court-appointed to retained could result from a change in a defendant’s financial situation or poor quality of representation from assigned counsel. Of

⁷⁷ See

https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf

⁷⁸ Attorney type includes court-appointed, retained, and public defender.

the 18,142 total changes, 54% represent changes from court-appointed to court-appointed and 33% represent changes from court-appointed to retained.

Recommendations

Over 80% of cases only had one attorney, which indicates that Bexar County is doing well maintaining vertical representation. However, Bexar County should continue to monitor cases to ensure vertical representation is maintained as much as possible. A mechanism within the database could be added, which would prevent appointments from the bench if an attorney is not on the appointment wheel.

Judicial Practices

While PPRI analyzed quantitative data regarding judges' appointment procedures, qualitative interview questions also explored attorney attitudes about judges and about any concerns they had about judicial practices. Most attorneys felt that judges were good and fair.

Appointment of Investigators & Experts

Statutory Requirements

Article 26.05(d) of the Texas Code of Criminal Procedure states that counsel appointed to represent indigent defendants "shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts."⁷⁹

ABA Standards & Principles

The ninth ABA principle states:

9. 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.

Additionally, ABA Standards, Providing Defense Services 5-1.4 states:

"The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process. In addition, supporting services necessary for providing quality legal representation should be available to the clients of retained counsel who are financially unable to afford necessary supporting services."⁸⁰

Bexar County Indigent Defense Plan

Bexar County's indigent defense plan states that Bexar County will reimburse appointed attorneys for reasonable and necessary investigation and expert witness expenses incurred on behalf of an indigent defendant.

⁷⁹ Texas CCP 26.05(d)

⁸⁰ See also ABA Standards, Providing Defense Services 5-1.6, https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf

Bexar County Current Practice

Judges are required to approve reasonable and necessary requests for investigators and experts in indigent defense cases. In the CJIS database, there are two codes for appointment of investigators and experts. The investigator appointment code was entered 284 times out of 90,045 cases. The expert appointment code was used only 14 times. Although the codes indicate investigation and expert appointments could be tracked, it appears that these codes are not being utilized and reasons for denials are also not tracked. Table 7-4 and Table 7-5 display Bexar County indigent defense investigation & expert witness expenditures in FY 2019 for all county and district courts, respectively.⁸¹

Table 7-4: Bexar County Court ID Investigation & Expert Witness Expenditures, FY 2019

Court	Investigation Expenditures	Expert Witness Expenditures
County Court at Law No. 1	\$ 768	\$ -
County Court at Law No. 2	\$ 633	\$ -
County Court at Law No. 4	\$ 298	\$ -
County Court at Law No. 5	\$ 1,500	\$ 1,000
County Court at Law No. 6	\$ -	\$ -
County Court at Law No. 7	\$ 1,566	\$ -
County Court at Law No. 8	\$ 340	\$ 750
County Court at Law No. 9	\$ -	\$ -
County Court at Law No. 11	\$ 75	\$ -
County Court at Law No. 12	\$ 410	\$ -
County Court at Law No. 13	\$ 2,437	\$ -
County Court at Law No. 14	\$ 1,644	\$ -
County Court at Law No. 15	\$ 701	\$ -

Table 7-5: Bexar County District Court ID Investigation & Expert Witness Expenditures, FY 2019

Court	Investigation Expenditures	Expert Witness Expenditures
144th District Court	\$ 42,307	\$ 11,293
175th District Court	\$ 54,686	\$ 38,335
186th District Court	\$ 54,227	\$ 16,322
187th District Court	\$ 43,984	\$ 61,529
226th District Court	\$ 45,497	\$ 56,129
227th District Court	\$ 76,583	\$ 38,862
290th District Court	\$ 27,355	\$ 36,966
379th District Court	\$ 41,341	\$ 58,335
399th District Court	\$ 38,106	\$ 43,722
437th District Court	\$ 61,575	\$ 111,415

⁸¹ Public defender expenditures are excluded for Tables 7-4 and 7-5.

Recommendations

As displayed in Appendix C, Bexar County's misdemeanor investigation expenditures per case were very low in FY 2019. The lack of requests for investigation and expert codes in the Bexar County CJIS being utilized along with information about whether the amounts were approved or denied and the reasons why the requests were denied or reduced in a database format prevents an informative analysis of how judges are handling these requests, and how many cases in which a paid investigator was used. It is unclear if these services are not being requested or the codes are not being used to record them. Without these metrics, it is difficult to ascertain if indigent defendants are receiving adequate legal support services. These metrics need to be included in any future data management system.

Voucher Reimbursement

Statutory Requirements

Article 26.05(c) of the Texas Code of Criminal Procedure states that:

"Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county."⁸²

⁸² Texas CCP 26.05 (c) *See also* Texas CCP 26.05 (a)

ABA Standards

ABA Standards, Providing Defense Services 5-2.4 states:

“Assigned counsel should receive prompt compensation at a reasonable hourly rate and should be reimbursed for their reasonable out-of-pocket expenses. Assigned counsel should be compensated for all hours necessary to provide quality legal representation. Compensation for assigned counsel should be approved by administrators of assigned-counsel program.”⁸³

Bexar County Indigent Defense Plan

The Bexar County Indigent Defense Plan contains a Fee and Expense Payment Process Section for both the county and district courts. Additionally, the fee schedules for both plans are publicly available documents.⁸⁴

Bexar County Current Practice

Judges were asked about attorney voucher reimbursements. Judges stated they never denied vouchers, and almost all judges felt that attorneys were underpaid. The voucher reimbursement process begins with the submission of vouchers to the court, where judges give their approval after deciding if expenditures were reasonable. Officials from the auditor’s office pick up the vouchers and physically bring them to the auditor’s office where they are entered into the computer system and a spreadsheet. One voucher is entered into five screens manually, and vouchers are scanned into the computer, as well. Several county officials in the auditor’s office, including interns, handle phone calls from attorneys asking about the status of voucher payments. If county officials take vacation days, this can create a back log in the system. County officials are looking forward to an automated system for processing voucher payments. Bexar County has an e-invoice system for Family & Children’s Court, and county officials felt that system worked well. If a similar system could be developed for criminal court vouchers, it would be beneficial for county officials.

Bexar County also has a voucher recommendation committee. If a judge has a question about a voucher, the voucher can be submitted for review. If a voucher is contested by an attorney, it can also be submitted to the voucher recommendation committee. This committee is made up of a group of attorneys to review contested vouchers and make recommendations to judges.

Attorneys were also asked about the voucher reimbursement process. Several stated they had never had a voucher denied and others stated they had vouchers sent to the voucher recommendation committee for review. Other attorneys mentioned that vouchers are modified or adjusted without reasons provided. Attorneys also stated they have had problems getting vouchers paid in a timely manner and some vouchers are lost.

PPRI attempted to analyze voucher payments via the CJIS database. Two codes are used to indicate that a voucher has been filed and that the voucher has been forwarded to the auditor for payment. However, the dollar amounts listed in the event qualifier are not standardized, so an analysis of voucher

⁸³ See

https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/providing_defense_services.pdf

⁸⁴ See Appendix A. See also <http://tidc.tamu.edu/Public.Net/Reports/IDPlanNarrative.aspx?cid=255#B>

payment approval and reductions could not be completed because the amount cannot be extracted. The reason for voucher denial or reduction is also not recorded in the database.

Recommendations

The voucher recommendation committee is a promising practice and should be continued. Additionally, voucher payment details need to be collected via the database in order to better examine judicial behavior regarding vouchers.

Conclusion

PPRI examined judicial quantitative and qualitative data. While certain courts appeared to appoint from the bench more often than others, many tracking measures do not exist within the current data system to examine these practices in more detail. Information about reasons for appointing attorneys from the bench, voucher denials, investigation and expert codes, and reduction reasons are not recorded or fully utilized in the CJIS database. This information is vital in order to fully understand judicial practices within Bexar County.

Recommendations

The Public Policy Research Institute at Texas A&M University examined Bexar County's indigent defense practices. During qualitative interviews, Bexar County stakeholders made recommendations to change and improve the indigent defense system. In addition, Bexar County is also moving to a new data management system. In light of this change, it is an opportune time to examine metrics for future tracking of quality indigent defense representation. The following chapter outlines data and policy recommendations for the county. Recommendations are presented by:

- Stakeholder recommendations (including feedback from judges, attorneys, county staff, and defendants)
- PPRI data recommendations
- PPRI policy recommendations

Stakeholder Recommendations

Attorneys, judges, defendants, and other county officials had their own recommendations to improve Bexar County's indigent defense system. Attorneys focused on better pay and more funding for indigent defense. They also suggested an expanded Bexar County Public Defender Office. They mentioned some sort of system to ensure accountability, a questionnaire for defendants after their case is resolved, mentoring, and a committee to review and investigate complaints against attorneys and setting up a system to check if attorneys actually look at discovery information. Other areas attorneys felt needed improvement were logistics surrounding jail visits, lab testing taking a long time, more timely court resolutions (it sometimes takes quite a few settings to resolve a case), and the bond system needs reform. While some attorneys did know about the existence of specialty courts, they were unsure of how the specialty courts actually operated. Several attorneys also specifically mentioned that a DWI case is a complex misdemeanor involving breathalyzer tests and blood work. These cases also typically involve expert witnesses and testimony. This type of case requires a significant amount of time and effort to defend, and currently attorneys only receive \$180 to represent defendants charged with this offense.

Like attorneys, judges also recommended increasing attorney pay, improving the logistics of jail visits, and increasing attorney accountability. Judges also recommended the implementation of a MAC office. Judges mentioned the ethical conflict of interest to rule on issues with attorneys since they have to ask for campaign contributions.

County officials thought attorneys should be paid more, and there should be some accountability for attorneys. Additionally, implementing a MAC were recommendations from county officials to improve the indigent defense system. Other recommendations included a larger Bexar County Public Defender Office, and attorneys who give campaign contributions should not get court appointments. The county officials also suggested the voucher system be automated, and they should be able to track a lot of the data more consistently than they are now.

The defendants recommended attorney communication be improved. Better attorney contact was also a recommendation of defendants. A defendant also recommended a generic video presentation at the beginning of the process to explain what they can expect and how the appointment process works.

Bexar County officials first expressed interest in examining the effect of the misdemeanor fee increases, and to further examine the indigent defense system in the county. County officials, judges, and attorneys stated that attorneys need to be paid more, even with the fee increase, and more funding is needed for indigent defense. However, all stakeholder groups also recognized the importance of accountability for court-appointed counsel.

PPRI Data Recommendations

At this time, it is difficult to measure aspects of quality representation in Bexar County. The county must implement better tracking mechanisms to self-monitor court-appointed attorneys. The following section details recommendations concerning data metrics. TIDC has published *Recommended Functionality & Data Guidelines for Indigent Defense Technology Projects*. These elements are shown in Table 8-1, along with the elements' availability in Bexar County's database. Table 8-2 also displays additional data metrics that Bexar County should track to measure quality representation. Several of these metrics are already listed via the TIDC data guidelines.

Table 8-1: TIDC Recommended Functionality & Data Guidelines for Indigent Defense Technology Projects

TIDC Data Elements	Available via Bexar County Criminal Justice Database?
Arrestee Name	Yes
Date and Time of Arrest	Yes
Offense Date	Yes
Charged Offenses	Yes
Indication of mental illness	Some free text, not consistent and not standardized
Need for attorney with proficiency in language other than English	Yes
Bond date	Yes
Bond type/amount	Yes, but observations are missing bond type
Date and time of request for counsel to appointing authority	No. There is some free text entry that shows request for counsel, but it is not standardized
Each data element gathered for financial screening to determine indigence according to county standard	No
Ruling on Indigency (Approved/Denied/Incomplete Application)	No
Date and Time of Ruling on Indigency	No
Date of Appointment of Counsel	Yes
Rotation List Appointment or Other	Yes
Reason for Appointment Outside Rotation	No
Date Attorney Notified of Appointment	Yes
Case Stage (New Offence, Appeal, MTR)	Yes

Date and Method of First Attorney Contact with Client	No
Date of First Client Interview by Attorney	No
Dates of Subsequent Client Contact (including fields to document contact attempts)	No
Dates of Court Appearances/Settings	Hearings & Hearing Resets, Not Type of Hearing
Date and Amount of Request for Expert	No
Date and Amount of Request for Investigator	No
Case Filing Date	No
Case Number	Yes
Lists of Attorneys Approved for Each Offense Level Specified in Local Plan	Yes
Attorney Continuing Legal Education (CLE) Hours	No
Attorney Current Compliance Status with CLE Requirements	No
Attorney Name	Yes
Attorney Bar Number	Yes
Amount billed	Yes
Defendant Name	Yes
Court	Yes
Itemized list of services provided	Case numbers are inconsistent
Date Voucher Approved, Reduced, or Denied by Judge	No
Amount Approved	Yes
Reason for Reduction or Denial	No
Payment Amount, Date	Yes
Expert fees paid per case	Case numbers are inconsistent. There is no case number/judicial number/SID number in the data to link the payments
Investigator fees paid per case	No. The investigator data only has 337 observations. There is no case number/judicial number/SID number in the data to link the payments
Amount of Attorney Fee Repayment	Yes, by court only
Disposition Date	Yes
Disposition (recommend coding to align with clerks' OCA reporting)	Yes, but not consistent
Method of Disposition (Trial: Jury/Bench, Plea)	Yes
Sentence	Yes

Table 8-2: Additional Quality Measures for Bexar County⁸⁵

Additional Tracking Measures	Available via Bexar County Criminal Justice Database?
Timeliness of initial client contact	No
Timeliness from appointment to first face to face contact	No
Frequency of client contact	No
Reason for changing court-appointed counsel	No
Complaints filed against court-appointed attorneys by the defendant or defendants' power of attorney	No
Frequency at which attorney did not appear in court	No
Frequency of contact made with designated power of attorney	No
Frequency at which judicial administrators are notified of any dysfunction or inaction by court-appointed counsel	No
Frequency at which court-appointed counsel, private attorneys, and public defenders reset court dates and conduct investigations.	Investigator requests not recorded consistently
Reason documented for appointing from the bench	System does not record the judge or reason for when it switches from wheel to non-wheel but does specify court
Frequency with which voucher reimbursements are approved and denied. If denied, list the documented reason for denying reimbursement.	No
Frequency with which court-appointed attorneys are disciplined for an appointed case. If disciplined, list the documented reason for disciplinary action.	No
Educational and professional background of all court-appointed counsel.	No
Court-appointed attorneys completed required continuing legal education requirements.	No

In order to self-monitor, Bexar County needs to track the above data elements.⁸⁶ Having these measures in an electronic format will provide for easy data tracking and analysis to ensure defendants are

⁸⁵ These metrics were specifically requested to be analyzed by Bexar County. PPRI attempted to examine these metrics via the CJIS system, but due to data limitations, this analysis could not be completed.

⁸⁶ ACT Smart for Public Defense is a web portal designed in collaboration between TIDC and PPRI with funding support from the Bureau of Justice Assistance (BJA). The purpose of the portal is to help Texas jurisdictions use data and metrics to track progress toward full compliance with right to counsel laws, rules and standards. For more information on the web portal, see <http://smartdefense.pprinet.tamu.edu/>

receiving quality representation. In its current format, the database has a large amount of text entry, which prevents consistent data entry and complicates any type of analysis. Presently, many measures are tracked via hard copy documents, which is not conducive to electronic data analysis.

Additionally, it is unclear if court coordinators are using similar event codes for similar court events. A key component of any new data system Bexar County would implement must be a standardized data manual and training on how to enter data consistently across courts. The ultimate goal for Bexar County should be to build a data management system that is based on event codes that minimize if not eliminate free text, and are used consistently by court coordinators. Suggestions to eliminate free text include the use of county approved drop down menu (for instance when recording reasons for bench appointments, etc.) and regular training of data users (court coordinators and others) on data entry using an event code dictionary.

Another focus of qualitative interviews concerned the auditor's office and tracking of attorney vouchers. This data system needs to be electronic and streamlined to ease processing of attorney vouchers. Currently, a voucher is entered into the computer and spreadsheets manually. The new data management system should be inclusive of all aspects of a case; including booking, court events, and voucher payments. Such system would allow the county to be responsive to concerns of stakeholders and use real-time data to run reports on different components of the indigent defense system. For instance, one concern raised by stakeholders was the large number of settings by case. The county should easily be able to examine the party/reason for those additional hearings with the new data management system.

PPRI Policy Recommendations

Bexar County currently offers a diverse set of specialty courts. However, qualitative interviews seemed to indicate that not all attorneys understand how the specialty courts operate. Bexar County could provide more extensive training about how the court processes mental health and other types of cases which might be more suitably directed to specialty courts. Additionally, Bexar County could employ an indigent defense coordinator program, as other large counties have, to ensure prompt appointment of counsel and assisting defendants with the appointment process.

It appears there is a lack of supervision and accountability for court-appointed counsel. Qualitative interviews showed all stakeholder groups recognized that this issue needs to be addressed. The current system in Bexar County does not have the ability to consistently track complaints against attorneys and ensure quality standards are met. As mentioned previously, Bexar County has submitted an improvement grant application to implement an indigent defense monitoring program. This program would address these issues and would be an excellent action to improve indigent defense representation in the county. The Bexar County Public Defender Office already has the infrastructure to monitor attorneys and their caseloads. Due to data limitations, PPRI could not fully examine the outcomes of the Public Defender Office.

However, implementing a Managed Assigned Counsel (MAC) program in conjunction with the Public Defender Office in Bexar County would ensure further compliance with the ABA Ten Principles. This

office would comply with principles 1, 5, and 10.⁸⁷ The office would provide access to an investigator independent of the judiciary, control caseloads, and provide supervision and mentoring of attorneys.

A MAC program would allow Bexar County the ability to resolve several of the current struggles the county is facing. Any county with an attorney wheel can benefit from a MAC program because of two main enhancements:

- Oversight of defense services by attorneys
 - A MAC office will handle day to day operations of attorneys which include defendant complaints, vouchers, attorney selection/removal from the wheel, CLEs, etc.
 - The office will monitor lawyers (and hold them accountable) in areas such as:
 - Initial contact with defendants
 - Court appearance
- Independence from the judicial body in the county
 - A MAC office allows judges to separate themselves from decisions related to attorneys such as attorney selection, vouchers approvals, defendant complaints about attorneys, etc.
 - Attorneys will report to the leadership of the MAC office

It is important to note that a MAC program in Bexar County should not be seen as a substitute to the judicial leadership, but instead an accompaniment to its efforts. A MAC program removes most details of the day-to-day operations from the judges, to allow them to focus on the cases on their dockets. Bexar County judges will still take the lead in legislating new rules and guidelines in the county. Setting up a successful MAC office would require collaboration among different stakeholders within the county including judges, commissioners, IT, Public Defender Office, and the jail to create an office that ensures quality defense services to defendants.

For such an office to be successful, Bexar County should consider:

- Avoid limiting the MAC office to either misdemeanors or felonies
 - Most defendants have both misdemeanor and felony charges, and limiting the office to either one will affect the continuity of defense
- Establish data management system, which will allow the office to generate reports on attorneys and their activities (client visitation, CLEs, court appearance, defendant complaints, etc.)
- Move to hourly pay (for attorneys in the MAC system) rather than case fixed pay
 - This would align attorneys' incentives with the quality of defense
 - This would also ensure access to a pool of quality attorneys
- Work closely with TIDC and other large jurisdictions in Texas (such as Harris County, Travis County, etc.) who are either in the process of implementing or currently run a MAC office. This collaboration would also highlight the ability to establish a MAC office in conjunction with the Public Defender Office.

⁸⁷ *Supra* note 11.

Based on the above, the county would then examine the performance of the newly established MAC office based on the below criteria:

- Improved outcomes for defendants
 - Relationship with attorneys (contact, service, attention to the case and needs of defendants, etc.)
 - Case outcomes (pretrial detention, disposition, jail time, etc.)
- Efficiency in operations
 - Voucher system
 - Attorney complaints
 - Attorney wheel operations

Managed Assigned Counsel System Successes in Texas

It is very difficult, if not impossible, to examine the causal impact of a MAC system on a county because of the missing counterfactual. No one can observe what the county would have looked like without a MAC system (if a county had implemented one), or how a county would look like under a MAC system (if the county is considering implementing one) while holding all other factors constant.⁸⁸ That being said, Bexar County would benefit from the experience of other counties in Texas that have implemented a MAC system. Lubbock County was the first jurisdiction in Texas to establish a MAC office. It initially provided services to mentally ill and intellectually disabled defendants but then expanded to include all non-capital defendants. Collin County was the second jurisdiction with a MAC office. The Collin County system is the only MAC office in Texas that is not a private office and is a fully governmental entity. Similar to Lubbock County, the office in Collin County started offering indigent defense services to mentally ill defendants but expanded to all indigent defense cases in the county. Finally, the Austin Criminal Defense Lawyers Association and the Austin Bar Association created a joint venture to start Travis County's MAC program.

Qualitative interviews and discussions offer anecdotal evidence that the quality of representation has improved under the MAC system due to improving accountability, training, mentoring, resources, and controlling of caseloads of assigned attorneys. Better quality of representation is important in ensuring improvements in efficiency and reduction of costs. Cost reductions come in reduced jail populations, increased voucher payment processes (and overall efficiency), and more stability in administrative and budget estimates. The Collin County MAC office saved the county between \$158,000 in 2013 and \$640,000 in 2015.⁸⁹ The office in Lubbock helped an inmate get a treatment plan, which allowed her not to be involved with the criminal justice system for seven years after having been incarcerated for 10 years (pre-trial) and not making any court appearance for the last two and a half years.

Conclusion

If Bexar County implements the recommendations contained in this report, the county will take a large step forward in improving indigent defense in the county. Additionally, these changes will improve monitoring of attorneys, ensuring quality indigent representation for all defendants in Bexar County.

⁸⁸ *Supra* note 9.

⁸⁹ Texas Indigent Defense Workshop, 2017, Mental Health Defenders Presentation

Appendix A

Bexar County Indigent Defense Plans

Bexar County Court Plan

Prompt Magistration

10/9/2017

Prompt Magistration

As of November 1, 2007, Bexar County Magistrates appointed by the Criminal District Court Judges will be performing all magistration duties.

A. Arresting Officer Responsibilities:

1. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.
2. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.
3. Release of defendants arrested without warrant
 - a. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.
 - b. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.
 - c. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not

been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

- d. The time limits set forth in 1. and 2. above do apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17.

B. Magistrate Duties:

1. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.
2. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, and Article 15.17, do the following:
 - a. Advise the accused of the accusation against him/her and any affidavit filed therewith;
 - b. Admonish the accused of:
 - i. The right to retain counsel;
 - ii. The right to remain silent;
 - iii. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - iv. The right to terminate an interview at any time;
 - v. The right not to make a statement and that any statement made by the accused may be used against him/her; and
 - vi. The right to an examining trial.
 - c. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
 - d. Inquire as to whether accused is requesting that counsel be appointed.
 - e. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.
 - f. If the magistrate has reason to believe the accused is not mentally competent, the

magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

3. In cases where the individual was arrested without an arrest warrant, bench warrant, *capias*, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.
 - a. If probable cause has not been determined by a magistrate:
 - i. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
 - ii. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
 - iii. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.
4. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
5. The magistrate shall record the following (See **Forms: Magistrate Warnings**--Attachment One for English version and Attachment Two for Spanish version):
 - a. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
 - b. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
 - c. Whether the accused requested appointment of counsel
6. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Pretrial Services for an interview to determine the defendant's financial status. The defendant will be required to swear to the accuracy of the the interview form and sign it (See **Forms: Financial and Indigent Affidavit--Attachments Four and Five**). If the defendant declines an interview he /she will be asked to sign an affidavit to such effect (See **Forms: Bexar County Detention Center Accused Declined to Be Interviewed**--Attachment Three). If it is determined that the defendant falls below the

guideline established by the Criminal Court judges, Pretrial services will query the computer for the selection of an appointed attorney (see Section III, A. (Minimum Attorney Qualifications) describing "Attorney Rotation Wheel").

7. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit or cause to be transmitted to the court or to the court's designee authorized under Article 26.04, Code of Criminal Procedure, to appoint counsel in the County, the form requesting appointment of counsel.
8. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.
9. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the clerk to be put into the case file.
10. Defendants who did not request an attorney at magistration but request one at arraignment may be sent to the Pretrial Services Satellite Office for interview and attorney appointment. As an alternative, the Judge may make the attorney appointment in court under "interest of justice" criteria. If the appointment is made by the Judge in the interest of Justice, the rationale for the appointment must be placed on the record.
11. For persons arrested on out-of-county warrants, the magistrate must ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel. The magistrate will ensure the person is provided reasonable assistance in completing the necessary forms for requesting counsel in the county issuing the warrant. Requests for counsel made by persons arrested on out-of-county warrants must be transmitted to the appointing authority of the county issuing the warrant within 24 hours of the request being made.

