



## **Senate Committee on Intergovernmental Relations**

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# Indigent Defense Delivery Systems

## Four Basic Types of Appointment Systems:

1. Assigned Counsel Systems
2. Managed Assigned Counsel Systems
3. Public Defender Systems
4. Contract Defender Systems
  - Many variations within these basic types
  - Some systems are a hybrid of 2 types

## Which Type or System is Best?

- Each system type has unique advantages and unique risks
- Any type of system can work well or poorly
- Most important:
  - Make the most of the advantages of your system
  - Adopt safeguards to avoid the risks

## 1. What is an Assigned Counsel System?

- Private attorneys are appointed from an appointment list
- Most widely used in Texas (around 90%)
- Sometimes called “ad hoc” systems
- Attorneys are appointed to handle individual assigned cases on rotating “wheel”
- Attorneys compensated as independent contractors
- Authorized in Article 26.04(a), Code of Criminal Procedure

## Potential Advantages of Assigned Counsel Systems

- Utilizes existing pool of private attorneys

- Attorney may combine public & private practice
- Can attract top quality attorneys
- County not responsible for attorney overhead
  - But County has to compensate for overhead

### **Potential Risks with Assigned Counsel Systems**

- No systematic attorney training, attorney supervision, or monitoring of attorney performance
- No systematic monitoring of attorney caseload
- Lacks independence from judiciary if “wheel” not strictly followed
- Can be refuge for incompetent attorneys
- Administrative costs and time burden borne by courts and court administrators to:
  - Screen attorneys and maintain appointment lists
  - Manage appointments
  - Manage attorney compensation
  - Manage expert/investigator compensation

## **2. What is a Managed Assigned Counsel System?**

- A new option for counties to achieve some of the benefits of public defender system within an assigned counsel system
- Defense services are administered by:
  - A county department; or,
  - Non-profit corporation under contract with the county
- Authorized in Article 26.047, Code of Criminal Procedure

### **Potential Advantages of Managed Assigned Counsel Systems**

- Enhances **oversight** and **accountability** of defense function:
  - Systematic attorney training
  - Systematic attorney supervision
  - Systematic monitoring of attorney performance
  - Systematic monitoring of caseloads

- Enhances **independence of defense function**
- Does **not** require a secondary system for conflicts cases like a public defender system
- Does **not** grow government significantly, but rather uses private sector to provide direct client services
- Reduces time burden on judges and court administrators
- Uses existing pool of private attorneys
- Provides a centralized forum for criminal lawyers to collaborate and discuss indigent defense issues
- Better ability to apply for State and Federal grants

#### **Potential Risks with Assigned Counsel Systems**

- Some start-up costs
- Difficult to implement/justify in small counties
- Could become politicized
- Choosing the right Managing Attorney is critical

### **3. What is a Public Defender System (PD)?**

- Defense services and representation by:
  - A county or state agency or
  - Non-profit corporation under contract with the county
- Analogous to prosecutor's office on the defense side
- Attorneys are salaried employees
- Attorneys are full-time defense specialists
- Still requires a secondary system for conflicts cases
- Authorized in Article 26.044, Code of Criminal Procedure

#### **Potential Advantages of Public Defender Systems**

- Predictable costs / easier to budget
- Systematic attorney training
- Systematic attorney supervision
- Systematic monitoring of attorney performance

- Systematic monitoring of attorney caseloads
- Ability to retain experienced attorneys
- Ability to fire less competent attorneys
- Attorneys are full-time defense specialists
- Reduced court administrative costs
  - Screening and maintaining appointment lists
  - Managing appointments
  - Managing attorney compensation
  - Managing expert / investigator compensation
- Reduced time burden on courts and administrators
- Provides better input into improving the local criminal justice system
- Public defender program can be a training and resource center for the private criminal defense bar

### **Potential Risks with Public Defender Systems**

- Substantial start-up costs
- Difficult to implement/justify in small counties
- A “Bad” Chief Public Defender can cause big problems
- Caseloads can become overwhelming
  - Creating disincentive to thorough representation
  - Leading to high staff turnover
- Could become politicized