Indigence Determination Standards

10/9/2017

Indigence Determination Standards

A. Definitions, as used in this rule:

1. “Indigent” means a person who is not financially able to employ counsel.
2. The defendant’s “net income” will be used to determine if the individual is indigent based on the income for one person under the Federal Poverty Guidelines. If the defendant’s “net income” is \$980.83 or more per month, they will not qualify for a court appointed attorney. If the defendant’s “net income” is less than \$980.83 a month, they will qualify for a court appointed attorney. This amount will be adjusted annually pursuant to the Federal Poverty Guidelines.
3. The defendant’s necessary expenses will be subtracted from the defendant’s gross income, including spousal income if applicable. The resulting number will be referred to as the defendant’s “net income”. "Necessary expenses" should include: rent or mortgage; food/groceries; car payment; car insurance; utilities (water, electricity, phone).

B. Eligibility for Appointment

1. An accused is presumed indigent if any of the following conditions or factors are present:
 - a. At the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
 - b. The accused’s net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
 - c. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.
2. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused’s dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

- a. the nature of the criminal charge(s),
 - b. anticipated complexity of the defense,
 - c. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
 - d. the amount needed for the support of the accused and the accused's dependents;
 - e. accused's income,
 - f. source of income,
 - g. assets and property owned,
 - h. outstanding obligations,
 - i. necessary expenses,
 - j. the number and ages of dependents, and
 - k. spousal income that is available to the accused.
3. Factors NOT to be considered in determining indigence:
- a. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.
 - b. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.
4. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

1. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
2. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 - a. Determining if accused is (or is not) indigent; or
 - b. Impeaching direct testimony of accused regarding the accused's indigence
3. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.

4. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. Tex Code of Crim Proc 26.04(p)

a. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

i. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or

ii. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.

b. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

5. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay. Tex Code Crim Proc 26.05 (g)

Minimum Attorney Qualifications

10/9/2017

Minimum Attorney Qualifications

A. The Bexar County Criminal Courts plan for the implementation of the appointment portion of the Texas Fair Defense Act involves the use of an attorney data bank on the Criminal Justice Information System (CJIS) mainframe computer, also known as the "Attorney Rotation Wheel." The data bank is comprised of attorneys who apply to take court appointments for new criminal charges as well as

Motions to Revoke Probation (MTRs) and are determined to meet certain qualification standards. The computer, using a rotational process, will select the appropriate attorney from the database. In making the selection, the computer will use several different preset filters. Those filters will include, but not be limited to: date of attorney's last appointment, attorney availability, offense level, language requirements, pending cases with previously appointed counsel, etc. Attorneys can apply to take either felony or misdemeanor court appointments or both. Once the application process is complete, the Administrative offices for both the District and County Criminal Courts will enter the attorney information into the computer. An attorney will not be entered into the system for either misdemeanor or felony appointments unless he/she meets the prescribed qualifications and is approved by the Judges.

B. To be eligible for the misdemeanor appointment list or "Attorney Rotation Wheel", an attorney must meet the following minimum qualifications:

1. Misdemeanor Qualification Requirements:

- a. All attorneys on the appointment list must ensure all information on their application is correct;
- b. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
- c. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.
- d. An attorney shall complete a minimum of six (6) hours of CLE in the area of Criminal law within 30 days from the date the attorney submits their application to be on the appointment list. In addition to those six (6) hours of CLE in Criminal Law, an attorney must provide proof of either a CLE course in Immigration Law or an Immigration

component within another CLE course. There is no minimum required number of hours needed for the Immigration Law requirement. Said attorney shall take any Texas State Bar accredited course dedicated to Criminal Law, including, but not limited to, the San Antonio Criminal Defense Lawyer's Association Annual Nuts & Bolts course;

- e. In addition to the requirements to receive court appointments set out above, attorneys applying for misdemeanor appointments must maintain a minimum of six (6) hours of CLE in Criminal Law and an additional CLE course or component in Immigration law as set forth above annually. All attorneys on the appointment list must submit proof of these hours on an annual basis to County Court Administration (by January 15th each year). Attorneys need only submit a copy of their State Bar MCLE page to show proof of these hours. We will accept courses within a one year period immediately preceding (calendar year) to satisfy these hours. As an alternative to meeting the CLE requirements, an attorney may be currently certified in Criminal Law by the Texas Board of Legal Specialization;
- f. The following provisions are also included in the rules to add flexibility so the attorneys may meet the requirements without causing undue burden:
 - i. All of the required criminal law hours in this 6 hour requirement may be earned through any method authorized by the State Bar, including self-study; and
 - ii. Emergency appointments are allowed when no attorney meeting the CLE requirements is available by the time an attorney must be appointed in a case.
- g. An attorney must maintain an office capable of receiving email, fax, and telephone calls, with fax and email available 24 hours per day;
- h. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.
- i. If an attorney is arrested at any time while on the Misdemeanor appointment wheel, the

attorney must report the arrest to County Court Administration by the end of the first business day after arrest.

2. Approval for Misdemeanor List or Wheel--An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.
3. It is in the discretion of the County Court at Law Judges hearing criminal law cases to deny an applicant to serve on the Misdemeanor appointment wheel for any good cause.

C. Notification and Formalization for Attorney Rotation Wheel

If an attorney is appointed through the computer (Attorney Rotation Wheel), the attorney will receive notification by both email and fax. That notification will include the name, address/location, phone number of the defendant as well as the SID, Case Number, charge, court and arraignment date if available. Attorney information will automatically be transferred to the "C" page of the appropriate case file on the Criminal Justice Information System. The defendant will receive a print out with the name, address and phone number of the appointed attorney. The County Courts at Law Administration Office will print out a list of defendants and appointed attorneys, each working day. Additionally, the County Courts at Law Administration Office will print out one copy of the Appointment Order for each case. These Orders will be stamped with the signature of the Local Administrative Judge and delivered to the Criminal Central filing for inclusion in the individual case file(s).

D. Removal from Appointment List or Attorney Rotation Wheel-

The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. (as set forth below)

E. Grounds for removal

1. An attorney may be removed from the appointment list or attorney rotation wheel if the attorney:
 - a. has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;
 - b. has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;

- c. fails to maintain compliance with each of the appointment list guidelines;
- d. has been found by a court to have provided ineffective assistance of counsel;
- e. has violated a rule of professional responsibility;
- f. has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by fine only;
- g. is under indictment or being formally charged with an offense, other than an offense punishable by a fine only;
- h. has intentionally misrepresented statements on the application for the appointment list;
- i. has failed to submit an annual statement that describes the percentage of their practice time that is dedicated to work on appointed cases,
 - as set forth in B.1.c. above; or
- j. an attorney may be removed from the appointment list for another stated good cause.

2. In certain extraordinary circumstances, such as incarceration or institutionalization, an attorney may be temporarily removed from the Misdemeanor appointment wheel.

3. Procedures for Removal.

- a. If a judge believes that an attorney has violated any of the provisions listed above (E.1), the judge may refer an attorney to the County Court judges hearing criminal matters for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.
- b. Upon receiving an attorney referral, the County Court judges hearing criminal matters or designee shall notify the attorney in writing of the referral and inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the judges will meet to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.
- c. After the County Court judges hearing criminal matters meet and give the attorney an opportunity to be heard, the majority of the judges hearing criminal cases present shall determine whether the attorney should:
 - i. remain on the appointment list; or
 - ii. be removed from the appointment list altogether
- d. The attorney may be removed from the appointment list by a majority vote of the

judges hearing criminal matters present.

e. In addition, the majority of the judges may also vote to require the attorney to take other rehabilitative measures.

f. Removals from any list may be probated. For removal or probated removals, the judges ordering the removal may require the completing of rehabilitative measure as a condition of probation or reapplication.

g. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement.

h. An attorney who was removed from an appointment list under "Grounds for Removal" (f. or g.) shall be immediately reinstated upon providing proof that the charges were dismissed or

that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

i. The decision of the majority of judges hearing criminal matters is final and may not be appealed.

F. Reinstatement to Appointment List or Attorney Rotation Wheel

1. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

2. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Plan.

3. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

G. Duties of Appointed Counsel

Appointed Counsel shall:

1. Notify the court within 72 hours of the receipt of appointment;

2. Make every reasonable effort to:

a. Contact the defendant by the end of the first working day after the date on which

- the attorney is appointed; and
- b. Interview the defendant as soon as practicable after the attorney is appointed;
3. Represent the defendant until:
 - a. Charges are dismissed;
 - b. The defendant is acquitted;
 - c. Appeals are exhausted; or
 - d. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
 4. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
 5. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
 6. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
 7. Be prepared to try the case to conclusion either with or without a jury;
 8. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
 9. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
 10. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and

11. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
12. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Prompt Appointment of Counsel

10/9/2017

Prompt Appointment of Counsel

A. Appointment of Counsel

1. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
2. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
3. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within one working day of this county's receipt of the request for counsel.
4. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.
5. If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at <http://tidc.tamu.edu/public.net/> . The defendant may submit these forms to the Bexar County Pre-trial Services or the Court Coordinator in the County Court where the case is pending.. The court will rule on all requests for

counsel submitted in this manner.

6. If no case has been filed in the trial court, the appointing authority for misdemeanors is: the Court or Court's designee authorized under Article 26.04, Code of Criminal Procedure, to appoint indigent defendants in the County or Bexar County Pre-trial Services.

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversarial judicial proceeding that may result in punishment by confinement

1. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel

2. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

a. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or

b. Waived or has waived the opportunity to retain private counsel.

3. The attorney representing the state may not:

a. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or

b. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:

i. Has been given a reasonable opportunity to retain counsel; or

ii. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

1. A defendant may voluntarily and intelligently waive the right to counsel.

2. A waiver obtained in violation of section B above is presumed invalid

3. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges

against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this ___ day of ___, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

4. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

11/22/2019

Attorney Selection Process

- A.** The Judges or Judge's Designee (appointing authority) will use the "attorney rotation wheel" discussed in Section III (Minimum Attorney Qualifications), unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:
1. The defendant requesting counsel does not speak and understand the English language, or that the defendant is deaf, then the court or the courts' designee shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.;
 2. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or

3. Other good cause exists for varying from the list or "attorney rotation wheel"

B. Public Defender's Office – According to CCP 26.04(a), the procedures for appointing counsel for an indigent defendant must provide for the priority appointment of a public defender's office. At this time, the Chief Public Defender in Bexar County has indicated that the Public Defender's Office will not seek any additional appointments pursuant to CCP 26.04 (effective 9/1/19), other than the ones their office is currently receiving from the appointment wheel.

Pursuant to CCP, Art. 26.04(f), the court is not required to appoint the public defender's office if:

1. the court makes a finding of good cause for appointing other counsel;
2. the appointment would be contrary to the office's written plan under [Article 26.044](#);
3. the office is prohibited from accepting the appointment under [Article 26.044\(j\)](#); or
4. a managed assigned counsel program also exists in the county and an attorney will be appointed under that program.

Pursuant to CCP 26.044(j), the Public Defender's office may not accept an appointment if:

1. A conflict of interest exists that has not been waived by the client;
2. The office has insufficient resources to provide adequate representation for the defendant;
3. The office is incapable of providing representation in accordance with the rules of professional conduct;
4. Acceptance of the appointment would violate the maximum allowable caseloads established for the office; or
5. The office shows other good cause for not accepting the appointment.

The procedures set forth in Article 26.044(j-1), Code of Criminal Procedure, will be followed in the event the Public Defender's Office identifies a reason for refusing the appointment.

C. Public Defender's Office for Mental Health Cases - Any defendant charged with a misdemeanor offense who 1) has been deemed to have mental health issues, 2) who is found to be indigent, and 3) who requests a court appointed attorney, may be assigned to the Bexar County Public Defender's Office. The Pre-trial or booking officer will enter an "M" code on all cases that request a court appointed attorney and who have been identified as having mental health issues,. The "M" Code will appoint the Public Defender's Office to represent those mental health cases for each misdemeanor category of offense. All other cases will be passed on to the "attorney rotation wheel" as set forth in Section III.

D. Public Defender's Office for Appeals - Any defendant charged with a misdemeanor offense who:

- 1) wishes to appeal their conviction,
- 2) has been found to be indigent, and
- 3) who requests a court appointed attorney, may be assigned the Bexar County Public Defender's Office.

Once notice of appeal has been filed by the trial counsel, the trial court may enter an Order

Appointing the Public Defender's Office until the termination of the appeal process.

E. Judicial Removal from Case:

The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:

- a. Counsel's failure to appear at a court hearing;
- b. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
- c. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
- d. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
- e. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
- f. The defendant requests an attorney, other than trial counsel, for appeal; or
- g. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

F. Pursuant to 26.04(e), A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

G. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

Fee and Expense Payment Process

10/9/2017

Fee and Expense Payment Process

- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the County Court at Law judges hearing criminal cases in the county.
- B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules

set forth below.

1. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered, which must be submitted at the time the case is concluded. All vouchers must be in black or blue ink and either printed or typewritten. If the form provided by the County is not used, the format of the voucher must be similar to that used on the County form.
2. The trial judge presiding over the proceedings or a designee shall review the request for compensation and either approve or disapprove of the amount requested.
 - a. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
 - b. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region. An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of this administrative judicial region. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this section, the commissioner's court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for the County. This decision is final.

C. Payment of Expenses:

1. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.
2. Procedure With Prior Court Approval:
 - a. Appointed Counsel may file with the trial court a pretrial ex parte confidential

request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

- i. The type of investigation to be conducted or the type of expert to be retained;
 - ii. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
 - iii. An itemized list of anticipated expenses for each investigation and/or each expert.
 - b. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
 - i. State the reasons for the denial in writing;
 - ii. Attach the denial to the confidential request; and
 - iii. Submit the request and denial as a sealed exhibit to the record.
3. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.
4. See Attachment on Investigator Policy for County Courts.

Plan Documents

- Bexar County Court Affidavit of Indigence.pdf (10/21/2015 3:17:56 PM) [view](#)
- Bexar County Court Attachment Five-Financial and Indigent Affidavit Spanish.pdf (6/28/2010 2:52:36 PM) [view](#)
- Bexar County Court Attachment Four-Financial and Indigent Affidavit English.pdf (6/28/2010 2:52:18 PM) [view](#)
- Bexar County Court Attachment One-Magistrate Warning English.pdf (6/28/2010 2:51:54 PM) [view](#)
- Bexar County Court Attachment Three-Accused Declined to be Interviewed.pdf (6/28/2010 2:51:25 PM) [view](#)
- Bexar County Court Attachment Two-Magistrate Warning Spanish.pdf (6/28/2010 2:51:01 PM) [view](#)
- Bexar County Court Attorney Application for Appointment.doc (4/11/2016 1:27:42 PM) [view](#)
- Bexar County Court Attorney Fee Schedule.pdf (6/24/2020 11:51:20 AM) [view](#)
- Bexar County Court Attorney Fee Voucher.pdf (6/24/2020 11:51:47 AM) [view](#)
- Bexar County Court Attorney Visit Certification.pdf (6/24/2020 11:52:22 AM) [view](#)
- Bexar County Court Bexar County Court Investigator Policy for County Courts.pdf (10/9/2017 2:28:12 PM) [view](#)

Bexar County Court Investigator Policy for County Courts.docx (10/26/2015 11:22:37 AM) [view](#)

Bexar County Court Mental Health Public Defender.pdf (10/31/2013 3:28:41 PM) [view](#)

Bexar County Court Public Defender Plan or Proposal.docx (10/28/2013 4:46:23 PM) [view](#)

Bexar County Court Waiver of Counsel.doc (11/6/2009 4:17:40 PM) [view](#)

Bexar District Court Plan

Preamble

10/19/2017

BEXAR COUNTY CRIMINAL DISTRICT COURTS PLAN

STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

The following Local Rules replace the current local rules, Part 5, Section E., subsections 5.19 through 5.25. These subsections affect the Criminal District Courts only. These rules are adopted pursuant to Texas Government Code §74.093. These amended local rules are effective November 1, 2017.

E. INDIGENT DEFENSE

5.19 The rules in this section will govern criminal procedures in all criminal district courts in Bexar County, and will take precedence over any other local rule to the contrary.

Prompt Magistration

10/29/2019

5.20 Procedures for Timely Appointment of Counsel

a. The rules in this subsection were originally promulgated with the cooperation of the City of San Antonio Magistrate's Office. As of May 1, 2019, the City of San Antonio again began handling all magistration duties in Bexar County.

b. The person making the arrest or the person having custody of the arrested person shall take the arrested person before a magistrate within 48 hours after arrest, which is the current common practice in Bexar County.

c. Whenever an arrested person is first brought before a magistrate, the magistrate shall perform the duties described in Article 15.17 of the Code of Criminal Procedure, conducting what will hereinafter be referred to as an Article 15.17 hearing, which will include the following:

1. The magistrate shall specifically inform the person arrested of the person's right to request appointment of counsel if the person cannot afford counsel.
2. The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.
3. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel.
4. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.
5. If the arrested person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31 of the

Code of Criminal Procedure.

d. In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make a written record on a form titled “Magistrate Warning” and available in both English and Spanish, of the following information:

1. That the magistrate informed the person of the person’s right to request appointment of counsel;
2. That the magistrate asked the person whether the person wanted to request appointment of counsel; and
3. Whether or not the person requested appointment of counsel.

e. If the arrested person requests appointment of counsel, the magistrate shall transmit or cause to be transmitted to the Bexar County Pre-Trial Services Department the name of the arrested person requesting appointment of counsel, for their assistance in filling out the necessary forms and to interview them to determine if they qualify for a court appointed attorney. This transmittal will occur no later than 24 hours after the request is made to the magistrate.

f. For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate shall transmit or cause to be transmitted to the Bexar County Pre-Trial Services Department the name of the arrested person requesting appointment of counsel, for their assistance in filling out the necessary forms. The Bexar County Pre-Trial Services Department will transmit the forms to the appointing authority in the county issuing the warrant within 24 hours of the request being made.

Indigence Determination Standards

10/19/2017

5.21 Procedures and Financial Standards for Determining Whether a Defendant is Indigent

a. After the Article 15.17 hearing, if the arrested person has informed the magistrate that he/she does not want to request court appointed counsel, this will be reflected on the Magistrate Warning form. If at any time after magistration the arrested person decides that he/she would like to be interviewed after telling the magistrate that they did not want to request court appointed counsel, he/she will be referred to the Pre-Trial Services Officer for an interview (see below). If at any time after magistration the arrested person decides that he/she does not want to be interviewed for court appointed counsel, after making the request with the magistrate, he/she will be referred to the Pre-Trial Services Office to sign a form reflecting the declination.

b. After the Article 15.17 hearing, if the arrested person has informed the magistrate that he/she wants to request court appointed counsel, the arrested person will be interviewed by the Pre-Trial Services Clerk whether or not they are able to make bond. If the defendant makes bond, this interview will take place before release on bond.

c. As soon as possible following the Article 15.17 hearing, a Pre-Trial Services Clerk shall interview each arrested person who wants to request appointment of counsel, and the arrested person will

provide under oath the necessary information concerning the person's financial resources. The Pre-Trial Services Clerk shall input this information into the computer for the arrested person.

d. The financial data requested from the arrested person during the interview with the Pre-Trial Services Clerk will include but is not limited to the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. Whether the defendant has posted or is capable of posting bail will not be considered in determining indigency, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed above.

e. At the conclusion of the interview with the Pre-Trial Services Clerk, the arrested person will be asked to swear to and sign a "Financial Data Report Affidavit".

f. Based on the financial data given by the arrested person, the computer will calculate and determine whether the person meets the financial standard for indigence in Bexar County. Pursuant to the Code of Criminal Procedure Article 26.04(o), before a determination of indigence is made the arrested person signs an "Indigent Attorney Appointment Affidavit". The standard for determining indigence is outlined as follows:

1. The defendant's necessary expenses will be subtracted from the defendant's gross income, including spousal income if applicable. The resulting number will be referred to as the defendant's "net income".
2. "Necessary expenses" should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, utilities.
3. The defendant's "net income" will be used to determine if the individual is indigent based on the income for one person under the Federal Poverty Guidelines. This amount will be adjusted annually pursuant to the Federal Poverty Guidelines, which are published in late January.

g. A defendant who is determined to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or nonindigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

h. A written or oral statement elicited from the defendant during this process or evidence derived from the financial data provided may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant.

i. A defendant may request a court appointed attorney at any time, and the criminal district court judge who presides over the defendant's case has the discretion to appoint an attorney to that defendant, according to the method of assignment outlined in Rule 5.22 below.

Minimum Attorney Qualifications

10/19/2017

5.22 Selection and Appointment of Counsel

- a. Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described later in this subsection.
- b. The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:
 1. A State Jail Felony list;
 2. A Second and Third Degree Felony list;
 3. A First Degree and 3(g) Felony list;
 4. An Appellate list for State Jail and Third Degree Felonies;
 5. An Appellate list for First, Second, and 3(g) Felonies;
 6. A Post Conviction Writs/DNA Motions list.
- c. Appointment of counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilt proceeding shall be from any of the first three lists outlined above.
- d. Twice a year, by a posted date in June and December, attorneys may apply to be included on one or more of the public appointment lists. Attorneys do not need to re-apply for lists they are already on, but may apply for additional lists if they have met the qualifications.
- e. To be eligible for placement on each public appointment list, attorneys must meet the following minimum qualifications:
 1. To qualify for any felony appointment, including appeals and post-conviction writs/DNA motions, an attorney must have completed ten hours of CLE in criminal law or procedure in the past year, including carryover from the previous year only. Also, a State Bar approved Legislative Update Seminar must be attended in any year the Legislature meets.
 2. To qualify for the State Jail Felony list, an attorney must have at least one year prior experience in criminal litigation, and prior experience as lead or co-counsel in at least three criminal jury trials.
 3. To qualify for the Second and Third Degree Felony list, an attorney must have at least two years prior experience in criminal litigation, and prior experience as trial counsel in two or more felony jury trials, as lead or co-counsel.
 4. To qualify for the First Degree and 3(g) Felony list, an attorney must either be board certified in criminal law, OR
 - have at least four years prior experience in criminal litigation; and
 - have prior experience as trial counsel in four felony jury trials in the last five years, having served as lead counsel in at least two of those trials; and
 - have completed twelve hours of CLE in criminal law or procedure in the last calendar year. Suggested courses are: The Criminal Law Institute (offered annually by the SABA), Advanced Criminal Law Course (offered in San

Antonio once every four years), The Short Course (offered annually by the TCDLA). Other courses authorized by the State Bar of Texas in criminal law or procedure are acceptable.

5. To qualify for the Appellate list for State Jail and Third Degree Felonies, an attorney must have at least two years prior experience in criminal litigation and/or appellate experience, and at least one brief filed in a criminal or juvenile case.

6. To qualify for the Appellate list for First, Second, and 3(g) Felonies, an attorney must have at least three years prior experience in criminal litigation and/or appellate experience, and at least two briefs filed in a criminal or juvenile case.

7. To qualify for the Post Conviction Writs/DNA Motions list, an attorney must have at least two years of experience in criminal litigation and/or appellate experience, have completed at least four hours of post-conviction writ specific CLE (of which two hours may be self-study) in the previous two years, and have a combination of a total of at least six felony jury trials and appeals, with no fewer than two in either category.

8. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

f. In addition to the above qualification requirements, in order to be placed on one or more of the felony and/or appellate appointments lists, and/or the post conviction writs/DNA motions list, a majority of the criminal district court judges must vote to approve the attorney's placement on each such list.

g. In lieu of the above qualification requirements, for felony, appellate, and post conviction writs/DNA motions appointments, in extraordinary circumstances, an attorney may be deemed qualified by a majority of the criminal district court judges.

h. If an attorney does not meet the qualifications to accept cases of a certain degree, but would like the judges to consider qualifying him/her for that list under the provision above, he/she can fill out a form called "Application for Exception to Qualifications to Receive Court Appointments" and turn that in with his/her application.

i. At least twice a year, following the submission of attorney applications for the public appointment lists by the posted dates in June and December, the criminal district court judges shall evaluate the new applicants for each list and the attorneys already on the lists. The judges will vote on the new applications and any new exceptions to the qualifications received. Attorneys approved by a majority of the votes of the judges will be placed on the public appointment lists.

j. An attorney may be removed from one or more of the public appointment lists by vote of a majority of the criminal district court judges for any of the following reasons:

1. Whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases

associated with that list. The judges may in their discretion remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

2. When an attorney intentionally or repeatedly violates the requirement that the attorney 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.

3. When, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

4. When, after a hearing, it is shown that the attorney requested and/or received any money or anything else of value for representing the accused, other than what is paid or anticipated to be paid to them by the county, without approval from the court in writing.

k. In certain extraordinary circumstances, such as incarceration or institutionalization, an attorney may be temporarily removed from the felony court appointed attorney lists.

l. If an attorney is arrested at any time while on the felony court appointed attorney lists, that attorney must report the arrest to Criminal District Courts Administration by the end of the first business day after arrest.