### **4. What is a contract Defender System?**

- One or more private attorneys or law firms contracts to handle all or a large block cases
- Like a public defender, but private for-profit
- May need a separate system for conflicts cases
- Authorized in Article 26.04(h), Code of Criminal Procedure and Contract Defender Program Requirement rules in Title 1 Texas Administrative Code Chapter 174, Subchapter B

### **Potential Advantages of a Contract Defender System**

- Low administrative costs
- Costs are predictable / easy to budget
- Uses existing pool of attorneys
- Low startup costs
- Attorneys likely to be defense specialists
- Attorneys may work full-time on indigent defense

### **Potential Risks with Contract Defender Systems**

- Economic incentive to dispose of cases too quickly
- Economic disincentive to:
  - Investigate cases
  - Try cases
  - Utilize experts
- Can encourage a low-bid approach
  - Caseloads may then exceed original projections
- Usually no systematic training
- No systematic supervision
- No systematic monitoring of performance
- No systematic monitoring of caseloads
- Can become subject to favoritism or patronage

# Public Defender Programs and Studies

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## Dickens County / Texas Tech University School of Law

### Caprock Regional Public Defender Office

Established 2011

The Caprock Regional Public Defender Office provides indigent defense representation to counties in the West Texas region through an agreement between Dickens County and the Texas Tech University School of Law. For the coming year, the counties and Texas Tech are entering into a streamlined agreement to serve nine Charter Counties: Armstrong, Briscoe, Dickens, Floyd, Kent, King, Motley, Stonewall, and Swisher. Additional counties that meet the program's eligibility requirements are able to use the Caprock program's services.

#### Why the Office Was Formed

- Misdemeanor appointment rate in many counties fell far below statewide averages
- Ensuring right to counsel was difficult for counties because of the lack of attorneys

### Background & Highlights:

The Caprock Regional Public Defender was established in 2011 with a grant from the Commission to support counties to increase and improve indigent defense services within this rural and historically underserved region. In 2010, for example, the average population of the Charter Counties was 2,675 and appointment rates for misdemeanor cases ranged between zero and 22% before establishing the program.

The public defender is qualified to accept misdemeanor, juvenile, and felony cases. Upon the request of the local judiciary, the Commission expanded the scope of the program to allow the public defender to accept appeals appointments also. The geographic distance between the counties in the region is a factor that was considered in the program's design. In addition to a significant amount of travel, the public defender established a videoconferencing system to ensure that attorneys maintain regular contact with clients.

Through the agreement with Texas Tech University, the Caprock Public Defender utilizes qualified 3<sup>rd</sup> year law students to represent clients in minor cases. In addition to bolstering the public defender's potential capacity to provide services, this unique program feature helps to prepare new attorneys to meet the indigent defense needs of the community in the future. Within the first two years of the program, the Public Defender had a demonstrable impact on the number of indigent defendants who received criminal defense representation in the counties that utilized the program.

## **Harris County**

<http://www.tidc.texas.gov/media/23579/jhcpdfinalreport.pdf>

This report explores the challenge of providing quality indigent defense services in Harris County (Houston), Texas. For all jurisdictions, that challenge is to create and sustain an effective system that fulfills the jurisdiction's constitutional obligation, allows the fulfillment of each attorney's ethical obligation to each client, and ensures that punishment and rehabilitative resources are appropriately utilized. The Harris County Public Defender ("HCPD") began operations in early 2011. In 2012, HCPD contracted with the Justice Center for technical assistance and data analysis to assist in implementation and to evaluate the effectiveness of the office. The Justice Center interacted continuously with the office, conducting data analyses and reviewing processes to guide implementation. This report summarizes the collective knowledge generated from that work. The Justice Center set out to determine whether HCPD adds value to the criminal justice system of the county. The answer is "yes." The public defender adds significant value to the delivery of defense services in Harris County in three key ways: (1) better defense case outcomes than assigned counsel; (2) previously unavailable defense services such as training, mentoring, and advice; and, (3) defense participation in discussion of systemic issues.

## **Wichita County**

<http://www.tidc.texas.gov/media/18620/wichitapdstudy101212.pdf>

Wichita County maintains a generally well-functioning indigent defense system. The chief public defender oversees a staff of five attorneys, two investigators, and five legal and administrative support staff. The office maintains a close working relationship with the private bar, an important resource for managing case volume in the office. The office is highly professionalized as evidenced by merit-based employment, policies specifying policies, procedures and expectations, regular performance evaluation, and high-quality training, supervision, and professional support for attorneys.

Data shows public defender attorneys provide a higher level of service, and their work is supported by investigators in the majority of cases. Consequently, people represented by a public defender are more likely to have all charges against them dismissed, and are less likely to be found guilty overall. By the highest standard of defense – client acquittals – the public defender provides a better service than other court-appointed counsel. In addition, lower attorney and criminal case processing costs produce a net benefit of \$204 for the county and \$160 for each defendant represented by the public defender instead of a private assigned attorney.

## **Travis County**

[http://www.co.travis.tx.us/criminal\\_justice/mental\\_health\\_public\\_defender/](http://www.co.travis.tx.us/criminal_justice/mental_health_public_defender/)

The Travis County Mental Health Public Defender (MHPD) Office began in 2007 to serve the needs of persons with mental illness in the criminal justice system. The staff includes two lawyers, two social workers, three case workers and two support staff. The social and case workers are also available to assist private court appointed attorneys. Referrals are made for a variety of social services. Follow-up case management services are also provided.

In 2011, the county conducted a Cost Benefit Analysis of the performance of this program.

Links to Cost Benefit Analysis: [http://tidc.texas.gov/media/28271/cost\\_ben\\_mhpd\\_110922.pdf](http://tidc.texas.gov/media/28271/cost_ben_mhpd_110922.pdf)



# Lubbock County

[http://tidc.texas.gov/media/18616/130607\\_finalcapitaldefenderreport.pdf](http://tidc.texas.gov/media/18616/130607_finalcapitaldefenderreport.pdf)

## Regional Public Defender Office for Capital Cases (RPDO)

Established 2008

The costs associated with a capital murder case have the potential to decimate the budgets of smaller counties. The RPDO provides a way for counties to have greater budget predictability and mitigate the dramatic impact a capital case can have. Equally important, the RPDO can ensure that these most serious cases are tried effectively the first time. In exchange for contributing the membership fee, a quality defense team is provided by the RPDO at no additional cost if a capital murder case is filed in a participating county. The RPDO now serves 161 counties, spanning all nine administrative judicial regions. Under the program's current policies 240 counties are eligible to participate by paying membership dues.

Why the Office Was Formed
<ul style="list-style-type: none"><li>• Lack of qualified attorneys willing to accept capital appointments.</li><li>• Managing the costs of providing representation in capital cases</li><li>• Ensuring quality representation in cases that are extremely complex</li></ul>

### **Background:**

The RPDO was established in 2008 with a grant from the Commission to Lubbock County to provide capital defense services in the 7th and 9th Administrative Judicial Regions, encompassing the area from Abilene and Odessa to Amarillo and the panhandle. The program then expanded to the 4th, 5th, and 6th Regions in 2011, the 2nd and 3rd in 2012, and the 1st and 8th in 2013. The RPDO provides an entire team of defense service providers as required by Supreme Court case law including attorneys, investigators, and mitigation specialists. The office is appointed immediately to represent any person arrested on capital murder charges eligible for the death penalty.

The RPDO currently has eight offices across the state in Lubbock, Amarillo, Angleton, Corpus Christi, Midland, Terrell, and Wichita Falls. If state support for the RPDO rises to \$7 million annually, scope of services offered by the program may continue to expand, as well as the number of counties who opt into the RPDO. One possible expansion in scope may be the creation of a division for conflict cases or an appellate division. Any adjustment to the program scope would be decided between TIDC, Lubbock County and the program.