Prompt Appointment of Counsel

10/30/2019

a. Counsel shall be appointed in the manner specified in Rule 5.21 below, as soon as possible, but not later than the end of the first working day after the date on which the Pre-Trial Services Department receives the defendant's request for counsel. "Working day" means Monday through Friday, except for official county holidays. Also, a Magistrate or Judge will advise unrepresented defendants of the right to counsel and procedures for obtaining counsel according to CCP Article 1.051(f-2).

b. Criminal District Courts Administration will receive a master list every working day containing the names of all defendants who were arrested the previous day or weekend and were assigned court appointed counsel by the Pre-Trial Services Clerk. This master list will include the court appointed attorney's name and bar number, as well as the case numbers and offenses charged. This master list will be taken to the presiding criminal district court judge for a signature, making all appointments reflected therein official.

c. Persons arrested in other counties on Bexar County warrants must be assigned court appointed counsel from the rotational list of qualified attorneys, by Bexar County, within one working day of receipt of the request for counsel by Bexar County.

d. If a defendant is arrested in Bexar County based on another county's warrant, Bexar County will assign court appointed counsel from the rotational list of qualified attorneys in Bexar County, or from the Bexar County Public Defender's Office, to represent the defendant in any matter under the Code of Criminal Procedure Chapter 11 (Habeas Corpus) or 17 (Bail) if, on the eleventh day after the arrest, the defendant is still in Bexar County's custody.

e. By standing order, the Bexar County Public Defender's Office is appointed to represent indigent arrested persons and/or arrested persons who suffer from a mental illness during the arrested person's appearance before the magistrate at the Central Magistration (CMAG) facility, if the arrested person requests counsel,

does not already have counsel on record, and financially qualifies. The appointment of the Bexar County Public Defender's Office shall be for the limited purpose of representation of the mentally ill and/or indigent arrested person during the magistration process and related solely to the determination of the bond and the conditions of the bond for the arrested person. The limited appointment of the Bexar County Public Defender's Office is concluded upon the termination of the magistration proceedings and no motion to withdraw is necessary. At that point the indigent arrested person shall be appointed counsel according to the procedures outlined in this plan, to represent that person for the remainder of the case.

- With respect to the foregoing appointments which are in accordance with the Bexar County Public Defender's Office plan:
 - The Public Defender's office is given priority appointment to those types cases referenced above. The judges hearing criminal cases shall consult with the chief public defender to determine what percentage of cases to appoint to the public defender's office. Absent a finding of good cause, the judges shall appoint the public defender's office accordingly.
 - The Public Defender's Office may refuse to accept appointment to a case, if:
 - A conflict of interest exists;
 - The office has insufficient resources to provide adequate representation;
 - The office is incapable of providing representation in accordance with the rules of professional conduct;
 - Acceptance of the appointment would violate the maximum allowable caseloads established for the office; or
 - The office shows other good cause for refusing appointment.
- Judicial Removal from Case:
 - The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
 - Counsel's failure to appear at a court hearing;
 - Counsel's failure to comply with the requirements imposed upon counsel by this plan;
 - Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
 - The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 - The defendant requests an attorney, other than trial counsel, for appeal; or
 - The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
- Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

f. If at any time after magistration the arrested person decides that he/she would like to request court appointed counsel, he/she may contact the Bexar County Pre-Trial Services Department or the court coordinator of the court where the case is set, to be interviewed and provided with the necessary forms. If qualified, the arrested person will then be assigned counsel as provided in this plan.

g. Regarding Motions to Revoke Probation, Motions to Enter an Adjudication of Guilt, or in the case of Appeals that are not referred to the Bexar County Public Defender's Office, appointments will be made from a rotational list of qualified attorneys in the same manner as other felony cases.

h. At any time, a defendant may appear before the judge presiding over the defendant's case and request a court appointed attorney, and the judge has the discretion to appoint a qualified attorney or a qualified member of the Bexar County Public Defender's Office to represent that defendant. The attorney or member of the Bexar County Public Defender's Office must be qualified to take that degree of offense, and may be chosen from the next five names on the wheel, as provided by the Criminal District Courts Administration

Office, or a request can be made for the system to make an automatic appointment. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney or a qualified, willing member of the Bexar County Public Defender's Office, regardless of whether the attorney's name is among the next five names on the appropriate list. "Qualified" in the context of this rule means that the particular individual attorney filled out the appropriate application form, met all of the qualifying appointment requirements, and was approved by a majority of the Criminal District Court Judges.

i. Each attorney appointed under this subsection to represent the defendant shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record.

j. Before withdrawing as counsel for the defendant after trial or the entry of a plea and sentencing where the right to appeal was not waived, the appointed trial attorney shall advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal. If the defendant wishes to pursue a motion for new trial and/or notice of appeal, it is the trial attorney's responsibility to file the notice and pursue the motion for new trial. If no motion for new trial is filed, it is still the trial attorney's responsibility to file a notice of appeal if the defendant so wishes. Once these steps have been completed, the court appointed trial attorney's representation of the defendant is concluded, and a motion to withdraw should be filed. The trial court may then appoint the Bexar County Public Defender's Office on the appeal. If the Bexar County Public Defender's Office refuses the appointment pursuant to the Code of Criminal Procedure Article 26.044(j), the trial court may appoint a lawyer from the next five names on the appropriate Appellate list, as provided by the Criminal District Courts Administration Office, or a request can be made for the system to make an automatic appointment. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney regardless of whether the attorney's name is among the next five names on the appropriate list.

Attorney Selection Process

10/19/2017

a. The following method shall be used to assign attorneys from the appropriate public appointment list to represent indigent defendants:

1. After the defendant has been interviewed by the Pre-Trial Services Clerk and the computer has completed the calculation and determined that the defendant meets the standard of indigency in Bexar County, the Pre-Trial Services Clerk will ask the computer to determine the next attorney's name on the appropriate list.

2. The computer will select and provide an attorney's name to the Pre-Trial Services Clerk, after analyzing the individual requirements of the request and utilizing the following filters:

- Language
- Degree of Offense
- Availability of Attorney
- Date of Last Appointment.

3. The attorney's name selected by the computer to be appointed to the case should be one that meets any language requirement (if possible), is qualified to take appointments for that degree of offense, is not unavailable, and has the oldest date of last appointment. This will result in a system of rotation.

4. Criminal District Courts Administration will receive a master list every working day

containing the names of all defendants who were arrested the previous day or weekend and were assigned court appointed counsel by the Pre-Trial Services Clerk. This master list will include the court appointed attorney's name and bar number, as well as the case numbers and offenses charged. This master list will be taken to the presiding criminal district court judge for a signature, making all appointments reflected therein official.

5. Regarding Motions to Revoke Probation, Motions to Enter an Adjudication of Guilt, or in the case of appeals that are not referred to the Bexar County Public Defender's Office, appointments will be made from a rotational list of qualified attorneys in the same manner as other felony cases.

6. At any time, a defendant may appear before the judge presiding over the defendant's case and request a court appointed attorney, and the judge has the discretion to appoint a qualified attorney or a qualified member of the Bexar County Public Defender's Office to represent that defendant. The attorney or member of the Bexar County Public Defender's Office must be qualified to take that degree of offense, and may be chosen from the next five names on the wheel, as provided by the Criminal District Courts Administration Office, or a request can be made for the system to make an automatic appointment. The judge may make a finding of good cause on the record for appointing out of order, and may appoint any qualified, willing attorney or a qualified, willing member of the Bexar County Public Defender's Office, regardless of whether the attorney's name is among the next five names on the appropriate list. "Qualified" in the context of this rule means that the particular individual attorney filled out the appropriate application form, met all of the qualifying appointment requirements, and was approved by a majority of the Criminal District Court Judges.

Fee and Expense Payment Process

10/19/2017

5.25 Attorney Fee Schedule and Compensation of Appointed Attorneys

a. Other than the Bexar County Public Defender's Office, counsel appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

1. Time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;
2. Reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;
3. Preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and
4. Preparation of a motion for rehearing.

b. All payments shall be paid after judicial approval, in accordance with the attached fee schedule and guidelines which were adopted by formal action of the Criminal District Court Judges, with copies sent to the Commissioners Court of Bexar County.

- c. This fee schedule takes into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.
- d. A voucher form and in-court and out-of-court itemization forms will be provided for appointed counsel to itemize the types of services performed. The appointed counsel must submit this voucher to the judge presiding over the case for which the appointed attorney seeks compensation, for the judge to approve the payment.
- e. If a judge requests guidance on how to proceed in authorization of a voucher for payment or bill submitted by an attorney, an investigator, or a court appointed expert, he/she may forward the voucher or bill in question to the General Administrative Counsel for the Criminal District Courts for referral to the Voucher Recommendation Committee. This committee was formed to assist in pay voucher review on court appointed cases. This committee can also review vouchers where the judge has already disapproved all or part of the requested amount of payment. In this case, the voucher can be referred to the General Administrative Counsel for the Criminal District Courts by the judge, defense attorney, investigator, or expert, and the General Administrative Counsel for the Criminal District Courts will request review by the Voucher Recommendation Committee. The Voucher Recommendation Committee is composed of members of the local defense bar, one of whom is the current president of the San Antonio Criminal Defense Lawyers' Association. Members of the committee are selected by the current president, and their names are submitted for approval by a majority vote of the Criminal District Court Judges. Members serve two year terms. The committee has limited investigatory powers, such as access to jail records to verify jail visits, contact with the attorney who prepared the voucher, and requests to the attorney to produce information to corroborate claims on the voucher. The committee then makes non-binding recommendations in writing to the judge presiding over the voucher. If the voucher involves an attorney and the attorney is not satisfied with the outcome, he/she may still pursue the statutory remedy outlined in Article 26.05(c) of the Code of Criminal Procedure.
- f. An attorney who receives an appointment through the system outlined in this plan or through any other means is not allowed to receive any money or anything else of value for representing the accused, other than what is paid to them by the county, as approved by the court in writing.
- g. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
- h. Regardless of whether an attorney's voucher has been reviewed by the voucher recommendation committee or not, an attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, as provided under Article 26.05(c) of the Code of Criminal Procedure. This motion must be filed within twenty-one (21) days from the date the attorney receives notice of the disapproval of payment.
- i. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment and determine the appropriate amount of payment. In reviewing the disapproval, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted, Bexar County shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the adopted fee schedule.

j. Bexar County will reimburse appointed attorneys for investigation and expert witness expenses incurred on behalf of an indigent defendant as provided under Articles 26.05(d) and 26.052(f) through (h) of the Code of Criminal Procedure, and that is in accordance with the adopted fee schedule.

k. The Bexar County Public Defender's Office shall be compensated through its budget as approved by the Bexar County Commissioners Court.

Miscellaneous

10/29/2019

Approved: _____

Peter Sakai

Local Administrative Judge for Bexar County

Plan Documents

Bexar District Court Affidavit of Indigence.pdf (10/26/2015 10:49:08 AM) [view](#)

Bexar District Court Application for Exception to Qualifications.docx (10/29/2013 2:43:59 PM) [view](#)

Bexar District Court Appointment of Attorney Out of Order.pdf (10/15/2009 1:25:11 PM) [view](#)

Bexar District Court Attorney Application for Appointment.docx (10/19/2017 3:05:58 PM) [view](#)

Bexar District Court Attorney Fee Schedule.pdf (10/30/2019 12:04:59 PM) [view](#)

Bexar District Court Attorney Fee Voucher.doc (10/19/2017 3:08:00 PM) [view](#)

Bexar District Court Bexar District Court Application for Exception to Qualifications.docx (10/19/2017 3:09:34 PM) [view](#)

Bexar District Court Bexar District Court Supplemental Attorney Appointment Application.docx (10/19/2017 3:10:39 PM) [view](#)

Bexar District Court Example email notice to attorney.pdf (10/29/2013 2:44:47 PM) [view](#)

Bexar District Court Example Master List Report.pdf (10/15/2009 1:22:23 PM) [view](#)

Bexar District Court Financial Data Report Affidavit.pdf (10/29/2013 2:45:49 PM) [view](#)

Bexar District Court Magistrate's Warning Form Spanish.pdf (10/29/2013 2:43:07 PM) [view](#)

Bexar District Court Magistrate's Warning Form.pdf (10/29/2013 2:42:12 PM) [view](#)

Bexar District Court Public Defender Plan or Proposal.pdf (10/27/2015 10:04:21 AM) [view](#)

Bexar District Court Supplemental Attorney Appointment Application.docx (10/29/2013 2:46:45 PM) [view](#)

Bexar District Court Waiver of Counsel.pdf (10/29/2013 2:40:13 PM) [view](#)

Appendix B
Largest Counties' Attorney Fee Schedules

2019 SO 07



STATE OF TEXAS

§
§
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§
§
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FILED IN MY OFFICE
IN THE COUNTY COURTS
GIVING PREFERENCE TO
CRIMINAL MATTERS
2019 AUG 28 1 15 58

COUNTY OF BEXAR

1,2,4,5,6,7,8,9,11, 12, 13, 14, and 15

JOINT ORDER REVISING FEE SCHEDULE

This fee schedule applies to MISDEMEANOR APPOINTMENTS ON CASES FILED ON OR AFTER SEPTEMBER 1, 2019 and replaces Joint Order 2019 SO 05 filed February 19, 2019.

The goal of these payment guidelines is to assure quality representation for indigent persons charged with misdemeanor crimes in Bexar County. The fees set forth by this order take into consideration the time and labor required, the complexity of the cases, and the experience and ability of appointed counsel. The fee schedule makes accommodations for reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates.

Each Judge has discretion to approve an amount that is above these guidelines, including cases where the amount or quality of work performed is substantially above the norm and in complex cases.

County appointed attorneys remain attorneys of record until final disposition of their cases unless a motion to withdraw or to substitute counsel is granted.

I.

Appointed Counsel shall be paid a reasonable attorney's fee for performing the following services, subject to the Judge's discretion:

- Initial jail visit – Attorney must turn in Attorney Visit Certification with voucher \$50 in addition to fee
- Attorney released prior to disposition \$50
- Each Succeeding case (including MTRs) \$25
- Auxiliary Court Bond Hearing (1 Defendant) \$40 in addition to fee

- Auxiliary Court Attorney of the Day for Multiple Defendants for the limited purpose of Bond Hearing \$200
- Discovery and Dismissal \$180
- Plea and Sentence (1 Defendant, 1 case) \$180
- Plea and Sentence (1 Defendant, Multiple cases) \$180
- Each succeeding case \$25
- Disposition of Motion to Revoke Probation \$100
- Admission into PreTrial Diversion program \$180
- PreTrial Diversion Removal- Sentencing \$100
- Motion to suppress with live testimony \$100 in addition to fee
- Competency disposition without trial \$100 in addition to fee
- Jury Trial or Trial before the Court \$750
- Appeals to the 4th Court of Appeals \$750
- Expunction Order prepared for Acquitted \$150 in addition to fee
- Appointed Defendant under Art 55.02 Sec. 1
Filed within 30 days of acquittal

An attorney is to elect the appropriate payment for the given disposition of the case assigned. The additional payment for motion to suppress hearing will be added to the flat rate fee only when a motion hearing is held and live testimony is taken by the Court. The fee for trials is inclusive of all time preparing for trial, hearings on pre-trial motions, any and all necessary motions filed, all necessary discovery, and actual time in trial. A jury trial means that a jury has been selected. A Trial before the Court means that the first witness is sworn.

II.

All claims for misdemeanor payment must be submitted at the time the case is concluded, with limited exception of when a case is disposed by trial. In those instances a voucher may be submitted within 30 days of the conclusion of the case.

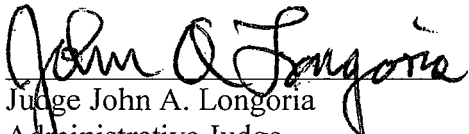
III.


Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health or other experts. Counsel should file their motion requesting appointment in advance to get the necessary approval from the Court. The maximum amount to be paid will be \$500.


This schedule applies to APPOINTMENTS ON CASES FILED ON OR AFTER SEPTEMBER 1, 2019.

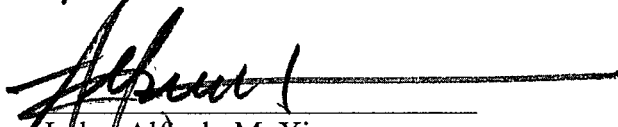
It is ORDERED that this Joint Order Revising Fee Schedule be filed for record in the offices of the County Clerk of Bexar County.

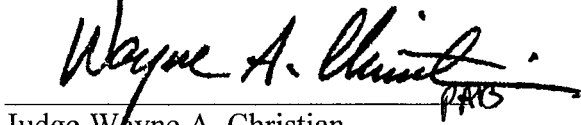
SIGNED, ORDERED, AND ENTERED ON THIS 26th day of AUGUST, 2019 by:


Judge John A. Longoria
Administrative Judge
County Court at Law No. 5


Judge Helen Petry Stowe
County Court at Law No. 1

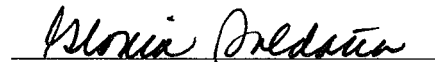

Judge Grace M. Uzomba
County Court at Law No. 2

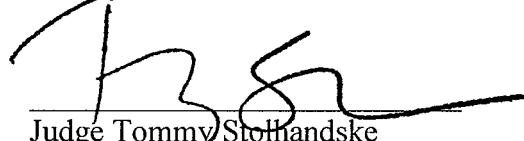

Judge Alfredo M. Ximenez
County Court at Law No. 4

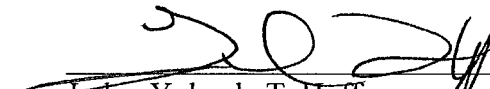

Judge Wayne A. Christian
County Court at Law No. 6

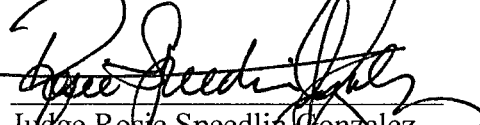

Judge Michael De Leon
County Court at Law No. 7

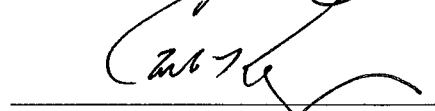

Judge Mary Roman
County Court at Law No. 8

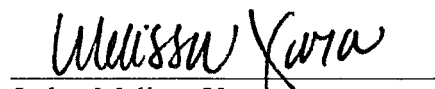

Judge Gloria Saldaña
County Court at Law No. 9


Judge Tommy Stothandske
County Court at Law No. 11


Judge Yolanda T. Huff
County Court at Law No. 12


Judge Rosie Speedlin Gonzalez
County Court at Law No. 13


Judge Carlo Key
County Court at Law No. 14


Judge Melissa Vara
County Court at Law No. 15

SPECIAL ORDER NO.

72323

STATE OF TEXAS

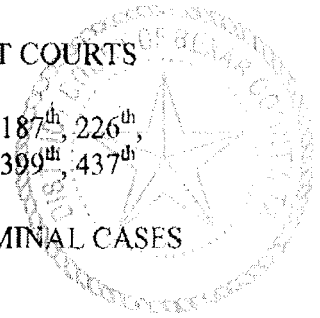
IN THE DISTRICT COURTS

AND

144th, 175th, 186th, 187th, 226th,
227th, 290th, 379th, 399th, 437th

COUNTY OF BEXAR

HANDLING CRIMINAL CASES



JOINT ORDER ADOPTING FEE SCHEDULE


In accordance with Article 26.05, Sections (b), (c), and (d) of the Code of Criminal Procedure of the State of Texas, the undersigned, being the district court judges designated by the legislature to give priority to criminal cases in Bexar County, Texas, now adopt the attached Fee Schedule, effective for all vouchers submitted after November 1, 2019.

It is ORDERED that this Joint Order be spread upon the minutes of the respective courts, filed for a record in the offices of the District Clerk of Bexar County, and a copy sent to the Commissioners Court of Bexar County.

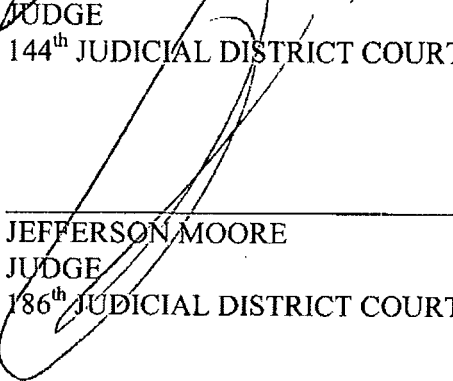
SIGNED, ORDERED and ENTERED the 29th day of October, 2019.




RAY OLIVARR
JUDGE
144th JUDICIAL DISTRICT COURT



CATHERINE TORRES-STAHL
JUDGE
175TH JUDICIAL DISTRICT COURT



JEFFERSON MOORE
JUDGE
186th JUDICIAL DISTRICT COURT



STEPHANIE BOYD
JUDGE
187th JUDICIAL DISTRICT COURT

72323

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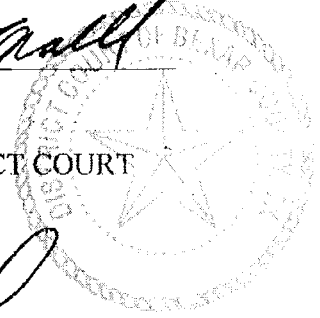
72323

Velia Meza

VELIA MEZA
JUDGE
226th JUDICIAL DISTRICT COURT

Kevin O'Connell

KEVIN O'CONNELL
JUDGE
227th JUDICIAL DISTRICT COURT



Jennifer Pena

JENNIFER PENA
JUDGE
290th JUDICIAL DISTRICT COURT

Ron Rangel

RON RANGEL
JUDGE
379th JUDICIAL DISTRICT COURT

Frank J. Castro

FRANK J. CASTRO
JUDGE
399th JUDICIAL DISTRICT COURT

Lori I. Valenzuela

LORI I. VALENZUELA
JUDGE
437th JUDICIAL DISTRICT COURT

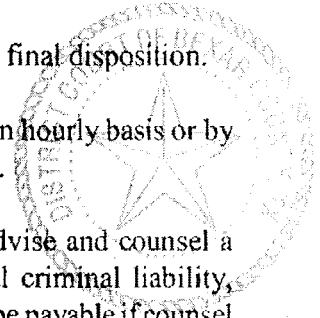
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GUIDELINES FOR THE FEE SCHEDULE

1. No claim will be paid unless properly submitted within one year of the final disposition.
2. Dismissals (either pre-indictment or post-indictment) may be paid on an hourly basis or by flat fee. For multiple cases that include a dismissal, see Guideline #16.
3. When it becomes necessary for the Court to appoint an attorney to advise and counsel a witness whose own testimony might subject that witness to potential criminal liability, counsel will be entitled to compensation at the hourly rate which would be payable if counsel had been appointed to represent the defendant in the case on trial.
4. Attorneys handling waiver pleas will be paid as if the case had been indicted.
5. According to Article 26.05(c) of the Code of Criminal Procedure, this fee schedule takes into consideration reasonable and necessary overhead costs. Overhead costs that are included in the fee schedule and may not be additionally claimed on a voucher include but are not limited to: printing/reproduction expenses, postage, facsimile expenses, computer research, parking, supplies, equipment, rent, repairs, utilities, insurance, advertising, taxes, or CLE. Fees for certified copies and/or subpoena processing fees for records may be claimed. Also, for appellate vouchers only, printing/reproduction expenses, binding, and the cost of electronic filing may be claimed.
6. Requests for prior approval to exceed the maximum stated out-of-court hours and/or the maximum stated investigator fees must be filed in the appropriate court and set out the need to exceed the maximum and a justification of the cost. Extraordinary circumstances must be presented in order to obtain Court approval.
7. Only if an attorney chooses to be paid a flat fee for a plea, an additional \$100 may be paid for the initial jail visit, if in person or if done remotely through the Remote Attorney Visitation System.
8. An itemization sheet must be attached showing detailed hours worked if the attorney is being paid on an hourly basis.
9. If the County Auditor's Office detects simple mathematical errors in a pay voucher, it will compute the voucher and pay it out based on the auditor's office calculations.
10. A copy of your brief must be attached to your voucher for payment on an appeal.
11. After January 1, 2002, there will be no more automated payments. A voucher must be submitted for payment on any case.

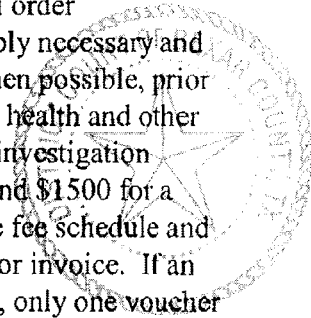


FOR INFORMATION ONLY

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12. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable expenses will not be approved. When possible, prior court approval should be obtained before incurring expenses for mental health and other experts. Prior court approval is required before incurring expenses for investigation services that exceed \$300 for a SJF or 3°, \$500 for a 2°, \$750 for a 1°, and \$1500 for a Capital. Overhead costs of investigators and experts are included in the fee schedule and may not be additionally claimed on an investigator or expert's voucher or invoice. If an investigator or expert is appointed to one defendant with multiple cases, only one voucher or invoice should be submitted that includes the totality of work performed on all cases.
13. On a capital murder case, if an attorney anticipates exceeding 100 hours of out-of-court time, he/she must notify the court when they have reached 100 hours and provide the court with an up-to-date itemization form for the time already spent. On presentation of a claim for payment, the court shall order payment of counsel for all out-of-court time, if the time spent was reasonably necessary and reasonably incurred. Unreasonable claims will not be approved.
14. When an appointment is made on an appeal, it is expected that the attorney receiving the appointment and signing the voucher actually did the research and wrote the brief. If another person assisted the attorney of record, the voucher must reflect that person's name, the work performed by that person, and the amount, if any, that person was paid or promised for their services.
15. A voucher combining hourly itemizations and flat fees on multiple cases/multiple counts will not be approved. An attorney must submit a voucher based on flat fees alone, or hourly itemizations alone, and no combination of the two is acceptable.
16. For multiple pending cases with the same defendant, including indictments, MTRs, informations on waiver pleas, and/or any combination of these, you may either choose to submit one itemized voucher or be paid a flat fee for the highest degree case, whatever the disposition of that case. If you choose to itemize, use the rate applicable to the highest degree case.
17. For one indictment with multiple counts, you may either itemize or choose to be paid one flat fee.
18. Defense attorneys must submit pay vouchers to the court for experts and court appointed investigators. Investigators and experts may not approach a judge directly for payment. The defense attorney must submit the investigator's pay voucher to the court at the same time as their own pay voucher.

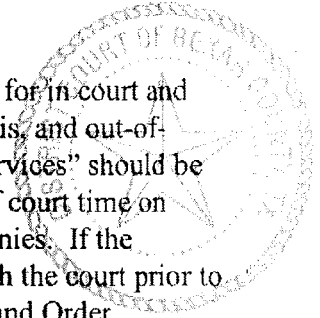


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INFORMATION FOR ATTORNEYS

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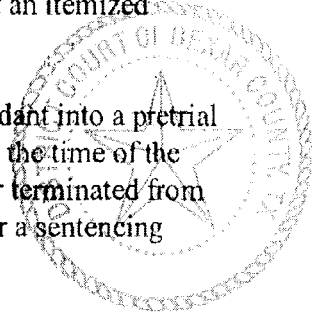
19. Attorneys who volunteer to sit second chair on a felony case in order to gain experience will not be paid.
20. On all itemized vouchers filed you must use the authorized worksheets for in court and out of court hours. In-court time must be itemized on ¼ of an hour basis, and out-of-court time must be itemized in real time. The "Brief Description of Services" should be specific. Prior court approval is required to exceed 100 hours of out-of court time on capital murder cases and 30 hours of out-of-court time on all other felonies. If the attorney expects to exceed this 100/30 hour cap, he/she should approach the court prior to exceeding the cap with an up-to-date itemization along with a Motion and Order approving hours in excess of the cap.
21. Itemized vouchers should be completely, accurately, and sufficiently filled out when submitted.
 - "Offense(s) charged" should accurately reflect the information or indictment
 - "Offense date" should be accurate
 - "Proceeding and Disposition" should be dated and be reasonably specific as to the nature of the disposition. If an attorney withdraws, is substituted out, or an attorney is hired resulting in the removal of the attorney, the date of such action and the name of the new attorney should be listed
 - "Payment Category" should accurately reflect the degree of the offense, or the highest level offense where there are multiple cases.
22. If upon indictment a case becomes a higher degree of offense than pre-indictment, and the attorney initially appointed is no longer qualified to take the higher degree of offense, it is the responsibility of the attorney upon indictment to inform the court that he/she is no longer qualified, so the court may appoint a new attorney who is qualified to be appointed on a case of that degree of offense. Any work claimed by the initial attorney after indictment will not be paid.
23. Other than in a capital murder case, the only time an interim voucher is acceptable from an attorney continuing as the attorney of record is upon a finding of incompetency.
24. An attorney appointed on appeal must seek prior approval from the court to file a Petition for Discretionary Review. If approved, a separate voucher should be filed for the PDR, including a copy of the brief on PDR.
25. The attorney named on the appointment must personally appear for a plea and/or sentencing of that case.
26. An attorney may not submit a voucher for another attorney's work, or claim appearances that were made by another attorney.



FOR INFORMATION ONLY

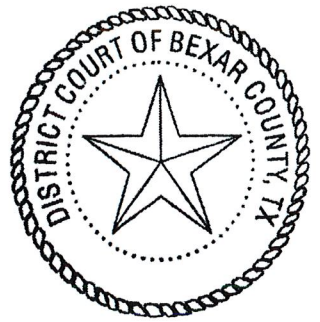
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27. If an attorney submits a voucher on a case (other than an MTR) that is not disposed of, because another attorney was hired or appointed, they can either submit an itemized voucher or request a flat fee of \$200.00.
28. An attorney appointed on a case that results in the admission of a defendant into a pretrial diversion program can claim a flat fee equal to a plea for that offense at the time of the admission of the defendant to pretrial diversion. If the defendant is later terminated from pretrial diversion, an attorney can claim an amount equal to an MTR for a sentencing hearing.



INFORMATION FOR SUBMITTERS

CERTIFIED COPY CERTIFICATE STATE OF TEXAS
I, MARY ANGIE GARCIA, BEXAR COUNTY DISTRICT
CLERK, CERTIFY THAT THE FOREGOING IS A TRUE
AND CORRECT COPY OF THE ORIGINAL RECORD AS
INDICATED BY THE VOLUME, PAGE AND COURT ON
SAID DOCUMENT. WITNESSED MY OFFICIAL HAND
AND SEAL OF OFFICE ON THIS:



October 29, 2019

**MARY ANGIE GARCIA
BEXAR COUNTY, TEXAS**

By:

CHRISTINA CARREON, Deputy District Clerk
(NOT VALID WITHOUT THE CLERK'S ORIGINAL SIGNATURE.)

Dallas County
Court Attorney
Fee Schedule

	FLAT FEE	Maximum
Dismissals	\$200.00	\$500.00
Pleas Motion Disposition	\$200.00 \$200.00	\$500.00 \$500.00
TBC Jury Trials	\$750.00 \$1,500.00	\$1,000.00 \$3,500.00
Appeals (Oral Argument)	\$1,250.00	\$3,500.00

	Hourly Rates
Non-appeals	\$100.00
Appeals	\$100.00

(B) A judge is free to use either the “Flat Fee Rate” or “Hourly Rate” to pay for a case. **NO DISCRETION FOR FEES:** Pursuant to TCCP Art. 26.05, a fee schedule must be set for payment of appointed Attorney at either a fixed rate or a fixed range, with minimum and maximum hourly rates. A county fee schedule may not include an “opt out” provision that allows a judge to approve a different rate on a case by case basis.

The attorney must submit an hourly, itemized invoice for payment at the hourly rate.

(C) Where the attorney disposes of multiple cases for a defendant, the court should pay the attorney for each case. However, the court may pay the same fee per case or different amounts for each case.

(D) Fee disputes with the presiding judge or the county auditor, should be handled Pursuant to Criminal Code of Procedure §26.05 ©).

(E) The appointed attorney is responsible for turning in a pay sheet to the court within ten days after disposition of the case.

**CRIMINAL DISTRICT COURT
SCHEDULE OF FEES
FOR THE COMPENSATION OF APPOINTED COUNSEL
May, 2020**

The Criminal District Court Judges of Dallas County and the Judges of the District Courts giving preference to criminal cases in Dallas County, in accordance with the requirements of TEX. CODE CRIM. PROC. §26.05, formally adopt the following fee schedule for the compensation of appointed counsel in all felony cases other than capital cases in which the state seeks the death penalty.

I. All court appointed attorneys shall have the option of being compensated by the fixed rate as listed below or submitting an itemized bill to the Court. This itemized bill will be paid at the rate of \$100 per hour. The attorney cannot choose both methods. All fees are to be awarded at the discretion of the Judge based upon the complexity of the case and work completed by the attorney.

II. The following fixed rates shall be paid for disposition of a case:

- \$300.00 for a disposition in a Probation Violation case.
- \$500.00 for a disposition in a State Jail or Third Degree Felony case.
- \$600.00 for a disposition in a Second Degree Felony case.
- \$700.00 for a disposition in a First Degree Felony case or a Non-Death Penalty Capital Murder case.
- \$800.00 for a full day of contested trial.
- \$400.00 for half a day of contested trial.
- \$700.00 for a contested competency hearing.
- \$400.00 for an agreed competency hearing. *
- \$100.00 for each additional case disposed.

* The fee of \$100.00 for each additional case disposed does not apply for additional cases in an agreed competency hearing.

III. APPEALS

- Hourly rate: \$100.00
- Jury trial range: \$1800.00 - \$3500.00
- Anders brief: \$400.00 - \$1000.00
- Standard approved expenses: reading record, research, writing the brief.
- Discretionary pay: letters, phone calls, meetings with family.
- Appellate argument: will pay for time to prepare, argument, travel expenses, hotel.

IV. EXPERT AND INVESTIGATIVE FEES

Attorneys should receive prior court approval for all investigator and expert witness expenses. Counsel may incur expenses not to exceed \$750.00 without prior court approval. Expenses incurred without prior court approval, including expert and investigator fees, will be reimbursed up to a maximum of \$750.00 if the court finds them to be reasonably necessary and reasonably incurred. Any fees or expenses in excess of \$750.00 must receive prior court approval.

Expenses for investigators will be reimbursed at a rate of \$40.00 per hour plus mileage at a rate of 34 ½ cents per mile, not to exceed a maximum of \$750.00 without prior court approval.

Expert witnesses will be reimbursed at the expert's actual hourly rate, not to exceed a maximum of \$750.00 without prior court approval.

V. EXPENSES

Attorneys will be reimbursed for actual expenses incurred in accordance with the rates and procedures set forth in this schedule. To receive reimbursement, the attorney must submit an itemized accounting of the expenses incurred along with the Request for Payment form. No payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge approves the payment.

VI. TIME DOCUMENTATION

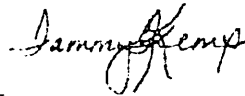
All court-appointed attorneys seeking compensation for legal services must submit a voucher in the Defense Portal (Request for Payment form). No detailed list of activities shall be required if the attorney is requesting the fixed amount for a disposition. If an attorney is requesting compensation other than the fixed rate, or to be compensated for work done on a case that has not been disposed of, a court-appointed attorney must submit a detailed list of legal services provided reflecting the type of itemized legal service provided, the date and location of the service, and the time spent providing the service rounded to the nearest tenth of an hour (6 minute increments) along with the voucher that is submitted in the Defense Portal ("Request for Payment") form. The voucher must be _____ by the attorney in the Defense Portal (detailed list of legal services must be signed by the attorney). The submission of the voucher (signature of the attorney) is an attestation as to the accuracy of the request.

VII. DISPUTES

The judge will approve all requests for payment submitted by a court-appointed attorney unless the court deems the request unreasonable. If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount of payment the judge approves and each reason for approving an amount different from the requested amount. If an attorney is not satisfied with the amount of compensation for a request for payment submitted under this schedule, the attorney may appeal the judge's decision by following the procedure set forth in TEX. CODE CRIM. PROC. § 26.05.

I certify that the foregoing fee schedule was adopted by a majority vote of the Judges of the Criminal District Courts of Dallas County and of the Judges of the District Courts giving preference to criminal cases in Dallas County on May 7, 2020. The changes to the fee schedule will take effect on June 1, 2020, for cases of disposed of on or after that date.

SIGNED this the 28 day of May, 2020.



Digitally signed by Tammy Kemp
DN: cn=Tammy Kemp, o.ou,
email=tammy.kemp@dallascounty.org, c=US
Date: 2020.05.28 11:10:56 -05'00'

**TAMMY KEMP, PRESIDING JUDGE
CRIMINAL DISTRICT COURTS
DALLAS COUNTY, TEXAS**

Harris County Court Plan

24.12. FEE AND EXPENSE PAYMENT PROCESS.

- 24.12.1. FEE SCHEDULE. Appointed counsel shall be compensated for all time reasonably necessary to adequately represent the defendant according to the following fee schedule, and as set forth in his or her contract for indigent defense services with Harris County, Texas.[\[8\]](#)
- 24.12.2. DAILY FLAT FEE RATE. To receive the daily rate, an attorney shall:
 - 24.12.2.1. appear for docket call at the time and place designated by the judge of the assigned court;
 - 24.12.2.2. accept appointments in that court or any other county court to which the attorney may be assigned on that day;
 - 24.12.2.3. remain available to the judges of the County Criminal Courts at Law until the courts' morning docket call is concluded, or the attorney is released by the judge of the court to which the lawyer is assigned; and
 - 24.12.2.4. provide professional services, including the resetting of cases, first to appointed cases in the County Criminal Courts at Law.
- 24.12.3. HOURLY RATE.
 - 24.12.3.1. Out-of-Court — \$25/hr. to \$50/hr.
 - 24.12.3.2. Out of Court (Mental Health Caseload) — \$50/hr.
 - 24.12.3.3. Hearings with Sworn Oral Testimony — \$50/hr. to \$90/hr.
 - 24.12.3.4. Trial (includes competency or sanity) — \$60/hr. to \$90/hr.
 - 24.12.3.5. Mental Health Defense Specialist — \$90/hr.
 - 24.12.3.6. Specialty Court — \$125/hr.
 - 24.12.3.7. Hourly rates shall be paid for performing the appropriate statutory services defined in TEX. CODE CRIM. PROC. ANN. art. 26.05(a), based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel.
- 24.12.4. FLAT FEE SCHEDULE.
 - 24.12.4.1. Term & Daily Assignments — \$250 per docket
 - 24.12.4.2. Term and Daily Assignment Foreign Language Certified — \$300 per docket
 - 24.12.4.3. Individual non-issue claims: \$50 per case per day, and may not exceed \$100.00 per day total, for all County Criminal Courts at Law combined.
 - 24.12.4.4. Non-Issue or Plea (concurrent with weekly or daily assignment) — No fee
 - 24.12.4.5. Appeal & Extraordinary Writs — \$750.00
 - 24.12.4.6. Petition For Discretionary Review — \$350.00

- 24.12.4.7. Oral Argument Before Court of Criminal Appeals — \$250.00
- 24.12.5. EXPENSES.
 - 24.12.5.1. Reasonable and Necessary Expenses
 - 24.12.5.1.1. The County will reimburse appointed attorneys for reasonable and necessary expenses including investigation and mental health and expert witnesses incurred on behalf of an indigent client with and without prior approval as provided by TEX. CODE CRIM. PROC. ANN. arts. 26.05(d) and 26.052(f), (g), and (h).
 - 24.12.5.2. Out-of-county travel expenses will be reimbursed with prior approval, using county rates and policies.
 - 24.12.5.3. Counsel shall submit the original invoice or receipt, along with any request for reimbursement.
- 24.12.6. INVESTIGATORS — \$40 per hour standard rate.
- 24.12.7. CONCURRENT PAYMENTS.
 - 24.12.7.1. An attorney engaged in a weekly or daily assignment shall not be compensated for a non-issue or plea appearance that occurs on the same day the attorney is assigned to a court pursuant to a quarterly assignment.
 - 24.12.7.2. An attorney is entitled to payment for out-of-court-hours, a motion hearing at which testimony is taken, trial, or professional services performed in a Specialty Court Program on the same day the attorney is paid for a daily or weekly term assignment.
- 24.12.8. ADDITIONAL COMPENSATION.
 - 24.12.8.1. An attorney appointed to represent an indigent defendant shall not accept additional compensation for professional services performed on behalf of the defendant, as a result of the appointment, in any form from any source other than Harris County, Texas.
- 24.12.9. JUDICIAL DETERMINATION OF ATTORNEY COMPENSATION.
 - 24.12.9.1. The following procedures apply to the review and approval of attorney's fees:
 - 24.12.9.1.1. Appointed counsel shall request payment on a form approved by the judges of the County Criminal Courts at Law and the County Auditor. Counsel shall submit the request for payment to the presiding judge in the court. The payment request shall list all services performed by the attorney on behalf of the defendant.
 - 24.12.9.1.2. The judge shall either approve the amount requested or enter written findings stating the amount the judge approves and each reason for approving an amount differing from the requested amount.
 - 24.12.9.1.3. An attorney whose request for payment is disapproved or not acted upon within 60 days may appeal the disapproval by filing a motion

with the Presiding Judge of the Second Administrative Judicial Region.[\[9\]](#)

24.12.9.1.4. Upon receipt, the auditor shall forward the order to the Office of County Court Management for review by the Presiding Judge or Court Manager.

24.12.10. ACCOUNTING OF ATTORNEY HOURS. To be entitled to payment, appointed counsel shall provide the following information:

24.12.10.1. HOURLY RATE.

24.12.10.1.1. STANDARD. Time must be itemized in tenths of one-hour (60 minute) increments on a form approved under the Plan.

24.12.10.1.2. ITEMIZATION. Counsel must prepare and maintain time records for each appointed client showing the date of service, nature of service rendered, and hours worked.

24.12.10.2. FLAT FEE RATE. The date and type of service performed.

24.12.11. SUBMISSION OF FEE VOUCHER.

24.12.11.1. An attorney, expert, or private investigator shall submit a fee claim on a form approved by the Judges of the County Criminal Courts at Law, and the Harris County Auditor.

24.12.11.2. An attorney assigned to a court for a term shall submit one fee voucher per week listing each case number to which he was appointed on each day of the week at the conclusion of the docket on the business day of that week.

24.12.11.3. An attorney assigned to work more than one day but less than five (5) days shall submit a fee voucher listing each case number to which he was appointed on each day of the week that he was assigned at the conclusion of the docket on the last business day of that week.

24.12.11.4. Fee vouchers for individual cases shall be submitted upon disposition of the case, e.g. dismissal, plea, or trial.

24.12.11.5. To receive compensation, an attorney must submit a fee voucher to the appointing judge not later than the 30th day after the date the case is disposed.

24.12.11.6. The instructions on the Weekly/Daily Assignments, and Individual Non-Term Appointment Fee Claims are incorporated herein as a part of this Alternative Plan.

24.12.11.7. An attorney is responsible for correctly completing and timely filing a fee voucher meeting the requirements of law, the Harris County Auditor, and this Plan.

24.12.11.8. The presiding judge of a court may withdraw an order directing the Harris County Auditor to pay a previously approved claim for attorney fees, reimbursement, expert witness fees, or other litigation-related expenses, if the claimant fails to correct a claim returned by the county auditor.

- 24.12.12. PAYMENT BY COUNTY AUDITOR. The Harris County Auditor shall only pay a claim submitted by an attorney whose name appears on the list of approved attorneys assigned to a county criminal court at law during a term or date assigned by FDAMS. The Office of County Court Management shall provide the County Auditor's Office with a current list of attorneys certified to accept appointments. The Auditor shall send a claim submitted by an attorney who is not on the list of certified attorneys to the Court Manager.
- 24.12.12.1. REASONABLE AND NECESSARY EXPENSES. The County will reimburse appointed attorneys for reasonable and necessary expenses, including investigation and mental health and expert witnesses, incurred on behalf of an indigent client as provided under TEX. CODE CRIM. PROC. ANN. arts. 26.05(d) and 26.052(f), (g), and (h).
- 24.12.12.2. ORIGINAL INVOICE OR RECEIPT. Counsel shall submit the original invoice or receipt along with any request for reimbursement.
- 24.12.12.3. SYSTEM PERSON NUMBER (SPN). To ensure accuracy in the tracking and reporting of fees paid to attorneys and others under this Plan, the Auditor shall amend the current attorney fee voucher to include a space for the Justice Information Management System Person Number of the individual seeking payment of county funds.

[8] See TEX. ADMIN C. TITLE 1, PART 8, SUBCHAPTER B §§174.10 et seq.

[9] See TEX. CODE CRIM. P. ANN. art. 26.05(c).



**HARRIS COUNTY DISTRICT COURTS TRYING CRIMINAL CASES
FAIR DEFENSE ACT
ALTERNATIVE PLAN FOR APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS**

FEE SCHEDULE

Attorney's Fees

Harris County pays attorneys appointed in district courts either per hour, per court appearance, or per court appearance plus out-of-court hours.

Trial Level Assignment and Payment Limitations

A term assigned lawyer can be assigned up to five clients a day. A term assigned lawyer cannot accept any other trial level appointments for the period of the term. Any cases reset beyond the term of the attorney's assignment will be paid on an individual case assignment basis. The presumptive maximum number of non-trial settings beyond the term assignment is four.

An attorney should not sign on as a limited term attorney in one court when he has an appointed matter in another court on the same day, except that an appointed trial setting in one court will not prevent an attorney from accepting a limited term appointment in another court on the same day.

An attorney appointed to be the limited term attorney in one court who is called to trial in another court should immediately notify the first court that he will not be available the rest of the week.

An attorney can accept two individual case assignments per day.

An attorney being paid on the basis of court appearances can be paid for up to four cases per day for court appearances that occur on or after July 1, 2010. Attorneys can be paid for up to three cases per day for court appearances that occurred prior to July 1, 2010. "Cases" in this context means different defendants or a defendant with cases arising from different transactions, i.e., different offense reports.

Two or more cases tried in a single proceeding are paid as a single case.

Two or more cases tried in one proceeding are paid as one appeal.

The attorney's pay rate is based on his certification level and the level of the offense charged, without consideration of enhancements. If the offense level drops, the attorney will be paid at the higher rate for the entire course of the representation.

Appointed attorneys and attorneys seeking public funds for investigative or expert assistance must submit a voucher to the appointing Court in the format specified by the Harris County District Courts Administrative Office, including registering to submit vouchers electronically. Appointed attorneys and attorneys seeking public funds for investigative or expert assistance must follow all procedures for payment required by the Harris County Auditor.

All vouchers must be submitted to the appointing Court within 21 days of disposition of the matter or the attorney's withdrawal, unless good cause is shown.

Hourly

Cases paid on an hourly basis have no presumptive maximums. Hours are billed in six-minute increments rounded to the nearest such increment. Attorneys are compensated on the basis of time spent working on the case whether that time is in or out of court. The attorney is compensated for only one case at a time. For example, if the attorney is in court on two cases, he allocates his time between those two cases for billing purposes; he does not bill for two cases. There is no bi-lingual supplement on cases paid on an hourly basis.

All district courts pay hourly for capitals, post-conviction proceedings, and argument in the Court of Criminal Appeals.

The rates are as follows:

\$150/hour

Capital First Chair

\$125/hour

Capital Second Chair

\$100/hour

11.071 Writ of Habeas Corpus
Capital Appeal
Capital Motion for New Trial
Capital Petition for Discretionary Review
Capital New Brief after PDR Granted
Capital Court of Appeals Oral Argument
Court of Criminal Appeals Oral Argument

\$75/hour

DNA Motion
11.07 Writ of Habeas Corpus
Non-Capital Appeal
Non-Capital Motion for New Trial
Non-Capital Petition for Discretionary Review
Non-Capital New Brief after PDR Granted
Non-Capital Court of Appeals Oral Argument

Beginning January 1, 2016, some courts will pay hourly for all individual case assignments. The rates are as follows:

1st degree	\$100
2nd degree	75
3rd degree, state jails felonies, motions, contempt	50

Per Court Appearance

For all other cases, all district courts pay per court appearance or per court appearance plus out-of-court hours with presumptive maximums. The courts may appoint and pay the attorney on the basis of an individual case assignment or a term assignment. The rates are as follows:

<u>Individual Case Assignment</u>	<u>Daily Rate / Presumptive Max</u>	<u>Out of Court / Presumptive Max</u>
--	--	--

Non-Trial

First Degree	\$225 / \$1125	\$85 (per hour) / \$1700
Second Degree	\$175 / \$875	\$60 (per hour) / \$600
Third Degree		
State Jail Felony	\$125 / \$625	\$40 (per hour) / \$400
Motion to Revoke Probation		
Motion to Adjudicate Guilt		
Contempt		
Pre-Trial Hearing w/ Testimony	\$350	
PSI Hearing		
Bilingual Supplement	\$50 / \$250	

Trial

First Degree	\$500
Second Degree	\$400
Third Degree	
State Jail Felony	\$300
Motion to Revoke Probation	
Motion to Adjudicate Guilt	

<u>Term Assignments (Daily, Weekly, Term)</u>	Daily	Presumptive Max For Weekly/Term
First Degree	\$395	\$1975
Second Degree	\$350	\$1750
Third Degree		
State Jail Felony	\$315	\$1575
Motion to Revoke Probation		
Motion to Adjudicate Guilt		

A request to exceed the presumptive maximum will not be considered except upon written request providing adequate justification.