### **Highlights From Recent Studies:**

From: Judgment and Justice: An Evaluation of the Texas Regional Public Defender for Capital Cases (Public Policy Research Institute 2013)

**“This study finds that the Texas Regional Public Defender for Capital Cases (RPDO) increases access, improves quality, and reduces costs of death penalty representation in small to mid-sized counties. The program makes attorney and non-attorney capital team members readily available in the most remote regions of the state. In addition, specific strategies are employed by the office to raise the quality of counsel. By starting to work as early in the case as possible, developing a strong relationship**

of trust with each client, and constructing a convincing argument for mitigation of death, public defenders create the conditions most likely to result in a plea agreement. Cases ending in a plea are less costly to counties, both in terms of the initial disposition and subsequent appeals. Pleas also save the life of the defendant.

**These findings show the public defender model is a successful means to deliver affordable, high-quality, specialized capital defense expertise in non-metro areas of the state. The model is worthy of consideration by eligible Texas counties as well as by other states contemplating replication.”**

From: EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: The Texas Capital Punishment Assessment Report (American Bar Association 2013)

**“Finally, one of the most significant advancements aimed at improving the fairness of capital proceedings was brought about by the establishment of two offices to provide capital representation throughout the state. In 2007, the Regional Public Defender for Capital Cases (RPDO) was established to represent indigent capital defendants at trial in an increasing number of Texas’s 254 counties. In 2009, the Office of Capital Writs (OCW), was created to represent indigent death-sentenced inmates during state habeas proceedings. Prior to the creation of these two offices, the State of Texas relied almost exclusively on locally-appointed counsel to represent indigent capital defendants and death-sentenced inmates. Although the most populous counties continue to rely primarily upon an appointment system in capital trials, the creation of these two offices—staffed by attorneys with demonstrated knowledge and expertise in death penalty cases—is a significant step forward in the improvement of the quality of representation available to Texas’s indigent defendants and inmates in death penalty cases.”**

### **Lubbock Private Defender Office (LPDO)**

The managed assigned counsel (MAC) program is a method to provide representation to indigent defendants who are arrested for and/or charged with a misdemeanor or felony that is punishable by jail time (confinement). In 2011, the 82nd Texas State Legislature enacted HB 1754 to establish procedures for counties to create managed assigned counsel programs. A number of pioneering local governments began to experiment with the implementation of indigent defense programs that were modeled after other successful MACs or ‘private defenders’ around the country before formal statewide procedures were established.

For example, Lubbock County received a discretionary grant award from the Texas Indigent Defense Commission to establish a managed assigned counsel program to provide specialty representation to indigent defendants with mental illness in 2009. The Lubbock Special Needs Defender Office was the state’s first MAC. After the legislature established procedures for counties to establish programs of this nature, Lubbock County requested additional support from the Commission to expand the LSNDO’s scope to provide representation in felony (non-capital) cases and misdemeanors.

## Montgomery County

<http://tidc.texas.gov/media/27762/macmh-2014-final-report-shsu.pdf>

The Commission provided Montgomery County with a discretionary grant to establish a Managed Assigned Counsel Mental Health (MACMH) Program in FY 2011. The MACMH provides specialized defense services to people who have been diagnosed with mental illness. The final report for the grant was conducted by Sam Houston State University which examined 888 indigent, mentally ill defendants appointed to the MACMH program during January 2012 through March 31, 2013, and compared them to 915 similar defendants not appointed to the MACMH program.

## Collin County

The Commission provided Collin County with a discretionary grant to establish a Mental Health Managed Assigned Counsel program in FY 2013. Collin County operates the program with a managing attorney serving as the program manager.

## Coryell County

The Commission provided Coryell County a discretionary grant to provide direct client services to indigent defendants with documented mental health issues, with an emphasis on providing representation to veterans who are facing criminal charges. The county seat, Gatesville, is located on the northern edge of Fort Hood and significant portions of the military post are located within Coryell County. The county's application stated that military veterans represent a larger percentage of the Coryell County population than any other county in Texas as well as the highest per capita percentage of disabled veterans and purple-heart recipients.

The program attorney has reported that mental health cases have been identified earlier and all parties have raised awareness about dealing with defendants with mental health issues or qualifying military service. Jailers, prosecutors and the Indigent Defense Coordinator are all working to notify the program attorney of cases that may be an appropriate fit. Prosecutors have even requested that the attorney provide representation to defendants in cases that meet some of the criteria for the program but not all.

According to Coryell County's reports: "The combination of County Pretrial Services (Mike Hull/Dewey Jones) screening mental health inmates at the time of arrest, coupled with the speed of having mental health defender office appointed, has greatly reduced the jail population along with getting these individuals the "mental health" treatment they need that much sooner."

As a result of this grant, the local MHMR added three people to provide primary treatment and case management services to people involved with the criminal justice system in Coryell County. The judge said that the VA is fully engaged when the person is a veteran. The state department of health services added crisis stabilization beds in Gatesville. They did so knowing that the expansion required an additional expense of \$50,000 for a sprinkler system.

**Case Study: "The defender office had a male soldier who had just completed an Iraqi tour of duty where he began to suffer from PTSD. While at home (not on post), he had an episode [involving discharging] a firearm in a residential neighborhood which resulted in a felony charge." The program attorney [was] able to pull**

his Army medical records to show the DA's office [the defendant's diagnosis]." The attorney kept "the case from moving forward in the court system which allowed [this veteran] to stay in military. If he keeps going to his medical appointments, this matter will eventually be dismissed (allowing him to one day expunge this arrest from his record)."

## Process Management Technology Grants

Technology is playing a significant role for counties that seek to manage indigent defense processes more efficiently and to increase overall accountability. The Commission has supported county-driven initiatives to use technology to increase efficiency and accountability since the beginning of its discretionary grant program. Between Fiscal Years (FY) 2003 and 2012, the Commission disbursed over \$1.7 Million to counties to support county projects of this nature. By FY 2014 the Commission's grant awards to counties for Process Management Technology programs exceeded \$1.9 Million. The growing demand for the Commission's support is driven, in part, by the demonstrable results that have been reported by jurisdictions such as Bell County, which developed a solution to help monitor key compliance data, provide faster processing of requests for counsel, and includes an electronic attorney fee voucher payment process.

As a response to 5 separate requests from counties, the Commission awarded a grant to Tarrant County (as the grant administrator and on behalf of participating counties) to support the following:

- Implement the Bell County Indigent Defense System (BCS), also known as FIDO, in Tarrant and Victoria Counties and the 35th (Brown & Mills Counties) and 38th (Medina, Real & Uvalde Counties) Judicial Districts (8 counties);
- Convert the BCS to a technical structure consistent with the standards that will allow additional counties to adopt the system.
- Maintain and operate the BCS for Bell, Coryell, Tarrant and Victoria counties, as well as the 35th and 38th Judicial Districts.

A second grant was awarded to Collin County to determine how similar capabilities might be developed within Tyler Technology's Odyssey integrated justice software system. Collin County agreed to pursue the enhancements to the Odyssey system in a manner that could be shared by other counties that are using the Odyssey software.

The growing number of indigent defense technology requests also signaled a growing level of complexity for managing the programs. Tarrant County and Collin County engaged the expertise of the Conference of Urban Counties (CUC) TechShare Program. CUC's TechShare has extensive experience with helping counties to collaborate on technology projects. "TechShare projects are mutual efforts where participants save money by sharing the cost of research and development." At this moment, TechShare is more directly engaged in the implementation of the Tarrant County project; however, TechShare has also facilitated some of Collin County's efforts with Tyler Technology.

In August 2014, the Commission conducted a Technology Funding Strategic Planning Session in order to review ongoing and future indigent defense technology programs through the context of the TIDC mission and legal responsibilities under the Fair Defense Act. The session was intended to clarify standards and preferred functionality. After the Strategic Planning Session, the Commission adopted Recommended Functionality and Data Guidelines for Indigent Defense Technology Projects. The guidelines outline the Commission's preferred functionality, data tracking and reporting capabilities for process management technology projects.

Finally, the Commission awarded **Harris County** a FY 2014 Targeted Specific Grant to hire contract resources (Project Manager/Systems Analyst, Developers) to automate business processes from attorney voucher submittal, court & auditor approval to tracking attorney payments for the District Courts.