Investigators and Experts

Investigators on non-capitals are paid at a uniform rate of \$40/hour at a maximum of \$600 per case, unless good cause shown. For capital cases, investigators are paid \$75/hour.

Investigators and experts must be licensed in accordance with applicable State law.

Experts are paid on a case-by-case basis per Harris County guidelines.

Bills submitted by investigators and experts must document the dates and time spent on the case and must be sworn to or affirmed as accurate. The following oath would suffice: “I swear or affirm that the attached invoice accurately documents the time that I spent on this case.”

Investigators and Experts seeking direct payment must follow all procedures for payment required by the Harris County Auditor, including submitting a vendor identification number on invoices.

Travel and Expenses

Paid per Harris County guidelines. Receipts must be provided.

Compensation for Attorney Services

Counsel appointed to represent indigent criminal defendants shall be compensated for their services as follows:

court appearance

(including uncontested disposition): \$50-250/appearance

evidentiary court appearance

(including jury trial): \$300-800/day

out-of-court time:

\$50-100/hour

appellate time:

\$50-125/hour

All requests for hourly payment must be itemized. The first client notification letter will not be paid.

Fee Schedule for Attorney Services

Tarrant County District Courts

Counsel appointed to represent indigent criminal defendants in non-death capital cases and first degree felony shall be compensated for their services as follows:

Court appearance (including uncontested disposition):	\$50-300/appearance
Evidentiary court appearance (including jury trial):	\$500-1500/day
Out-of-court time:	\$50-150/hour
Appellate time:	\$50-125/hour
Post-Conviction Writ/DNA	\$50-125/hour
64.01(c) DNA Review	\$300 flat

Counsel appointed to represent indigent criminal defendants in all other felony cases shall be compensated for their services as follows:

Court appearance	\$50-300/appearance
Evidentiary court appearance	\$500-1,250/day
Out-of-court time	\$50-125/hour
Appellate time	\$50-125/hour

TRAVIS COUNTY FEE GUIDELINES
FOR APPOINTED COUNSEL IN MISDEMEANOR CRIMINAL CASES

EFFECTIVE NOVEMBER 1, 2016 FOR SERVICES RENDERED ON OR AFTER THAT DATE

The goal of these payment guidelines is to assure quality representation for indigent persons charged with misdemeanor crimes in Travis County. Those cases appropriate for trial should be tried and those appropriate for plea should be pled.

The Program Administrator reserves the right to deviate from these guidelines in particular cases where the amount or quality or work performed is substantially above or below the norm.

Court appointed attorneys remain attorneys of record until final disposition of their cases unless a motion to withdraw or to substitute counsel is granted.

PAYMENT GUIDELINES

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

¹\$75 for each additional case

EXPENSES

Court appointed counsel will be compensated for all necessary expenses: i.e., collect or long distance phone calls, copying expenses, auto mileage (at IRS rate). All major expenses, such as investigators or expert witnesses, will require written approval by the Program Administrator prior to the expense being incurred.

REQUESTS FOR PAYMENTS

Request-for-payment forms shall be submitted at the time the case is disposed of except for trials. Requests for payment after trials should be submitted within 30 days of the conclusion of the case. Failure to comply may result in suspension from the court appointment list.

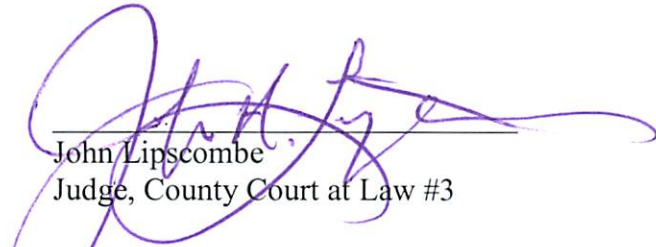
Payment for all of a defendant(s) cases should be requested on one form.

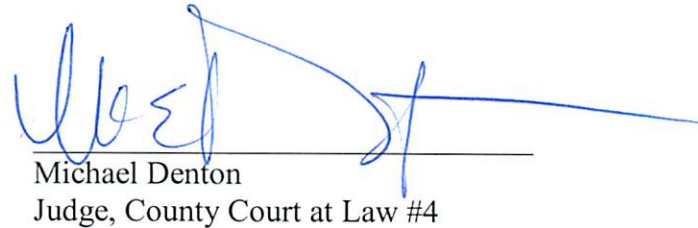
Payment for expenses such as investigators and expert witnesses should be requested on a separate form.

CAVEAT

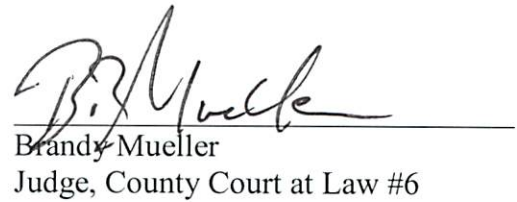
In an unusual case, the considerations set forth in Texas Rules of Professional Conduct Rule 1.04(b) may dictate a fee that is less than or more than the one established by these guidelines. In such event, an hourly rate of \$40 to \$60 may be used in calculating requested fees. Fees will be dependent upon the complexity of the case and the experience and ability of the appointed counsel. Claims for payment should reflect time expended to the nearest 1/10th of an hour.

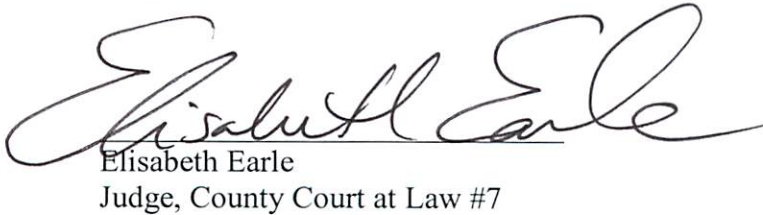
Approved and Ordered this 31 day of October, 2016.

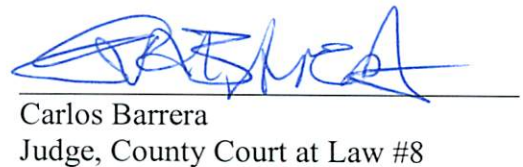

John Lipscombe
Judge, County Court at Law #3

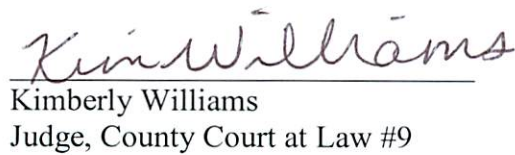

Michael Denton
Judge, County Court at Law #4


Nancy Hohengarten
Judge, County Court at Law #5


Brandy Mueller
Judge, County Court at Law #6


Elisabeth Earle
Judge, County Court at Law #7


Carlos Barrera
Judge, County Court at Law #8


Kimberly Williams
Judge, County Court at Law #9

TRAVIS COUNTY FEE GUIDELINES
FOR APPOINTED COUNSEL IN FELONY CRIMINAL CASES

EFFECTIVE OCTOBER 1, 2019 FOR SERVICES RENDERED ON OR AFTER THAT DATE

Pursuant to C.C.P. Art. 26.05, the following guidelines shall be used to claim attorney's fees for appointed counsel in criminal cases.

FIXED RATES

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

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

¹ \$100 for each additional case

DAILY RATES

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

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

HOURLY RATES

Attorneys must have approval of the Court *in capital cases seeking death or approval of the Capital Area Private Defender Service as the Program Administrator for all other cases* in writing at the conclusion of the pretrial hearings if a claim is to be based on an hourly rate. If such approval is not obtained in advance an hourly rate shall not be paid.

Appointed counsel will be compensated for time actually required by an appointment at an hourly rate of \$60 to \$100 for all cases with the exception of capital cases, which will be compensated at no more than \$200 per hour. The exact rate will be dependent upon the complexity of the case and the experience and ability of the appointed counsel. Claims for payment should reflect time expended to the nearest 1/10th of an hour.

If an hourly rate is approved, an itemized statement reflecting the date, service performed, and time expended, must be submitted with the request for payment form.

EXPENSES

Court appointed counsel will be compensated for all necessary expenses: i.e., collect or long distance phone calls, copying expenses, auto mileage (at IRS rate). All major expenses, such as investigators or expert witnesses, will require written approval by the Program Administrator prior to the expense being incurred, excluding capital cases seeking death, which require written approval of the Court.


REQUESTS FOR PAYMENTS

Request-for-payment forms shall be submitted at the time the case is disposed of except for trials. Requests for payment after trials should be submitted within 30 days of the conclusion of the case. Failure to comply may result in suspension from the court appointment list. If a case is disposed of prior to indictment or is a writ matter, the request-for-payment form should be submitted to the Program Administrator. Payment for all of a defendant's cases should be requested on one form. Payments for expenses such as investigators and expert witnesses should be requested on a separate form.

CAVEAT- Maximum Rate for Exceptional Cases

In exceptional cases involving death capital offenses and special prosecutions, the exact rate will be dependent upon the complexity of the case and the experience and ability of the appointed counsel, to be determined by the trial judge at a rate of no more than \$300 per hour

Approved and Ordered this 25th day of September, 2019




Judge Clifford Brown
147th District Court




Judge Julie Kocurek
390th District Court




Judge Karen Sage
299th District Court



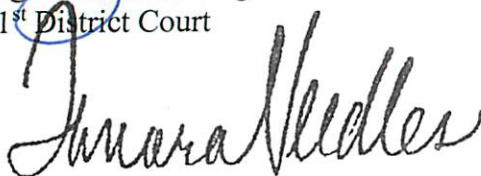
Judge David Wahlberg
167th District Court



Judge Chantal Eldridge
331st District Court



Judge Brenda Kennedy
403rd District Court



Judge Tamara Needles
427th District Court



Judge Brad Urrutia
450th District Court

Appendix C

Largest Counties' Investigation & Expert Expenditures by Case Type in FY 2019

**Largest Texas Counties' Investigation ID Expenditures
for Felony & Misdemeanor Cases in FY 2019**

County	Total Investigation Felony Expenditures	Investigation Felony Expenditures Per Case	Total Investigation Misdemeanor Expenditures	Investigation Misdemeanor Expenditures Per Case
Bexar	\$485,661	\$27.36	\$10,372	\$0.47
Dallas	\$1,448,069	\$64.16	\$701,279	\$28.87
Harris	\$2,183,188	\$60.91	\$78,756	\$4.01
Tarrant	\$409,666	\$26.19	\$15,878	\$1.04
Travis	\$186,870	\$15.96	\$24,361	\$1.63

**Largest Texas Counties' Expert ID Expenditures
for Felony & Misdemeanor Cases in FY 2019**

County	Total Expert Felony Expenditures	Expert Felony Expenditures Per Case	Total Expert Misdemeanor Expenditures	Expert Misdemeanor Expenditures Per Case
Bexar	\$472,908	\$26.64	\$57,319	\$2.58
Dallas	\$882,091	\$39.09	\$420,035	\$17.29
Harris	\$632,717	\$17.65	\$113,855	\$5.79
Tarrant	\$673,109	\$43.03	\$93,740	\$6.11
Travis	\$445,213	\$38.02	\$36,887	\$2.47

Appendix D

Largest Counties' Minimum Attorney Qualifications Section in Indigent Defense Plans

Largest Counties' Minimum Attorney Qualifications Section in Indigent Defense Plans

(as of March 2020)

Bexar County Court Indigent Defense Plan

A. The Bexar County Criminal Courts plan for the implementation of the appointment portion of the Texas Fair Defense Act involves the use of an attorney data bank on the Criminal Justice Information System (CJIS) mainframe computer, also known as the "Attorney Rotation Wheel." The data bank is comprised of attorneys who apply to take court appointments for new criminal charges as well as Motions to Revoke Probation (MTRs) and are determined to meet certain qualification standards. The computer, using a rotational process, will select the appropriate attorney from the database. In making the selection, the computer will use several different preset filters. Those filters will include, but not be limited to: date of attorney's last appointment, attorney availability, offense level, language requirements, pending cases with previously appointed counsel, etc. Attorneys can apply to take either felony or misdemeanor court appointments or both. Once the application process is complete, the Administrative offices for both the District and County Criminal Courts will enter the attorney information into the computer. An attorney will not be entered into the system for either misdemeanor or felony appointments unless he/she meets the prescribed qualifications and is approved by the Judges.

B. To be eligible for the misdemeanor appointment list or "Attorney Rotation Wheel", an attorney must meet the following minimum qualifications:

1. Misdemeanor Qualification Requirements:

- a. All attorneys on the appointment list must ensure all information on their application is correct;
- b. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
- c. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.
- d. An attorney shall complete a minimum of six (6) hours of CLE in the area of Criminal law within 30 days from the date the attorney submits their application to be on the appointment list. In addition to those six (6) hours of CLE in Criminal Law, an attorney must provide proof of either a CLE course in Immigration Law or an Immigration component within another CLE course. There is no minimum required number of hours needed for the Immigration Law requirement. Said attorney shall take any Texas State Bar accredited course dedicated to Criminal Law, including, but not limited to, the San Antonio Criminal Defense Lawyer's Association Annual Nuts & Bolts course;
- e. In addition to the requirements to receive court appointments set out above, attorneys applying for misdemeanor appointments must maintain a minimum of six (6) hours of CLE in Criminal Law and an additional CLE course or component in Immigration law as set forth above annually. All attorneys on the appointment list must submit proof of these hours on an annual basis to County Court

Administration (by January 15th each year). Attorneys need only submit a copy of their State Bar MCLE page to show proof of these hours. We will accept courses within a one year period immediately preceding (calendar year) to satisfy these hours. As an alternative to meeting the CLE requirements, an attorney may be currently certified in Criminal Law by the Texas Board of Legal Specialization;

f. The following provisions are also included in the rules to add flexibility so the attorneys may meet the requirements without causing undue burden:

i. All of the required criminal law hours in this 6 hour requirement may be earned through any method authorized by the State Bar, including self-study; and

ii. Emergency appointments are allowed when no attorney meeting the CLE requirements is available by the time an attorney must be appointed in a case.

g. An attorney must maintain an office capable of receiving email, fax, and telephone calls, with fax and email available 24 hours per day;

h. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

i. If an attorney is arrested at any time while on the Misdemeanor appointment wheel, the attorney must report the arrest to County Court Administration by the end of the first business day after arrest.

2. Approval for Misdemeanor List or Wheel--An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.

3. It is in the discretion of the County Court at Law Judges hearing criminal law cases to deny an applicant to serve on the Misdemeanor appointment wheel for any good cause.

C. Notification and Formalization for Attorney Rotation Wheel

If an attorney is appointed through the computer (Attorney Rotation Wheel), the attorney will receive notification by both email and fax. That notification will include the name, address/location, phone number of the defendant as well as the SID, Case Number, charge, court and arraignment date if available. Attorney information will automatically be transferred to the "C" page of the appropriate case file on the Criminal Justice Information System. The defendant will receive a print out with the name, address and phone number of the appointed attorney. The County Courts at Law Administration Office will print out a list of defendants and appointed attorneys, each working day. Additionally, the County Courts at Law Administration Office will print out one copy of the Appointment Order for each case. These Orders will be stamped with the signature of the Local Administrative Judge and delivered to the Criminal Central filing for inclusion in the individual case file(s).

D. Removal from Appointment List or Attorney Rotation Wheel-

The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. (as set forth below)

E. Grounds for removal

1. An attorney may be removed from the appointment list or attorney rotation wheel if the attorney:

a. has twice or more failed to contact or interview clients in a timely manner as required by Article 26.04(j)(1), Code of Criminal Procedure;

b. has submitted a claim for legal services not performed as specified in Article 26.05(e), Code of Criminal Procedure;

c. fails to maintain compliance with each of the appointment list guidelines;

d. has been found by a court to have provided ineffective assistance of counsel;

e. has violated a rule of professional responsibility;

f. has been convicted of or received a deferred adjudication for any an offense, other than an offense punishable by fine only;

g. is under indictment or being formally charged with an offense, other than an offense punishable by a fine only;

h. has intentionally misrepresented statements on the application for the appointment list;

i. has failed to submit an annual statement that describes the percentage of their practice time that is dedicated to work on appointed cases,

as set forth in B.1.c. above; or

j. an attorney may be removed from the appointment list for another stated good cause.

2. In certain extraordinary circumstances, such as incarceration or institutionalization, an attorney may be temporarily removed from the Misdemeanor appointment wheel.

3. Procedures for Removal.

a. If a judge believes that an attorney has violated any of the provisions listed above (E.1), the judge may refer an attorney to the County Court judges hearing

criminal matters for removal from the appointment list. The referral must be in writing and shall clearly state the grounds that form the basis of the

referral. No disciplinary action with respect to the attorney being retained or removed from the appointment list may be made without such a referral.

b. Upon receiving an attorney referral, the County Court judges hearing criminal matters or designee shall notify the attorney in writing of the referral and

inform the attorney of the grounds that form the basis of the referral. The notice shall also inform the attorney of the time and place the judges will meet

to discuss the referral and give the attorney an opportunity to respond to the referral in writing or in person or both.

c. After the County Court judges hearing criminal matters meet and give the attorney an opportunity to be heard, the majority of the judges hearing criminal

cases present shall determine whether the attorney should:

i. remain on the appointment list; or

ii. be removed from the appointment list altogether

d. The attorney may be removed from the appointment list by a majority vote of the judges hearing criminal matters present.

e. In addition, the majority of the judges may also vote to require the attorney to take other rehabilitative measures.

f. Removals from any list may be probated. For removal or probated removals, the judges ordering the removal may require the completing of rehabilitative measure as a condition of probation or reapplication.

g. An order of removal should state in the order the earliest date at which the attorney may apply for reinstatement.

h. An attorney who was removed from an appointment list under "Grounds for Removal" (f. or g.) shall be immediately reinstated upon providing proof that the charges were dismissed or

that the attorney was acquitted, unless other grounds for removal exist against the attorney that would prohibit reinstatement.

i. The decision of the majority of judges hearing criminal matters is final and may not be appealed.

F. Reinstatement to Appointment List or Attorney Rotation Wheel

1. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

2. An attorney who was removed from the appointment list for not submitting the attorney's annual practice time report may be immediately reinstated upon submission of the report so long as the attorney otherwise meets the other qualifications under this Plan.

3. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

G. Duties of Appointed Counsel

Appointed Counsel shall:

1. Notify the court within 72 hours of the receipt of appointment;
2. Make every reasonable effort to:

- a. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
- b. Interview the defendant as soon as practicable after the attorney is appointed;
 3. Represent the defendant until:
 - a. Charges are dismissed;
 - b. The defendant is acquitted;
 - c. Appeals are exhausted; or
 - d. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
 4. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
 5. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
 6. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
 7. Be prepared to try the case to conclusion either with or without a jury;
 8. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
 9. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
 10. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
 11. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
 12. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

Bexar County District Court Indigent Defense Plan

- a. Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described later in this subsection.
- b. The judges hereby establish the following public appointment lists from which counsel for indigent defendants shall be appointed:

1. A State Jail Felony list;
2. A Second and Third Degree Felony list;
3. A First Degree and 3(g) Felony list;
4. An Appellate list for State Jail and Third Degree Felonies;
5. An Appellate list for First, Second, and 3(g) Felonies;
6. A Post Conviction Writs/DNA Motions list.

c. Appointment of counsel to represent a defendant in a motion to revoke probation proceeding or a motion to adjudicate guilt proceeding shall be from any of the first three lists outlined above.

d. Twice a year, by a posted date in June and December, attorneys may apply to be included on one or more of the public appointment lists. Attorneys do not need to re-apply for lists they are already on, but may apply for additional lists if they have met the qualifications.

e. To be eligible for placement on each public appointment list, attorneys must meet the following minimum qualifications:

1. To qualify for any felony appointment, including appeals and post-conviction writs/DNA motions, an attorney must have completed ten hours of CLE in criminal law or procedure in the past year, including carryover from the previous year only. Also, a State Bar approved Legislative Update Seminar must be attended in any year the Legislature meets.

2. To qualify for the State Jail Felony list, an attorney must have at least one year prior experience in criminal litigation, and prior experience as lead or co-counsel in at least three criminal jury trials.

3. To qualify for the Second and Third Degree Felony list, an attorney must have at least two years prior experience in criminal litigation, and prior experience as trial counsel in two or more felony jury trials, as lead or co-counsel.

4. To qualify for the First Degree and 3(g) Felony list, an attorney must either be board certified in criminal law, OR

- have at least four years prior experience in criminal litigation; and
- have prior experience as trial counsel in four felony jury trials in the last five years, having served as lead counsel in at least two of those trials; and
- have completed twelve hours of CLE in criminal law or procedure in the last calendar year. Suggested courses are: The Criminal Law Institute (offered annually by the SABA), Advanced Criminal Law Course (offered in San Antonio once every four years), The Short Course (offered annually by the TCDLA). Other courses authorized by the State Bar of Texas in criminal law or procedure are acceptable.

5. To qualify for the Appellate list for State Jail and Third Degree Felonies, an attorney must have at least two years prior experience in criminal litigation and/or appellate experience, and at least one brief filed in a criminal or juvenile case.

6. To qualify for the Appellate list for First, Second, and 3(g) Felonies, an attorney must have at least three years prior experience in criminal litigation and/or appellate experience, and at least two briefs filed in a criminal or juvenile case.

7. To qualify for the Post Conviction Writs/DNA Motions list, an attorney must have at least two years of experience in criminal litigation and/or appellate experience, have completed at least four hours of post-conviction writ specific CLE (of which two hours may be self-study) in the previous two years, and have a combination of a total of at least six felony jury trials and appeals, with no fewer than two in either category.

8. An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

f. In addition to the above qualification requirements, in order to be placed on one or more of the felony and/or appellate appointments lists, and/or the post conviction writs/DNA motions list, a majority of the criminal district court judges must vote to approve the attorney's placement on each such list.

g. In lieu of the above qualification requirements, for felony, appellate, and post conviction writs/DNA motions appointments, in extraordinary circumstances, an attorney may be deemed qualified by a majority of the criminal district court judges.

h. If an attorney does not meet the qualifications to accept cases of a certain degree, but would like the judges to consider qualifying him/her for that list under the provision above, he/she can fill out a form called "Application for Exception to Qualifications to Receive Court Appointments" and turn that in with his/her application.

i. At least twice a year, following the submission of attorney applications for the public appointment lists by the posted dates in June and December, the criminal district court judges shall evaluate the new applicants for each list and the attorneys already on the lists. The judges will vote on the new applications and any new exceptions to the qualifications received. Attorneys approved by a majority of the votes of the judges will be placed on the public appointment lists.

j. An attorney may be removed from one or more of the public appointment lists by vote of a majority of the criminal district court judges for any of the following reasons:

1. Whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately handle the category of cases associated with that list. The judges may in their discretion remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

2. When an attorney intentionally or repeatedly violates the requirement that the attorney 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.

3. When, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

4. When, after a hearing, it is shown that the attorney requested and/or received any money or anything else of value for representing the accused, other than what is paid or anticipated to be paid to them by the county, without approval from the court in writing.

k. In certain extraordinary circumstances, such as incarceration or institutionalization, an attorney may be temporarily removed from the felony court appointed attorney lists.

l. If an attorney is arrested at any time while on the felony court appointed attorney lists, that attorney must report the arrest to Criminal District Courts Administration by the end of the first business day after arrest.

Dallas County Court Indigent Defense Plan

Mandatory

A. General Qualifications

1. An attorney must be a member in good standing with the State Bar of Texas.

2. An attorney must have a secretary, receptionist, local area code-answering service, or a local area code-regularly monitored answering machine.
3. An attorney must have a functioning fax machine and an e-mail address, both available 24 hours a day.
4. An attorney shall have on file with the Court Managers Office a completed sworn application approved by the Judge of the County Criminal Courts.
5. An attorney shall promptly notify, in writing, the Court Managers Office and each individual Court Coordinator of any changes to the information contained in the application for appointments.
6. An attorney shall promptly notify, in writing, the Court Manager of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments in representing indigent defendants.
7. An attorney shall annually file with the Court Managers Office each year a copy of his/her State Bar of Texas Continuing Legal Education annual reporting form which demonstrates the annual completion of at least six hours of criminal law continuing legal education AND at least three hours of Immigration continuing legal education. (at least one hour related to criminal law consequences). None of the nine hours of CLE may be self study, juvenile, civil or family. Your CLE report must be filed by January 15th of each year to remain eligible on the wheel or you must reapply the next quarter. Hours are counted by calendar year, not birth month.
8. An attorney must be licensed for at least one year before applying for the misdemeanor wheel.
9. An Attorney must either live in Dallas County or have an office in Dallas County.
10. An attorney shall meet any additional requirements that may be later imposed by the Judges of the County Criminal Courts trying misdemeanor cases.
11. Submit an Attorney Reporting form annually between September 30th and October 15th.

Pursuant to Article 26.04(j) of the Code of Criminal Procedure, I hereby swear and affirm that I will submit an Attorney Reporting Form to Dallas County, I understand this form is used to report all adult criminal cases that I have been appointed during a fiscal year period that begins on October 1 and ends on September 30. I understand that the statement is due no later than October 15th immediately following the close of each fiscal year. For example, if, during the fiscal year that begins on October 1, 2013 and ends on September 30, 2014, an attorney accepts appointments in Dallas County, he/she must submit separate practice-time statements to Dallas County by October 15, 2014.

porting form annually between September 30th and October 15th.

Pursuant to Article 26.04(j) of the Code of Criminal Procedure, I hereby swear and affirm that I will submit an Attorney Reporting Form to Dallas County, I understand this form is used to report all adult criminal cases that I have been appointed during a fiscal year period that begins on October 1 and ends on September 30. I understand that the statement is due no later than October 15th immediately

following the close of each fiscal year. The Attorney may complete the forms using this website <https://tidc.tamu.edu/attorneyreporting/>. For example, if, during the fiscal year that begins on October 1, 2013 and ends on September 30, 2014, an attorney accepts appointments in Dallas County, he/she must submit separate practice-time statements to Dallas County by October 15, 2014.

B. Experience

Licensed to practice law for at least one year and provide proof of participation in a law school criminal clinic; or attend either the Criminal Defense Lawyers Project Criminal Trial Advocacy Institute, (held at Sam Houston State University in Huntsville, in March each year) or The National Institute of Trial Advocacy Course, (held in Dallas at SMU every June). Participation in a criminal clinic must be within thirty (30) months of being placed on the misdemeanor wheel; or

Licensed to practice law and have been lead counsel in two (2) or more criminal jury trials class B or higher; or

Licensed to practice law and have sat co-counsel in 3 or more criminal jury trials in the last ten (10) years.

Licensed to practice law and are employed as a public defender, district, county, or city attorney.

If applying for appeals, you must have authored briefs on at least 3 appeals;

And, be of sound mind and good character.

C. Distribution of cases.

1. Appointments will be made from a rotating list of eligible attorneys.

2. The Court Appointed Attorney list will be updated quarterly. All necessary applications and information should be delivered to the Court Managers Office by the 4:00 PM on the following dates; March 1, June 1, September 1 and December 1 or the first Monday of that month if those dates fall on a week-end or holiday.

3. Court Appointed Attorneys are appointed to the defendant within 24 hours of the request. The Court Appointed Attorney shall remain on that case through disposition/appeal.

4. Each Attorney Appointments will be at 250 per year.

Attorney Reporting Requirements regarding their appointed counsel practice time are listed below and in an attached plan form.

Attorney Reporting Requirements Contained in Article 26.04, Code of Criminal Procedure

Pursuant to Article 26.04(j) of the Code of Criminal Procedure, I hereby swear and affirm that I will submit an Attorney Reporting Form to Dallas County, I understand this form is used to report all adult criminal cases that I have been appointed during a fiscal year period that begins on October 1 and ends on September 30. I understand that the statement is due no later than October 15th immediately following the close of each fiscal year. For example, if, during the fiscal year that begins on October 1, 2013 and ends on September 30, 2014, an attorney accepts appointments in Dallas County, he/she must submit separate practice-time statements to Dallas County by October 15, 2014

I understand that the statement submitted to Dallas County must describe (1) the percentage of an attorney's total practice time (time spent in legal practice in all jurisdictions) that was dedicated to work on trial and appeal appointments in adult criminal cases in Dallas County Criminal Courts during the fiscal year beginning on the preceding October 1.

I understand that the percentages reported in the Attorney Reporting Form submitted to Dallas County should not include time dedicated to work on appointments to cases (such as CPS cases and guardianship cases) that are not adult criminal cases and should not include time dedicated to federal criminal appointments.

I understand that I shall submit the Attorney Reporting Form to the Commission's electronic attorney reporting portal, on the attached Commission reporting form, or on any other physical or electronic form specified by the county that captures all of the information requested on the Commission form. Dallas County may require attorneys who accept appointments in the county to use a specific method to submit their Attorney Reporting Form.

TIDC recognizes that attorneys who accept criminal appointments use a variety of case management systems, and attorneys are not required to use any single methodology to complete the Attorney Reporting Form. However, the statement should provide percentages that are as accurate as possible given the attorney's chosen case management system.

The attached worksheet may help attorneys calculate the percentages that must be included in the Attorney Reporting Form submitted to Dallas County. Attorneys are not required to submit the worksheet to the Dallas County or TIDC.

I understand that an attorney who keep time records for all or a portion of their caseload may use those records to calculate their practice-time percentages or, in the case of partial records, to complete some of the lines on the worksheet. Time records will provide the most accurate method for calculating practice-time percentages.

I understand that attorneys who do not keep time records may consider using a case-counting methodology to calculate practice-time percentages. This methodology involves looking at the numbers and types of cases in an attorney's total caseload, and calculating practice time percentages based on the number of cases in different case type categories. An attorney may keep track of the number and types of different cases the attorney handles during an entire fiscal year, or may choose to base the calculation on the number of cases the attorney has open at a specific point in time.

For example, an attorney who is appointed to 50 adult criminal cases in Dallas County and is retained by 50 individual clients may calculate 50% of the attorney's practice time is dedicated to adult criminal appointments in Dallas County, if the appointed cases and retained cases are similar in complexity. The attorney may adjust the percentages as necessary to account for any significant differences in the degree of complexity of cases in each category.

Dallas County District Court Plan

3.0 In this section, the term "district court judges" refers to the judges of the criminal district courts and the district courts giving preference to criminal cases in Dallas County.

3.1 Attorneys requesting court appointments must submit an application on the approved application form to the district court judges. A majority (9) of the district court judges must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle cases corresponding to an appropriate level.

3.2 In order to qualify for placement on the master list, an attorney must reside in Dallas County or have his or her principal office in Dallas County. An attorney's principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice that is the listed work address recorded with the State Bar of Texas and is published on the State Bar of Texas website and does not consist of a post office box address.

3.3 To qualify for placement on the master list, an attorney may not be on the appointment list in more than one other county besides Dallas County.

3.4 The master list will be multi-level, with four trial levels: 1) 1st degree and non-death penalty capital cases; 2) 2nd degree; 3) 3rd degree; and 4) state jail and probation revocations. Under each level there will be a sub-level for multi-lingual lawyers.

3.5 Attorneys on the master list at a certain level may petition to advance to a higher level by submitting a new application. A majority (9) of the district court judges must vote to approve the change.

3.6 An attorney who does not receive sufficient votes to be placed on any level of the master list may reapply in ninety (90) days.

3.7 Separate lists will be maintained for appeals and writ appointments. Attorneys must submit the appropriate application to be placed on the appeal appointment list and the writ appointment list. A majority (9) of the district court judges must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle appeals and/or writs.

3.8 Requirements for attorneys qualifying at each level of the trial wheel will increase as the possible consequences to the defendant become more serious. Minimum requirements for trial and probation revocations are as follows:

- State Jail and Probation Revocations: Licensed for two (2) years and at least six (6) points on the application form
- Third Degree: Licensed for three (3) years and at least twelve (12) points on the application form
- Second Degree: Licensed for four (4) years and at least eighteen (18) points on the application form
- First Degree and Non-Death Penalty Capital Cases: Licensed for five (5) years and at least twenty-five (25) points on the application form

Minimum requirements for the appellate wheel are as follows:

- a. The applicant must have authored a minimum of eight (8) state court appellate briefs within the two-year period prior to the date of application;
- b. The applicant must have a minimum of twelve (12) hours of CLE pertaining to Texas criminal law or Texas criminal appellate law within the two-year period prior to the date of application;
- c. The applicant must submit copies of two complete state court appellate briefs in criminal cases (excluding *Anders* briefs) authored by the applicant and submitted to an appellate court within the five-year period prior to the date of application; and
- d. The applicant must list five appellate court judges or justices with knowledge of the applicant's abilities.

3.9 Unusual or exceptional circumstances demonstrating substantial involvement in criminal law may be substituted for trial or appellate experience on the application form. If claiming this exception, the attorney must provide a detailed explanation of the attorney's experience as an attachment to the application.

3.10 An attorney qualified for appointment to any felony level will automatically be qualified for all the levels below. Thus, an attorney on the highest level will be on the felony levels below and his or her name will come up in rotation on each level independently of all other levels and will not result in a forfeiture of position on any other level.

3.11 Attorneys will be randomly, not alphabetically, listed on each level of the wheel. Names on the initial wheel will be shuffled. Thereafter, additional names will be randomly inserted at each level of the wheel.

3.12 An attorney who is appointed from the wheel must either personally represent the client or withdraw. Cases will not be transferable or tradable.

3.13 Any attorney notified of an appointment who does not respond to the notifying court by 9:45 a.m. the following morning will be removed from that appointment and his or her name will go back to the bottom of the list for future appointments. Repeated failures to respond may be grounds for removal from the list.

3.14 Appointed counsel is to remain on the case until taken off by the Court. An attorney who withdraws from a case will lose the appointment and will not be restored to his or her former place in the rotation.

3.15 All attorneys on the master list must notify the Court Manager for the Criminal District Courts of any change of address or contact information. Failure to maintain accurate contact information with the Court Manager's Office may result in automatic removal from the appointment list.

3.16 To remain eligible for appointment an attorney must:

- a. Complete a minimum of twelve (12) hours of CLE pertaining to criminal law during each twelve (12) month reporting period;
- b. Attend all sessions of either the State Bar Advanced Criminal Law Course or the TDCLA Advanced Criminal Law Short Course once every two (2) years;
- c. Be currently certified in criminal law or appellate criminal law by the Texas Board of Legal Specialization; or
- d. Complete the applicable judicial continuing education hours.

3.17 Qualifying CLE may include teaching at an accredited CLE activity, or other CLE activities accredited under Section 4, Article XII of the State Bar rules, which may include online courses and credit for teaching or publishing criminal law materials.

3.18 Self-study hours, juvenile law, and general ethics courses may not be included in meeting the CLE requirements.

3.19 CLE hours completed during any reporting period in excess of the minimum required hours may be applied to the following reporting period's requirement. CLE hours may only be carried over for one year. CLE hours may only be applied to one reporting period.

3.20 The CLE reporting period shall be from January 1st to December 31st of each year.

3.21 Beginning January 1, 2018, each attorney on the master list must submit the Annual Attorney Recertification form approved by the district courts judges. The form must include, 1) proof that the attorney resides in Dallas County or has his or her principal office in Dallas County; 2) a list of all other counties in which the attorney is currently on a felony appointment list; and 3) proof that the attorney has met the CLE requirements during the reporting period. The Annual Attorney Recertification must be sworn to by the attorney.

3.22 The Annual Attorney Recertification form shall be turned into the Criminal District Court Manager's Office during the month of January each year and must be received by the Criminal District Court Manager's Office no later than January 31st of each year.

3.23 An attorney who fails to annually meet the qualifications for placement on the master list or fails to submit a sworn Annual Attorney Recertification form each January will be automatically removed from the master list.

3.24 An attorney may be removed from the master list or moved to a lower level of the wheel for reasons other than failure to comply with the CLE requirements by a majority vote (9) of the district court judges.

3.25 Any district court judge, for good cause, may raise an issue regarding representation by an attorney or attorney misconduct at a monthly judges meeting. Specific and timely allegations must form the basis of the complaint.

3.26 Upon motion of one district court judge, after being seconded by another district court judge, an attorney may be summoned before the district court judges during a regularly scheduled judges meeting to explain his/her handling of a case or cases. The attorney is not entitled to the representation of counsel at the meeting. Failure to appear without good cause will be considered against the attorney. An attorney who appears before the district court judges is subject to questioning by the district court judges.

3.27 If an attorney's presence is required, notice of the specific allegation of misconduct or issue must be sent to the investigated attorney in writing no less than two (2) weeks prior to a requested appearance before the district court judges. A majority (9) of the district court judges will determine whether good cause exists for removal or sanction.

3.28 The court coordinators for the district courts shall keep a list of attorneys who do not appear for an initial appointment or who habitually fail to reset cases. This list will be taken into consideration should an attorney's qualifications be under review by the district court judges. Failure to reset cases may be grounds for appointing new counsel on an individual, case-by-case, basis

3.29 Sanctions may consist of any of the following:

- a. Written reprimand signed by the Presiding Judge;
- b. Demotion to a lower level of the appointment wheel;
- c. Temporary suspension from the appointment wheel;
- d. Removal from the appointment wheel;
- e. Requiring additional CLE hours; or
- f. Working with a mentor.

3.30 An attorney shall be automatically removed from the master list for the following reasons:

- a. Conviction or deferred adjudication for any felony offense;

- b. Conviction or deferred adjudication for any crime of moral turpitude;
- c. Being under indictment or formally charged with a felony or crime of moral turpitude;
- d. Failure to meet the general qualifications for placement on the master list; or
- e. Any suspension from the practice of law by the State Bar except for administrative suspensions for failure to pay fees or dues and failure to comply with State Bar CLE requirements.

3.31 An attorney may be removed from the master list by a majority (9) vote of the district court judges for the following reasons:

- a. Failing to perform the attorney's duty owed the defendant;
- b. Failing to maintain compliance with each of the relevant appointment guidelines;
- c. A finding by a court that the attorney provided ineffective assistance of counsel;
- d. Intentional misrepresentation on the application for court appointments, a request for compensation, or the annual recertification; or
- e. Any other good cause at the discretion of the district court judges.

3.32 An attorney may be temporarily removed from the master list for the following reasons:

- a. Any suspension from the practice of law by the State Bar for failure to comply with CLE requirements or failure to pay dues or fees;
- b. Failing to comply with the CLE requirements outlined in Section 3.16 of this plan; or
- c. At the attorney's request

3.33 Subject to Section 3.36, an attorney who has been removed from the master list due to suspension by the State Bar for failure to comply with CLE requirements or failure to pay dues or fees shall be reinstated to the felony master list at the attorney's previous level upon providing proof of reinstatement from the State Bar.

3.34 Subject to Section 3.36, an attorney who has been removed from the master list for failure to comply with the CLE requirements outlined in Section 3.16 of this plan shall be reinstated to the master list at the attorney's previous level upon providing proof of completion of the required CLE.

3.35 Subject to Section 3.36, an attorney who has been removed from the master list at the attorney's request may be reinstated to the master list upon request and proof that the CLE requirements outlined in Section 3.16 have been met.

3.36 An attorney who has been removed from the master list for any reason listed in Section 3.32 who is not reinstated within one year (12 months) of removal must reapply for placement on the master list.

3.37 An attorney who has been removed from the master list by a majority (9) vote of the district court judges for any reason listed in Section 3.31 or who has been automatically removed from the felony master list for a reason listed in Section 3.30, may reapply for placement on the master list after one year (12 months) from the date of removal. An attorney who has been demoted to a lower level may reapply for a higher level after one year (12 months) from the date of demotion.

3.38 An attorney who notifies the Court Manager for the Criminal District Courts or the Judges of the Criminal District Courts that the attorney is unable to accept appointments for any reason shall be automatically removed from the wheel. The Attorney shall be reinstated to wheel upon notification by the attorney to the Court Manager for the Criminal District Courts that the attorney is able to accept appointments and upon proof that the attorney meets the CLE requirements set forth in Section 3.16. An attorney who is not reinstated within one year (12 months) of removal must reapply for placement on the master list.

3.39 An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice that was dedicated to work based on appointments accepted in Dallas County for adult criminal cases and juvenile delinquency cases for the prior twelve (12) months beginning on October 1st and ending on September 30th. The report must be submitted through the online form to the Texas Indigent Defense Commission.

Harris County Court Plan

24.5. Establishing Minimum Attorney Qualifications.

24.5.1. **Qualifications.** To be qualified, an attorney must submit a completed application, resume, recent photograph, and signed attorney acknowledgement form. An individual who has served at least 48 months as a district court or county court judge trying criminal cases as of December 31, 2018, shall be exempt from taking the certification exam and the point system, and shall be placed on the master list of attorneys approved to represent defendants charged with misdemeanors upon proper application. The attorney must also:

24.5.1.1. Have been licensed to practice law for at least one year;

24.5.1.2. Have accumulated a minimum of **10 points** according to the following scale, at least **2 points** of which are from cases tried to verdict as first chair counsel (the attorney shall list the point total in each area with the application):

24.5.1.2.1. **Two points** for each continuous 365-day period in the preceding 3 years as a practicing attorney (up to 3 periods with 5 points maximum);

24.5.1.2.2. **Two points** for each successfully completed intensive criminal law training program in the last 3-year period appearing on the courts' list of approved intensive training programs (see Appendix A) (up to 4 points maximum);

24.5.1.2.3. **One point** for each criminal case tried to a verdict in county or district court as first-chair counsel (list case styles and cause numbers) (up to 5 points maximum; at least 2 points required);

24.5.1.2.4. **One point** for each continuous 120-day period in the preceding 3 years as an intern or legal assistant working under the supervision of a Texas lawyer whose practice was devoted at least 80% to criminal law in county or district courts (up to 3 points maximum);

24.5.1.2.5. **One point** for each Texas State Bar approved CLE lecture given by the attorney, with accompanying written materials, on a criminal law topic (provide written materials and list CLE title, date, and location) (up to 2 points maximum);

24.5.1.2.6. **One point** for each CLE reporting period in the last 3 years in which the attorney attended at least 40 hours of CLE training related to criminal law (provide annual CLE printouts) (up to 2 points maximum);

24.5.1.2.7. **One point** for each law review article authored by the attorney and published by an ABA-accredited law school on a criminal law topic (attach article and citation) (up to 1 point maximum); and

24.5.1.2.8. **One-half point** for each criminal case tried to a verdict in county or district court as second-chair counsel (list case styles and cause numbers) (up to 5 points maximum). To claim credit in this subsection, the attorney must have been present during the entire trial, from jury selection through final verdict;

24.5.1.3. Demonstrate substantive knowledge of criminal law, criminal procedure, and evidentiary rules applicable to misdemeanor cases by scoring at least 75% on an open-book test written by judicial staff and members of the Public Defender's Office of Harris County, Texas (unless the attorney is board certified in criminal or criminal appellate law by the Texas Board of Legal Specialization, or unless the attorney is an Assistant Public Defender participating only in an article 15.17 proceeding before a Criminal Law Hearing Officer, in which case he or she is exempt from the exam requirement);

24.5.1.4. Maintain telephone and fax numbers, as well as a physical location (other than a public building) in which the attorney can conduct confidential meetings and discussions without compromising professionalism and the attorney-client privilege;

24.5.1.5. Have attended at least 10 hours of CLE related to criminal law in the year prior to filing an application (submit CLE verification);

- 24.5.1.6. Agree to attend at least 10 hours of CLE related to criminal law annually, including one hour of ethics, and annually submit an affidavit showing compliance with this CLE requirement;
 - 24.5.1.7. Agree to attend CLE programs as directed by the Presiding Judge of these courts;
 - 24.5.1.8. Agree to submit an affidavit showing compliance with the annual CLE requirements;
 - 24.5.1.9. Provide (and keep current) an email address to which the Office of County Court Management may send official notices and correspondence regarding the Plan, including, but not limited to, matters concerning CLE, changes to the Plan and eligibility requirements, notice of removal from the approved list, and other administrative matters;
 - 24.5.1.10. Consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;
 - 24.5.1.11. Maintain a demeanor which is professional and conducive to effective representation;
 - 24.5.1.12. Demonstrate effectiveness of advocacy skills including, but not limited to, such items as: voir dire; direct and cross examination; introduction of, objection to, and admissibility of evidence; argument; instructions; and recognition of appellate issues;
 - 24.5.1.13. Communicate effectively with the other parties involved in his cases. The attorney must make thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives;
 - 24.5.1.14. Appear in court punctually and keep the court apprised of his whereabouts;
 - 24.5.1.15. Be cognizant that the manner in which he or she interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the justice system contributes to the effective representation of his indigent clients;
 - 24.5.1.16. Be of sound mind;
 - 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); and
- 24.5.2. **Continuing Duties; Exceptions.** A qualified attorney that has not been removed from the list of qualified attorneys must fulfill the obligations, expectations, and agreements listed in Rule 24.5.1, except that the attorney need not annually:
- 24.5.2.1. Resubmit an application, resume, and photograph; or
 - 24.5.2.2. Retake the competency exam (see Rule 24.5.1.4).
- 24.5.3. **Obligation to Report Certain Occurrences.** A qualified attorney shall notify the presiding judge of these courts not later than 48 hours after any of the following events:
- 24.5.3.1. The attorney's arrest for any state or federal offense punishable by confinement;
 - 24.5.3.2. The attorney's placement on community supervision, diversion, or intervention;

- 24.5.3.3. Any judicial finding that the attorney provided ineffective assistance of counsel;
- 24.5.3.4. Disciplinary action by the State Bar of Texas against the attorney, including but not limited to any active or probated suspension; or
- 24.5.3.5. The attorney enters a plea of guilty or no contest to, or is found guilty of, an offense punishable by confinement.

24.5.4. Specialty Court Programs, Public Defender, Defense Specialists.^[5] These categories provide opportunities for lawyers to diversify their practices, to control the size of their caseloads, to choose the types of cases they handle, and to have access to adequate resources to properly defend their clients.

24.5.4.1. Special Mental health Caseload. An assistant Harris County Public Defender with significant previous experience and specialized training in representing mentally ill and intellectually disabled persons charged with a criminal offense, shall represent a defendant:

24.5.4.1.1. Identified by an algorithm composed of data approved by the judges covered by this Plan in consultation with the chief public defender, indicating a likelihood that mental illness and/or intellectual disability is/are a factor in the defendant's arrest;

24.5.4.1.2. Arrested at least three times during the twelve months prior to the current arrest, with a medical and social history suggesting that court ordered step-down therapy may reduce the probability of future arrests; or,

24.5.4.1.3. Following a finding by a court that the defendant is incompetent.

24.5.4.2. Mental Health Defense Specialist. Represents a defendant identified using the mental health algorithm; a defendant found incompetent; or a defendant manifesting signs of mental illness when the Public Defender's Office reaches its daily or annual case load cap. The attorney must:

24.5.4.2.1. Meet the general qualifications; and

24.5.4.2.2. Meet at least one of the following three requirements:

24.5.4.2.3. Has previous experience representing mentally ill offenders in Texas;

24.5.4.2.4. Possesses an undergraduate or graduate degree in social work or a related field; and/or

24.5.4.2.5. Attended the four hour Mental Health Defense Specialist seminar sponsored by the Harris County Public Defender's Office.

24.5.4.3. Appeals and Habeas Corpus. The Harris County Public Defender shall represent all persons appealing a judgment or order of these courts. If, because of a conflict, the public defender is unable to represent a defendant on appeal, a judge shall request the names of qualified appellate attorneys from which he or she shall select a name.

24.5.4.3.1. This category provides counsel in cases where the Public Defender's Office has a conflict. The attorney must:

24.5.4.3.1.1. Meet the general qualifications; and

24.5.4.3.1.2. Have been attorney of record in at least five direct appeals and the appeal of adverse rulings in at least two writs of habeas corpus.

24.5.4.4. Bilingual Attorney. Represents a defendant who does not speak or understand the English language. The attorney must:

24.5.4.4.1. Meet the general qualifications; and

24.5.4.4.2. Demonstrate a Level III proficiency in a foreign language administered by a nationally recognized entity or organization that teaches individuals to read, write, and speak foreign languages through on-site instruction in Harris, County, Texas.

24.5.4.5. Fugitive Defense Specialist. Represents a person who has been arrested in Harris County, Texas on a warrant from another state or another county in Texas. The attorney must:

24.5.4.5.1. Meet the general qualifications; and

24.5.4.5.2. Have previous experience representing fugitives, The State of Texas, or both, in hearings or writ applications before a judge or magistrate involving defendants held under authority of out-of-state or out-of-county warrants.

24.5.4.6. S.O.B.E.R Court Program Attorney. Represents a defendant in the S.O.B.E.R Court Specialty program for persons convicted of driving while intoxicated. The attorney must:

24.5.4.6.1. Meet the general qualifications;

24.5.4.6.2. Observe one staffing and review in each S.O.B.E.R. Court;

24.5.4.6.3. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;

24.5.4.6.4. Work under the direction of a S.O.B.E.R. Court mentor attorney, representing program participants for 60 days;

24.5.4.6.5. Agree to attend grant sponsored specialty court training; and

24.5.4.6.6. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

24.5.4.7. Veteran's Court Program Attorney. Represents a Veteran or current member of the United States armed forces, including a member of the Reserves, National Guard or State Guard, who has been accepted into Veterans Court Program. The attorney must:

24.5.4.7.1. Meet the general qualifications;

24.5.4.7.2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;

24.5.4.7.3. Observe three dockets (staffing and review);

24.5.4.7.4. Agree to attend grant-sponsored team training; and

24.5.4.7.5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

24.5.4.8. PROJECT SECOND CHANCE COURT PROGRAM ATTORNEY. Represents a defendant who is charged with prostitution, from the age of 17 years of age through the age of 25 years of age who has been accepted into the Project Second Chance Court program. The attorney must:

24.5.4.8.1. Meet the general qualifications;

24.5.4.8.2. Read selected articles on specialty courts, and the role of defense counsel in specialty courts;

24.5.4.8.3. Observe three dockets (staffing and review);

24.5.4.8.4. Agree to attend grant sponsored team training; and

24.5.4.8.5. Agree to an hourly fee for professional services, and which does not include training (except for representation of a client under a mentor); graduations, or other activities.

24.5.5. Deaf or Hearing Impaired. Represents a defendant who is deaf, or severely hearing impaired. The attorney must:

24.5.5.1. Meet the general qualifications;

24.5.5.2. Have a working knowledge of American Sign Language or other universally accepted sign language; and

24.5.5.3. Possess the willingness to work through a state-licensed interpreter for the deaf and hearing impaired.

24.6. Approval of Qualified Attorneys. Approval decisions are based on an assessment of the need of the Courts to add attorneys in various categories based on an analysis of current caseloads and projections for the future.

24.6.1. The judges will review qualified applications at their January, May, and September meetings, or as the needs of the courts require.

24.6.2. Majority Vote for Approval. A majority vote (nine votes) of the judges presiding over the County Criminal Courts at Law is necessary to approve an attorney's placement on the list of Attorneys Eligible for Appointment.

24.6.3. Administrative Meeting. Prior to the first appointment period, each approved attorney shall attend a two hour meeting with the Courts' staff attorney to review the F.D.A.M.S. and V.i.P.S. electronic assignment and payment procedures.

24.6.4. Annual Duty to Report CLE Compliance. The annual reporting period begins on November 1st and ends October 31st of the following year.

24.6.5. Form of Report. CLE hours shall be reported by submitting the State Bar of Texas Minimum Continuing Legal Education annual Verification Report or reports attached to an affidavit attesting to the truth and accuracy of the report(s).

24.6.6. Compliance. Each attorney is responsible for timely filing the attorney's CLE report and affidavit with the Office of County Court Management, 1201 Franklin Street, 7th Floor, Houston, Texas 77002.

24.7. VOLUNTARY AND INVOLUNTARY REMOVAL OF APPROVED ATTORNEY FROM THE LIST OF ELIGIBLE ATTORNEYS AND APPEAL.

24.7.1. Involuntary Removal. The judges, by majority vote, may remove an attorney from the approved list if they find the attorney:

24.7.1.1. no longer meets the qualifications under 24.5;

24.7.1.2. is not competent to properly represent indigent defendants in the County Criminal Courts at Law; or

24.7.1.3. intentionally or repeatedly fails to make every reasonable effort to contact a 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.

24.7.1.4 repeatedly declines judicial requests to represent indigent defendants through individual or term assignments.

24.7.2. Voluntary Removal. An attorney may request to be removed from the list of approved attorneys for a limited or indefinite period by making such request in writing, addressed to the Presiding Judge of the County Criminal Courts at Law.

24.7.3. Reinstatement. An attorney may request reinstatement in the same manner as a request for removal.

24.7.4. Appeal. An approved attorney may appeal his involuntary removal from the list of Attorneys Eligible for Appointment using the following procedure:

24.7.4.1. At any time within 30 days after an attorney receives notice of the attorney's removal from the list of Attorneys Eligible for Appointment, the attorney may give written notice of appeal to the Presiding Judge of the Harris County Criminal Courts at Law.

24.7.4.1.1. For purposes of Rule 24.7.4.1, there exists a rebuttable presumption that the attorney received notice of his removal from the list on the earlier of: (1) the date the Office of Court Management emailed notice to the email address on file for the attorney; or (2) one day after the Office of Court management mailed notice to the mailing address on file for the attorney.

24.7.4.2. Upon receipt of a notice of appeal, the Presiding Judge shall request that a member of the Office of County Court Management verify the accuracy of the vote and subsequent notice to the attorney.

24.7.4.3. If review indicates an error, the Presiding Judge shall direct a member of the Office of County Court Management to make the necessary corrections.

24.7.4.4. Within 14 days receipt of the attorney's notice of appeal, a member of the Office of County Court Management shall notify the applicant of his status as to the list of Attorneys eligible for Appointment.

24.8. Replacement of Approved counsel from a Case or Cases.

24.8.1. Attorney Request.

24.8.1.1. A lawyer may request permission to withdraw by filing a written motion with the court.

24.8.1.2. The judge presiding over the case may grant the motion for good cause only after finding that the client will not be prejudiced by the substitution.

24.8.1.3. After granting the motion, the judge presiding over the case shall immediately appoint another qualified attorney as provided by these rules.

24.8.2. For Cause. The judge presiding over the case may replace counsel after entering written findings in the record showing good cause and that no prejudice to the defendant will result from the removal, including without limitation:

24.8.2.1. current information about the defendant and charges indicating that counsel of different qualifications is appropriate for the defendant under these rules;

24.8.2.2. a violation of the attorney's professional responsibilities; or

24.8.2.3. a principled reason.[\[6\]](#)

24.8.2.4. A judge, upon learning an indigent defendant was previously represented by a mental health defense specialist, shall appoint that specialist to the new case. The court coordinator shall immediately notify the mental health defense specialist of the appointment.

24.8.3. Defendant Request. The appointing judge may substitute counsel if:

24.8.3.1. at the conclusion of a trial, the indigent defendant desires to prosecute a direct appeal and requests that the court appoint different counsel; or

24.8.3.2. the defendant shows good cause for replacing appointed counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

24.8.4. Replacement Procedure.

24.8.4.1. If, after assignment, an attorney is unable to serve, the presiding judge of the court shall attempt to fill the vacancy with another attorney assigned to the court, or to another court.

24.8.4.2. If another attorney from the list of attorneys assigned to these courts is unavailable, the presiding judge of the court shall fill the vacancy using FDAMS.

Harris County District Court Indigent Defense Plan

4.0 Lists of Qualified Attorneys.

4.1 Death Penalty Cases: Attorneys shall be assigned to death penalty cases at trial and on appeal from the list established by the Second Judicial Administrative Region selection committee in accordance with Tex. Code Crim. P. art. 26.052. Attorneys shall be assigned to writs of habeas corpus in death penalty cases in accordance with Tex. Code Crim. P. art. 11.071.

4.2 Master List: To be considered for placement on the Master List, each attorney must submit a completed application form and meet the following baseline criteria:

4.2.1 Be licensed and in good standing with the State Bar of Texas;

4.2.2 Have practiced in the area of criminal law for at least two (2) years;

4.2.3 Pass the certification test with a score of at least 75 except attorneys already board certified in criminal law or certified in criminal appellate law by the Texas Board of Legal Specialization are exempted from the local certification test;

4.2.4 Exhibit proficiency and commitment to providing quality representation to criminal defendants;

4.2.5 Demonstrate professionalism and reliability when providing representation to criminal defendants; and

4.2.6 Average ten (10) hours a year of continuing legal education courses or other training relating to criminal law.

4.2.6.1 Reporting of continuing legal education activity. An attorneys' annual reporting period shall run from October 31 to October 30. On or before October 31 of each year, attorneys must tender a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report to the Administrative Offices of the District Courts accompanied by an affidavit verifying that the report is true and correct. If there are errors in or additions to the Verification Report, the attorney may amend the report by submitting any necessary supporting documentation, affidavits, or appendices.

4.2.6.2 Attend Harris County indigent defense specific continuing legal education or other training related to Harris County procedures as required by the central appointment coordinator.

4.2.7 An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

4.3 Graduated Lists: Attorneys shall be placed on the Master List in graduated lists of First Degree, Second Degree and Post-Conviction:

4.3.1 First-Degree List: Lawyers on the first-degree list may represent defendants charged with first-degree felonies, any offense listed under Tex. Code Crim. Pro. Art. 42.12 § 3g, or any lesser offense. In addition to the baseline criteria, first-degree lawyers must have

4.3.1.1 practiced criminal law for at least five (5) years; and

4.3.1.2 tried to verdict at least eight (8) felony jury trials as lead counsel; and.

4.3.1.3 been accepted as competent to receive first-degree felony appointments by majority vote of the judges.

4.3.2 Second-Degree List: Lawyers on the second-degree list may represent defendants charged with second-degree felonies or any lesser offense. In addition to the baseline criteria, second-degree lawyers must have

4.3.2.1 practiced criminal law for at least four (4) years; and

4.3.2.2 have tried to verdict at least four (4) felony jury trials as lead counsel.

4.3.3 Third-Degree List: Lawyers on the third degree list may represent defendants charged with third-degree felonies, state jail felonies, motions to revoke probation, and motions to adjudicate guilt. In addition to the baseline criteria, third degree lawyers must have tried to conclusion at least three (3) criminal jury trials as lead counsel.

4.3.4 post-conviction List: Lawyers on the Post-Conviction List may be appointed for direct appeals and writs in non-capital cases. In addition to the baseline criteria, Post-Conviction lawyers must:

4.3.4.1 be board certified in criminal law by the Texas Board of Legal Specialization; or

4.3.4.2 have personally authored and filed at least five (5) criminal appellate briefs or post-conviction writs; or

4.3.4.3 may submit a writing sample for approval by a committee of the district judges.

4.4 The Harris County Public Defender's Office shall be placed on the Master List and on the Graduated Lists of First Degree, Second Degree, Third Degree and Post Conviction.

5.0 Compilation of Master List.

5.1 Attorney Application and Approval: Attorneys must complete and submit an application for inclusion on the Master List. Attorneys meeting the baseline criteria and approved by a majority of the judges will be placed on the Master List. An individual who has served at least 48 months as a district court judge trying criminal cases as of December 31, 2008, shall be exempt from taking the certification exam and shall be placed on the master list of attorneys approved to represent defendants charged with first degree felonies upon proper application.

5.2 Voting Will Be By Secret Ballot. Judges will vote "approved" or "not approved," or will designate a proxy vote as to each applicant. In casting his vote each judge shall also indicate whether an applicant is competent to be assigned to the requested appointment category or should be assigned to another category of appointments. If an applicant is not approved by majority vote for one category, but the majority of judges does approve him for other appointment categories, the applicant shall be approved for the lesser appointment category.

5.3 Majority Vote for Inclusion: A majority vote (12 votes) of "approved" is necessary for an attorney to be included on the Master List. Blank and tardy ballots will be deemed "not approved" votes.

5.4 Placement on Graduated Lists: Applicants approved by a majority of the judges for the Master List will be placed on the graduated lists according to adopted criteria. Judges will make appointments for indigent defendants only from the graduated lists of approved attorneys.

5.5 New Applications: The judges will consider new applications for the Master List after each certification test. The Central Appointment Coordinator will administer the certification test at least annually.

5.6 Annual Update: Attorneys shall report any material changes in their information before May 1 of each year. The Master List and graduated lists will be updated after each certification test.

5.7 Attorney Requests for Classification Review: Attorneys asking the board of judges to reconsider their classification on the graduated lists shall submit a new application. Upon review of the completed application, the board of judges may 1) upgrade applicant's classification; 2) downgrade applicant's classification; 3) leave applicant's classification unchanged, or 4) remove applicant from the Master List.

5.8 Appeals: An applicant may appeal his omission from or placement on the Master List. At any time within thirty (30) days after an applicant receives (by certified mail) notice of his placement or omission from the Master List, the applicant may give written notice of appeal to the Central Appointment Coordinator. Upon receipt of a notice of appeal, the Central Appointment coordinator shall verify the accuracy of the votes for the applicant and the accuracy of an attorney's omission from or placement on the Master List. If review of the votes and Master List indicate an error, the Central Appointment Coordinator shall make the necessary corrections or modifications. Within fourteen (14) days receipt of applicant's notice of appeal, the Central Appointment Coordinator shall notify the applicant of his status as to the Master List.

5.9 Reinstatement to Master List: Attorneys who previously have been placed on the Master List and subsequent Graduated Lists of First Degree, Second Degree, Third Degree and Post Conviction must reapply if the period of inactivity is five years or more.

5.9.1. Attorneys who have been inactive for less than one year may be reinstated by verifying with the Central Appointment Coordinator that their CLE requirements meet the minimum requirements of Section 4.2.6.

5.9.2. Attorneys who have been inactive more than one year but less than five years may be reinstated by verifying with the Central Appointment Coordinator that their CLE requirements meet the minimum requirements of Section 4.2.6. and approval from a committee of the district judges.

5.9.3. Attorneys who are board certified in criminal law or who have served as a criminal District Court judge may be reinstated upon approval by a committee of the district judges.

6.0 Removal from or Reclassification of Attorneys on the Master List. A majority of judges may remove from or reclassify an attorney on the Master List upon a finding of good cause. An attorney may be removed from the list if he intentionally or repeatedly does not fulfill his duties in representing indigent defendants. An attorney may also be removed from the list as outlined in 11.10 or reclassified as outlined in 5.7.

Tarrant County Court Indigent Defense Plan

IV. QUALIFICATIONS TO RECEIVE APPOINTMENTS

A critical review of the quality of representation actually provided by attorneys applying to be on the wheel is a factor in providing high quality representation to indigent defendants. In addition to the

objective criteria outlined herein, the statutes of the State of Texas provide for a subjective review of the qualifications of the attorneys applying for inclusion on the wheel. While recognizing that there is a need for an open attorney appointment wheel, the county criminal court judges in Tarrant County have an obligation to closely monitor those seeking approval to be on the wheel.

Attorneys who are approved to receive appointments pursuant to this system of qualifications must file an application for re-approval before the end of their birth month each year.

Unless the county criminal court judges in Tarrant County have removed the attorney for any cause, the attorney may reapply for the appointment wheel after the expiration of one year following an application that is not approved.

The establishment of this system of qualifications confers to no attorney a property interest in receiving misdemeanor court-appointments.

A. General Objective Qualifications to Receive Appointments

In order to be considered to receive appointments and, once approved, to continue to receive appointments to represent indigent misdemeanor defendants in Tarrant County, an attorney must:

- 1) be a member in good standing of the State Bar of Texas;
- 2) be familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, Texas Rules of Evidence, Texas Rules of Appellate Procedure, Texas Disciplinary Rules of Professional Conduct, Texas case law, and the local rules of practice for the criminal and appellate courts of Tarrant County, Texas;
- 3) consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;
- 4) consistently demonstrate professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;
- 5) be of sound mind, as well as good moral and ethical character;
- 6) not have been sanctioned by a court for failure to appear;
- 7) not have been sanctioned by a court for any type of unprofessional conduct or abusive conduct;
- 8) maintain his or her principal office in Tarrant County. (A principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice that is the listed work address recorded with the State Bar of Texas and published on the State Bar of Texas website, and does not consist of a post office box address);
- 9) maintain a secretary, receptionist, answering service, or daily monitored answering machine or voice mail system at his or her principal office;
- 10) maintain a current listing in the attorney's name in the Fort Worth telephone book, on-line directory, and/or directory assistance;
- 11) maintain a functioning fax machine on a dedicated telephone line and an e-mail address, both available twenty-four hours a day and monitored on a daily basis;
- 12) timely and promptly respond to telephone, e-mail, regular mail, or fax requests from each court and OAA;
- 13) maintain the capacity to access and review district attorney files on appointed cases that are available through the Tarrant County District Attorney's Office electronic case filing system;
- 14) file with the OAA either a complete, accurate sworn "Application for Misdemeanor Court-Appointments," including all required attachments; or a copy of a current application for Tarrant County Felony Court-Appointments including all required attachments, together with a sworn affidavit by the attorney attesting to the truthfulness of all representations in the felony application and that the attorney wishes to apply for misdemeanor court-appointments.

- 15) promptly notify the OAA in writing of any changes to the information contained in any filed Application for Misdemeanor Court-Appointments;
- 16) promptly notify the OAA in writing of any matter that may disqualify the attorney by law, regulation, rule, or this Plan from receiving appointments to represent indigent defendants;
- 17) annually file with the OAA, by the last day of the attorney's birth month, an accurate copy of his or her State Bar of Texas Minimum Continuing Legal Education Annual Verification Report and a sworn "Annual Attorney Reapplication" that he or she is in compliance with the general and specific qualifications required under this Plan;
- 18) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record.
- 19) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:
 - (A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;
 - (B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel.
 - (C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.
- 20) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the OAA 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 Tarrant County under Article 26.04 and Title 3, Family Code.
- 21) make every reasonable effort to contact the defendant no 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;
- 22) timely request discovery from the State pursuant to Texas Code of Criminal Procedure art. 39.14;
- 23) make every reasonable effort to timely review each and every disclosure made by the State pursuant to Texas Code of Criminal Procedure art. 39.14 or otherwise regarding any matter to which counsel is appointed;
- 25) promptly provide written notification of any court setting to each appointed client within three business days of receipt of such notice;
- 26) submit only a properly documented and accurate "Defense Claim for Fee Payment/Expense" form on an appointed case;
- 27) effective October 1, 2015, submit only electronic payment claim forms through Fair Indigent Defense Online, unless a special exception is made by the court
- 28) accept responsibility for all actions taken on each appointed case;
- 29) attend training on the use of Fair Indigent Defense Online regarding electronic payment claim forms; and
- 30) meet any additional requirement(s) that may be later imposed by the county criminal court judges with notice to the attorneys as an addendum to this Plan.

B. Specific Objective Qualifications for Misdemeanor Cases

In addition to the general qualifications outlined above, an attorney seeking misdemeanor court-appointments must possess the following qualifications:

1. licensed to practice in Texas for at least one year;
2. the completion of at least 15 hours of State Bar of Texas approved Minimum Continuing Legal Education (MCLE) in the area of criminal law within the preceding 12 months and in each MCLE reporting year thereafter; and
3. substantial and active participation within the last 10 years in five (5) criminal jury trials on the merits (not including competency trials), and 20 pleas of guilty, all in non-class C cases.

A current Application for Felony Court Appointments for State Jail or higher level appointments, as described in Section "IV.A.14." above, eliminates the need for the attorney to submit the Application for Misdemeanor Court-Appointments.

Current board certification in criminal law eliminates the need for the attorney to provide proof of active participation in trials and cases at the time of application.

Attorneys seeking appointment to represent defendants on appeal must meet all the requirements and be approved to be placed on the felony appellate wheel. There will only be one list of appellate attorneys for both felony and misdemeanor appointments.

C. Specific Objective Qualifications for Special Language Skills Cases:

In addition to the above general objective qualifications to receive appointments and specific objective qualifications for misdemeanor cases, any attorney applying for appointments for non-English speakers must annually attend a one hour CLE about special issues in representing non-English speaking clients approved by the county criminal court judges in Tarrant County. The required one hour CLE in special issues in representing non-English speaking clients is included in the MCLE requirements for approval and annually thereafter.

Tarrant County District Court Indigent Defense Plan

A critical review of the quality of representation actually provided by attorneys applying to be on the wheel is a factor in providing high quality representation to indigent defendants. In addition to the objective criteria outlined herein, the statutes of the State of Texas provide for a subjective review of the qualifications of the attorneys applying for inclusion on the wheel. While recognizing that there is a need for an open attorney appointment wheel, the judges of the district courts trying criminal cases in Tarrant County have an obligation to closely monitor those seeking approval to be on the wheel.

Attorneys who are approved to receive appointments pursuant to this system of qualifications must file an application for re-approval before the end of their birth month each year.

Attorneys seeking to recertify for felony court appointments must demonstrate that the attorney has had substantial and active participation within the last 5 years in 5 non-class C criminal jury trials on the merits, at least two of which must have been felony cases. Current board certification in criminal law eliminates the need for the attorney to provide proof of active participation in trials and cases at the time of application. An attorney who is not approved on reapplication to the appointment wheel for failure to demonstrate active participation in the required number of criminal jury trials may reapply upon providing proof that the attorney has completed the required number of criminal jury trials, so long as the attorney otherwise meets the qualifications under the Plan.

Unless the district court judges trying criminal cases have removed the attorney for any cause, the attorney may reapply for the appointment wheel after the expiration of one year following an application that is not approved. The establishment of this system of qualifications confers to no attorney a property interest in receiving felony court-appointments.

A. General Objective Qualifications to Receive Appointments

In order to be considered to receive appointments and, once approved, to continue to receive appointments to represent indigent felony defendants in Tarrant County, an attorney must:

- 1) be a member in good standing of the State Bar of Texas;
- 2) be familiar with the Texas Penal Code, the Texas Code of Criminal Procedure, Texas Rules of Evidence, Texas Rules of Appellate Procedure, Texas Disciplinary Rules of Professional Conduct, Texas case law, and the local rules of practice for the criminal and appellate courts of Tarrant County, Texas;
- 3) must complete the Annual Mental Health and Criminal Law training approved by the Tarrant County Criminal Courts. Different training that covers mental health issues in the criminal justice system may be substituted with approval of the Criminal District Judges.
- 4) consistently demonstrate commitment to providing effective assistance of counsel and quality representation to criminal defendants;
- 5) consistently demonstrate professionalism, proficiency, and reliability in representing criminal defendants, and in dealing with the courts and opposing counsel;
- 6) be of sound mind, as well as good moral and ethical character;
- 7) not have been sanctioned by a court for failure to appear;
- 8) not have been sanctioned by a court for any type of unprofessional conduct or abusive conduct;
- 9) maintain his or her principal office in Tarrant County. (A principal office is the commercial location where the attorney conducts the majority of his or her criminal law practice that is the listed work address recorded with the State Bar of Texas and published on the State Bar of Texas website, and does not consist of a post office box address);
- 10) maintain a secretary, receptionist, answering service, or daily monitored answering machine or voice mail system at his or her principal office;
- 11) maintain a current listing in the attorney's name in the Fort Worth telephone book, on-line directory, and/or directory assistance;
- 12) maintain a functioning fax machine on a dedicated telephone line and an e-mail address, both available twenty-four hours a day and monitored on a daily basis;
- 13) timely and promptly respond to telephone, e-mail, regular mail, or fax requests from each court and OAA;
- 14) maintain the capacity to access and review district attorney files on appointed cases that are available through the Tarrant County District Attorney's Office electronic case filing system;
- 14) file with the OAA a complete, accurate sworn "Application for Felony Court-Appointments," including all required attachments;
- 15) promptly notify the OAA in writing of any changes to the information contained in any filed Application for Felony Court-Appointments;
- 16) promptly notify the OAA in writing of any matter that may disqualify the attorney by law, regulation, rule, or this Plan from receiving appointments to represent indigent defendants;
- 17) promptly notify the Court or OAA of any case for which he or she is no longer qualified due to any punishment enhancement or change of offense level after appointment;

- 18) annually file with the OAA, by the last day of the attorney's birth month, an accurate copy of his or her State Bar of Texas Minimum Continuing Legal Education Annual Verification Report and a sworn "Annual Certification of Attorney" that he or she is in compliance with the general and specific qualifications required under this Plan;
- 19) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record.
- 20) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:
 - (A) advise the defendant of the defendant's right to file a motion for new trial and a notice of appeal;
 - (B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel.
 - (C) if replacement counsel is not appointed promptly and the defendant wishes to pursue an appeal, file a timely notice of appeal.
- 21) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the OAA 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 Tarrant County under Article 26.04 and Title 3, Family Code.
- 22) timely appear and represent each appointed client at each and every court date scheduled by the court according to the Differentiated Felony Case Management system. The only exceptions for a designated substitute attorney to appear for the appointed attorney will be for a docket appearance where previously approved by the trial court and with the approval of the defendant, and to consummate a previously negotiated case settlement with the approval of the trial court and the defendant;
- 23) make every reasonable effort to contact the defendant no 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;
- 24) timely request discovery from the State pursuant to Texas Code of Criminal Procedure art. 39.14;
- 25) make every reasonable effort to timely review each and every disclosure made by the State pursuant to Texas Code of Criminal Procedure art. 39.14 or otherwise regarding any matter to which counsel is appointed;
- 26) promptly provide written notification of any court setting to each appointed client within three business days of receipt of such notice;
- 27) submit only a properly documented and accurate "Defense Claim for Fee Payment/Expense" form or submit to the court via the Tarrant County electronic voucher program on an appointed case;
- 28) accept responsibility for all actions taken on each appointed case; and
- 29) meet any additional requirement(s) that may be later imposed by the district court judges hearing felony cases with notice to the attorneys as an addendum to this Plan.

B. Specific Objective Qualifications for Degrees of Felony Cases

In addition to the general qualifications outlined above, an attorney seeking felony court-appointments must possess the following qualifications. Current board certification in criminal law eliminates the need for the attorney to provide proof of active participation in trials and cases at the time of application.

State Jail Felony and Extradition Cases: licensed to practice in Texas for at least one year, the

completion of at least fifteen hours of State Bar of Texas approved Minimum Continuing Legal Education (MCLE) in the area of criminal law within the preceding twelve months and in each MCLE reporting year thereafter, and substantial and active participation within the last ten years in five criminal jury trials on the merits, and twenty pleas of guilty or five contested probation revocations, all in non-class C cases.

Second and Third-Degree Felony and Motion to Revoke or Adjudicate Community Supervision Cases: must possess the qualifications necessary to receive state jail felony appointments and be licensed to practice in Texas for at least two years, have completed at least twenty hours of approved MCLE in the area of criminal law in the preceding twelve months and in each MCLE reporting year thereafter, and have substantial and active participation within the last ten years in ten non-class C criminal jury trials on the merits, at least two of which must have been felony cases.

First-Degree Felony Cases: must possess the qualifications necessary to receive second and third-degree felony appointments and be licensed to practice in Texas for at least three years, have completed at least twenty hours of approved MCLE in the area of criminal law in the preceding twelve months as well as in each MCLE reporting year thereafter, and have substantial and active participation in ten felony criminal jury trials on the merits within the last ten years; or be board certified in criminal law by the Texas Board of Legal Specialization.

Appeals: licensed to practice in Texas for at least three years, completion of at least twenty hours of approved MCLE in the area of criminal law in the preceding twelve months and in each MCLE reporting year thereafter, and must have briefed and prosecuted five separate criminal appeals within the last five years; or must be board certified in criminal law or appellate law by the Texas Board of Legal Specialization. If the defendant states on the record that he or she wishes for the trial attorney to prosecute the appeal, and the trial attorney agrees to prosecute the appeal, the trial court may appoint the trial attorney to represent the defendant on appeal.

Post-Judgment Writs and Post-Conviction DNA Motions: licensed to practice in Texas for at least three years, completion of at least twenty hours of approved MCLE in the area of criminal law in the preceding twelve months and in each MCLE reporting year thereafter, and must have briefed and prosecuted five separate criminal appeals within the last five years; or must be board certified in criminal law or appellate law by the Texas Board of Legal Specialization. In addition, must complete the Annual Post-Conviction Writs and DNA training approved by the Tarrant County Criminal Courts. Different training that covers forensic evidence, specifically, DNA, may be substituted with approval of the Criminal District Judges.

Qualification for appointments to offense by felony wheel is based on the punishment level of the offense after any enhancements or filing changes.

C. Specific Objective Qualifications for Special Language Skills Cases:

In addition to the above general objective qualifications to receive appointments and specific objective qualifications for degrees of felony cases, any attorney applying for appointments for non-English speakers must annually attend a one hour CLE about special issues in representing non-English speaking clients approved by the judges of the district courts trying criminal cases in Tarrant County. The required one hour CLE in special issues in representing non-English speaking clients is included in the MCLE requirements for approval and annually thereafter.

Travis County District & Court Indigent Defense Plan

For Managed Assigned Counsel - The Program Administrator may establish additional criteria to determine which attorneys are qualified to represent persons charged with class A and B misdemeanors, 1st, 2nd, 3rd degree and state jail felonies as well as appeals. The qualifications adopted by the Program Administrator shall maintain or exceed the standards that are currently set forth below:

A. General Minimal Qualifications for CAPDS Attorney Panels

The following standards apply to each attorney who applies to be on the appointment list and wants to remain on that list:

1. An attorney must have on file with the Program Administrator a completed and sworn application, which is approved by the Review Committee. Attorneys must ensure all information on their application is correct and current by submission of an electronic oath or by an oath before a notary.
2. An attorney must be a licensed practicing attorney and a member in good standing with the State Bar of Texas.
3. An attorney must either live in Travis County, or live in an adjoining county and maintain an office within Travis County.
4. An attorney must attend any CLE course required by the Program Administrator. The program administrator will adopt a minimum number of CLE hours meeting or exceeding 10 hours in the area of criminal law and procedure each year plus one hour of ethics relating to the practice of criminal law. All attorneys on the appointment list must file a CLE report with the Program Administrator each year attesting to completion of this required CLE.
5. An attorney must have a secretary, receptionist, answering service, or a cell phone with texting capabilities. An attorney must have an active e-mail account to receive court appointments and notices regarding procedural changes. An attorney must register a phone number consistent with the requirement above with the Travis County Sheriff to receive calls from incarcerated clients. Attorneys are encouraged to enable the use of video-conferencing. In addition, an attorney must respond promptly to a phone call or text from the court or from the Program Administrator.
6. An attorney shall notify the Program Administrator promptly, in writing, of any matter that would disqualify the attorney by law, regulation, and rule or under these guidelines from receiving appointments to represent indigent defendants.
7. After approval by the Review Committee, attorneys must attend a general orientation conference regarding the operation of the appointment process and first setting procedures.
8. Pursuant to TCCP Article 26.04(j)(4), an attorney shall submit by October 15th of each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

9. An attorney must meet other standards adopted by the Program Administrator that do not fall below the standards set forth in this Plan.

B. Minimum Qualifications for CAPDS Misdemeanor Attorney Panels

1. Must meet the General Minimal Qualifications.
2. Must have a minimum of one-year work experience in practicing criminal law.
3. The evaluation of experience and competency is done when the applicant applies to be on the appointment list and on a periodic basis thereafter. Factors to be considered are:
 - a) Competence, diligence, and skill
 - b) Years actively engaged in the practice of criminal law
 - c) Certification as a criminal law specialist
 - d) Attendance at advanced criminal law courses
 - e) Any other special skills
4. Must have at least the experience of being lead counsel in 2 misdemeanor jury trials. Experience as 2nd chair in a felony case may substitute for 1 misdemeanor trial. The styles and cause numbers of these cases should be listed in the attorney's application.
5. Alternatively, attorneys will be qualified for the misdemeanor panel after successful completion of the Capital Area Private Defender Service mentoring program. Attorneys may be assigned misdemeanor cases while in the mentorship program.
6. Must have prior appellate experience to be assigned appeals.
7. Attorneys on the misdemeanor appointment list may qualify for one or more of the following panels based upon experience and competency:
 - a) Misdemeanor Appointment Panel
 - b) Misdemeanor Mental Health Appointment Panel
 - c) Misdemeanor Appeal Appointments will be made from the Felony Appellate B Appointment Panel.
8. An attorney must meet other experience and competency requirements as deemed appropriate by the Program Administrator that do not fall below the standards set forth in this Plan.

C. Minimum Qualifications for CAPDS Mental Health Attorney Panel

The following standards apply to each attorney who is appointed to represent a defendant on the specialized mental health dockets accused of a criminal offense.

1. An attorney must meet the general qualifications.

2. An attorney applying for mental health court appointments must have served as a prosecutor in a county or district attorney's office for at least two years or have practiced criminal defense law on a regular basis for a minimum of two years.
3. The evaluation of experience and competency is done when the applicant applies to be on the appointment list and on a periodic basis thereafter. Factors to be considered are:
 - a) Competence, diligence, and skill
 - b) Years actively engaged in the practice of criminal law
 - c) Certification as a criminal law specialist
 - d) Attendance at advanced criminal law courses
 - e) Any other special skills
4. An attorney must have been lead counsel in at least 3 mental health cases (whether misdemeanor or felony) with at least one of the following issues presented: competency, sanity or court ordered mental health treatment. The styles and cause numbers of these cases must be listed in the appointment application.
5. The Program Administrator will adopt minimum training standards in the area of mental health each year. An attorney must have received 3 hours of CLE in mental health criminal issues or received training within 3 months of placement on the mental health appointment list.
6. An attorney must be knowledgeable concerning criminal law related to defendants with mental health issues and the Texas Mental Health Code.
7. An attorney applying for the misdemeanor mental health court appointment list must meet requirements for placement on the misdemeanor list.
8. An attorney applying for the felony mental health court appointment list must meet requirements for placement on the Category B felony list.
9. An attorney must meet other experience, training, and competency requirements as deemed appropriate by the Program Administrator that do not fall below the standards set forth in this Plan.

D. Minimum Qualifications for Felony CAPDS Attorney Panel

The following standards apply to each attorney who is appointed to represent a defendant accused of a felony.

1. An attorney must meet the general qualifications.
2. An attorney must have served as a prosecutor in a county or district attorney's office for at least two years or have practiced criminal defense law on a regular basis for a minimum of two years.

3. An attorney must have been lead counsel in at least 3 misdemeanor jury trials or first or second chair in at least two felony jury trials. The styles and cause numbers of these cases must be listed in attorney's application.

4. Attorneys on the felony appointment list may qualify for one or more of the following panels based upon experience and competency:

- a) Felony A Appointment Panel
- b) Felony B Appointment Panel
- c) Felony C Appointment Panel
- d) Felony Mental Health Appointment Panel
- e) Felony Appellate A Panel
- f) Felony Appellate B Panel is also utilized to appoint misdemeanor appeals.

5. The evaluation of experience and competency is done when the applicant applies to be on the appointment list and on a periodic basis thereafter. Factors to be considered are:

- a) Competence, diligence, and skill
- b) Years actively engaged in the practice of criminal law
- c) Certification as a criminal law specialist
- d) Attendance at advanced criminal law courses
- e) Any other special skills

6. Other experience and competency as deemed appropriate by the Program Administrator that do not fall below the standards set forth in this Plan

7. Alternatively, attorneys may qualify for a felony panel after successful completion of the Capital Area Private Defender Service felony mentoring program. While in the mentoring program attorneys may receive felony cases with the assistance of their mentor attorney and at the direction of the Program Administrator. Before admittance to any panel through the felony mentorship program, the felony mentoring program must be approved by the Travis County District Court Judges.

E. Types of Felony Panels:

1. Capital Cases: Attorneys will qualify and receive appointments pursuant to TCCP Article 26.052 and are subject to the Third Judicial Region's Capital Attorney Selection Committee's rules and procedures.

2. A Panel: Attorneys must have significant experience with all phases of a criminal practice including aggravated and first degree felony jury trials as lead counsel; very knowledgeable concerning criminal law and procedure, and capable trial attorney. Attorneys must meet general qualifications and have completed, as lead counsel, at least two first degree felony jury trials to be considered for this panel.

3. B Panel: Attorneys must have experience trying misdemeanor and some felony trials to a jury and before the court and second-chairing serious felony cases; experience trying other contested matters such as felony pre-trials and probation revocations; capable and knowledgeable but lacking experience in serious/aggravated felony cases. Attorneys must meet general qualifications and have completed, as lead counsel, at least one felony jury trial.

4. C Panel: Knowledgeable concerning criminal law and procedure and possessing trial skills but lacking significant felony trial experience, some jury trial experience in misdemeanors and, at least as second chair, in felonies.

F. Minimum Qualifications of Appellate Attorneys

The following standards apply to each attorney who is appointed to represent a defendant in an appeal.

1. Appellate A Panel: Attorneys placed on this list must have prior experience in felony level appellate work. At least two prior felony appellate briefs, along with any other requested data shall be submitted for review. The brief submission requirement contemplates the submission of a fully developed brief. An Anders brief alone will NOT satisfy the brief submission requirement. The complexity of the appellate work done will be a factor in determining eligibility and placement on the A level appellate list.

2. Appellate B Panel: Attorneys placed on this list must have experience in appellate work at the misdemeanor, class A or B levels. At the time of application, a brief evidencing prior appellate experience shall be submitted for review with any other relevant information.

3. Alternatively, attorneys may qualify for each appellate panel after successful completion of the Capital Area Private Defender Service mentoring program. While in the mentoring program attorneys may receive appellate cases with the assistance of their mentor attorney and at the direction of the Program Administrator. Before admittance to any panel through the mentorship program, the mentoring program must be approved by the Travis County District Court judges.

G. Determining Qualification

1. The Program Administrator through its Review Committee will determine the appropriate panel placement for each attorney.

H. Duties of Newly Appointed Attorneys

1. An attorney is notified of an appointment by e-mail. The attorney shall, within three working days of receiving notice of appointment, enter into the Assignment Management Portal (“AMP”), an internet based application, an acknowledgment of the appointment and a confirmation that the attorney made a reasonable effort to contact the defendant by the end of the first working day after the date of the appointment. Reasonable effort includes letter, fax, phone, videoconference, or personal visit. Text messages alone are not considered a reasonable effort.
2. In felony cases, court appointed attorneys must visit all appointed clients incarcerated at the Travis County jail in person (or utilize videoconferencing) at the earliest possible time and that initial visit shall not be later than ten days from notification of assignment. This visit shall be noted in AMP by the attorney within three working days.
3. In misdemeanor cases, court appointed attorneys must visit all appointed clients incarcerated at the Travis County jail in person (or utilize videoconferencing) at the earliest possible time and that initial visit shall not be later than five days from notification of assignment. This visit must be noted in AMP by the attorney within three working days.
4. Additionally, duties of assigned counsel shall include:
 - a) Make every reasonable effort to:
 - (1) Contact the client by the end of the first working day after the date on which the attorney is appointed; and
 - (2) Interview the client as soon as practicable after the attorney is appointed, but not later than the requirements mandated by this plan;
 - b) Represent the client until:
 - (1) Charges are dismissed;
 - (2) The client is acquitted;
 - (3) Appeals are exhausted; or
 - (4) The attorney is relieved of his duties by the court or Program Administrator. Program Administrator may relieve an attorney with good cause if the case is not on the jury docket. If the case is on the jury docket, the Judge may relieve an attorney.
 - c) Where appropriate, an attorney has an obligation to secure release of the client through conditions most favorable to the client.
 - d) Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the client;
 - e) Brief the law of the case, file appropriate motions, and be prepared to present any legal defense(s) that may be reasonably and arguably available to the client;
 - f) Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;

- g) Be prepared to try the case to conclusion either with or without a jury;
- h) Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
- i) Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case, preferably by in person visits;
- j) Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case.
- k) Perform the attorney's duty owed to the client in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics; and
- l) Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

I. Suspension or Removal of Attorney from Appointment List and Readmission to List

- 1. General Competence/Review by Program Administrator.
 - a) Appointed attorneys are reviewed annually by the Program Administrator through its Review Committee. The judges shall submit an annual evaluation of all appointed attorneys to the Review Committee. These evaluations will be used in the Review Committee's assessment of each attorney's performance. The District Judges will evaluate the felony list attorneys and the County Court at Law Judges will evaluate the misdemeanor list attorneys. Each judge will evaluate each attorney's performance and indicate whether the attorney: exceeds expectations, meets expectations, or is below expectations.
 - b) General Criteria
 - (1) Efficiency:
 - (a) Punctuality-Court appearances, motions, briefs, etc.
 - (b) Preparation in all areas
 - (c) Efficient use of court time
 - (2) Knowledge:
 - (a) Knowledge of individual court's rules and procedures
 - (b) Knowledge of Criminal Law
 - (c) Knowledge of Criminal Procedures
 - (d) Knowledge of probation programs, sentencing options, etc.
 - (3) Skill:

(a) Ability to communicate and conduct business with Judges, court staff, and district/county attorney in a civil and effective manner

(b) Ability to deal effectively with clients

(c) Ability to present legal arguments to court

(d) Ability to examine witnesses, present objections and perform jury trial skills.

(4) Ethics:

(a) Follows rules of professional conduct

(b) Honesty in dealings with court, other attorneys, staff, and clients

c) TCCA will assist in compiling the judicial evaluations and will forward the reviews to the Program Administrator. At the judges' discretion judicial evaluations may be anonymous. An attorney who receives at least two "below expectations" ratings from the judges will be presented to the Review Committee for review. A majority of the Review Committee shall vote to take one of the following actions:

(1) remove the attorney from the appointments list; or

(2) communicate observations and concerns through the Review Committee Chairman or the CAPDS Director on behalf of the body of judges to the attorney; or

(3) place the attorney on a lower list (felony appointments only); or

(4) place the attorney on probation for a specific period.

d) Terms and period of a probation term will be defined and communicated by the Program Administrator to the attorney. Attorneys placed on probation, may re-apply at the expiration of the probationary period, and the Review Committee will re-evaluate the attorney's performance. A majority of the Review Committee shall vote to either:

(1) remove the attorney from probation; or

(2) suspend the attorney from the list for a longer period; or

(3) place the attorney on a lower list (felony appointments only)

e) If the Review Committee votes to impose a sanction, the Program Administrator shall communicate the attorney's status and any other information relevant thereto as provided by the Review Committee.

f) In the event an attorney is incapacitated physically, mentally, or otherwise, in such a way as to call into question his/her ability to provide adequate representation, the attorney's level of proficiency may be reviewed by the Program Administrator through its Review Committee.

(a) The Review Committee may vote to reduce the attorney's classification to a lower level or remove the attorney from the list. A majority vote is required to remove or reclassify an attorney. The notice for an attorney to meet with the Program Administrator shall generally inform the attorney of the areas of deficiencies.

(b) A mentor may be appointed by the Program Administrator and/or Review Committee from a list of mentors which are approved by the Program Administrator.

(c) If an attorney is removed from the list or reclassified to a lower level, the Program Administrator shall communicate the attorney's status and any other information relevant thereto as provided by the Review Committee.

g) If an attorney is held to have rendered ineffective assistance of counsel by a court of record, and all appeals from said holding have been exhausted, the Program Administrator may remove the attorney from the appointment list for a minimum of one year. The attorney may reapply for the appointment lists at the end of the probationary period. If an attorney is removed from the list due to this provision, Program Administrator shall inform the attorney of the specific period of removal upon the rendering of the final judgment in the case.

h) The Program Administrator shall have the authority to limit the number of attorneys on the appointments list, at all levels, to maintain the integrity of the process, insure adequate representation of all indigent defendants, and to comply with all requisite legal standards designed to insure appropriate and competent representation of all defendants inclusive of all ABA standards.

i) All unexcused absences from court and failures to visit clients in a timely fashion should be reported to the Program Administrator so the office can maintain a cumulative record for all district and county courts at law. When the Program Administrator observes a recurring problem with an attorney it should be brought to the Review Committee's attention at the earliest appropriate time. The Review Committee will take appropriate action, to include written warning or suspension under these rules and report the action taken to the criminal court judges within weeks of said action.

j) The Program Administrator shall have the authority to adopt other standards and review procedures as the Program Administrator deems necessary that do not fall below the standards set forth in this Plan.

2. Specific Incidents of Misconduct Observed by or Reported to a Judge - If a judge experiences a specific problem with an attorney such as failure to attend court in a punctual manner, failure to timely visit clients, or other unethical or improper conduct, the judge may request an investigation by the Program Administrator.

a) If the matter is not resolved to the judge's satisfaction or the judge determines that the nature or circumstances of the conduct is sufficiently serious, the judge may request that Program Administrator immediately suspend the attorney from the appointment list.

b) The Program Administrator shall suspend the attorney and immediately notify him/her of said suspension. The notice shall further inform the attorney of the grounds for suspension and that the attorney has 7 days from date of notice to file a written response with the Program Administrator.

c) The Program Administrator shall circulate any response to all Review Committee Members and the suspension shall be voted on by the Review Committee at its next regular meeting. The judges will make a recommendation to the Program Administrator. Three or more votes ratify the suspension, which shall remain in effect until a majority of the Review Committee votes to return the attorney to the list.

3. Specific Incidents of Misconduct Observed by Program Administrator - If the Program Administrator becomes aware of actions by assigned counsel that require review by the Review Committee, the Executive Director may suspend an attorney for up to seven days and shall refer the case to the Review Committee. If the Review Committee does not have a regularly scheduled meeting within seven days, the Executive Director may renew the period of suspension for an additional seven days.

4. Attorney Sanctions Pursuant to the Texas Rules of Disciplinary Procedure - Disciplinary sanctions imposed pursuant to the Texas Rules of Disciplinary Procedure may constitute grounds for suspension or removal from the appointment list.

a) If an attorney receives a disciplinary sanction pursuant to the Texas Rules of Disciplinary Procedure, other than a private reprimand, the attorney shall provide to Program Administrator a copy of the order imposing sanction within 30 days of the said order.

b) An attorney may provide a written supplement of the disciplinary sanction when providing the order imposing sanctions.

c) Program Administrator shall circulate the order imposing sanctions and the written supplement to the review committee and the judges. The vote of a majority the Review Committee is required to suspend or remove the attorney from the appointment list.

d) Failure to provide a copy of the order imposing a disciplinary sanction pursuant to the Texas Rules of Disciplinary Procedure to Program Administrator within 30 days of the entry of said order may constitute independent grounds for removal from the appointment list.

5. Readmission to List - An attorney suspended from the list may reapply after 1 year. The new application may contain any information the attorney deems relevant to readmission. The request should be submitted in writing to the Project Administrator. A majority vote of the Review Committee is required to reinstate an attorney.

6. Appellate Issues - Late Briefs

a) An appellate attorney who receives notice from an appellate court that the deadline for filing a brief has not been met, shall immediately notify Program Administrator. The attorney shall be temporarily suspended from the appellate appointment list until the appellate brief has been filed. Once it has been filed with the appropriate court, a written or electronic copy of the brief and proof of filing must be provided to Program Administrator and to the presiding judge of the court wherein the case originated.

b) An appellate attorney who receives an order to show cause why he/she should not be held in contempt for failure to timely file a brief, or the appeal is abated to determine whether the defendant still wishes to pursue the appeal after appellate counsel has failed to respond to notice from an appellate court that his brief is overdue, shall be permanently removed from the appellate appointment lists. An attorney so removed may apply for immediate reinstatement to the appellate appointment list by submitting proof of exceptional circumstances which reasonably prevented the attorney from responding to the notice of the brief being overdue. A majority vote of the Review Committee is required for such immediate reinstatement. Alternatively, the attorney may re-apply for the appellate appointment list at the next open application period, and include a statement of steps the attorney has taken to prevent a future recurrence of failure to timely file a brief.

c) These rules apply to all appeals by attorneys on the appointment list, without regard to whether the subject case is being handled by appointment or otherwise. A judge who receives notice of the above facts will notify the Program Administrator immediately.

7. Maximum Caseload Limits

a) Felony Caseload Limits. An attorney who has a pending felony caseload of 90 cases or more shall be suspended from all future felony appointments until the attorney reduces his caseload to less than 85 felony cases.

b) Misdemeanor Caseload Limits. An attorney who has a pending misdemeanor caseload of 100 cases or more shall be suspended from all future misdemeanor appointments until the attorney reduces his caseload to less than 95 misdemeanor cases.

c) The Program Administrator may adopt additional standards that meet or exceed this standard.

8. Temporary Inactive Status

a) Temporary Inactive Status During Death Penalty Trials. Attorneys who are court appointed to represent defendants charged with capital murder in which the death penalty is sought will be temporarily inactivated on the felony appointment list starting 30 days before the beginning of voir dire and lasting for the duration of the case. The Program Administrator may adopt additional standards that meet or exceed this standard.

b) Temporary Inactive Status during Voluntary Leave. An attorney may request to be inactive for up to 90 days by submitting a written request to the Program Administrator. If an attorney has been inactive on the court appointment list for more than 90 days, he/she must submit a written request to reinstate along with proof of CLE compliance to the Program Administrator. The Program Administrator will decide if the attorney will be reinstated.

9. Attorneys on Appointment List(s) Charged with Criminal Offenses

a) An attorney shall be automatically suspended from all court appointment lists if he/she is convicted of or receives a deferred adjudication sentence for any felony or crime of moral turpitude.

b) An attorney shall be automatically suspended from the misdemeanor appointment list if he/she is charged with a class A or B misdemeanor offense which is being prosecuted by the Travis County Attorney's Office and from the felony appointment list if he/she is charged with a felony offense which is being prosecuted by the Travis County District Attorney's Office.

c) An attorney may be suspended from the appointment list if he/she is under indictment or other formal criminal charge for any offense if a majority of the Review Committee determines that the attorney's ability to fully and effectively represent his/her appointed clients is compromised or otherwise adversely affected by the pending charge.

d) Within seven (7) days of any suspension under this section the attorney shall notify his/her court appointed clients of the suspension and that the client may petition the Program Administrator or the trial court for the appointment of another attorney.

e) An attorney who is charged with a crime and released on a bond to be supervised by the Office of Pretrial Services must obtain the services of another attorney to deal with any matters involving his clients and the Office of Pretrial Services.

f) An attorney shall notify the Program Administrator in writing within 2 business days after being arrested for and/or charged with a class A or B misdemeanor or any felony offense.

g) An attorney may seek reinstatement to the appointment list when:

(1) the charges have been dismissed;

(2) the charges have not resulted in an indictment or other formal accusation within sixty days of arrest; or,

(3) any sentence or probation is completed.

10. Attorneys on List Accepting Remuneration from Appointed Clients

- a) An attorney appointed to represent a client is not allowed to solicit or accept remuneration from the client on the appointed case(s) unless the Program Administrator determines that there has been a change in status and approves such payment.
- b) If the client is charged with new offenses or is in need of other legal services during the pendency of his appointed case(s), the appointed attorney cannot accept remuneration for representation in those matters without notice to, and approval by Program Administrator.