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# Indigent Defense Systems Assessment: Williamson County, Texas

Justice Center

Council of State Governments

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Williamson County, Texas contracted with the Council of State Governments, Justice Center to conduct this study. Points of view or opinions in this document are those of the authors and do not represent the official position of the sponsors or the Council of State Governments members.

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## I. Introduction

### A. Request for Technical Assistance

Williamson County issued a request for a recognized consultant in court administration and indigent defense to conduct a system-wide indigent defense assessment in 2012. The county contracted with the Council of State Governments, Justice Center (from here on referred to as the Justice Center) in September 2013, to evaluate indigent processes in the county over a seventh month period. This is the final report summarizing the findings and recommendations culminating from this assessment.

### B. Work by Justice Center

The project began in October 2013 with a kick-off presentation to introduce the Justice Center team and review the project with the working group designated by Williamson County. The presentation focused on the timeline and goals of the project and provided some preliminary data analysis on the county's growing population and caseload trends. During the next six months, the Justice Center analyzed case-level data provided by the county and publicly available aggregate data relevant to the project, and conducted interviews with system stakeholders to compile the systemic information needed for this assessment. Some of these activities are further described below.

Case-Level Data Analyzed: Williamson County provided three case-level datasets for analysis. The County Auditor's Office provided the payment records for indigent defense cases paid during fiscal year 2012 and fiscal year 2013. The Magistrate's Office provided the magistration records for felonies and misdemeanors; this dataset included arrest, booking, and magistration times and charge information for individuals magistrated in Williamson County for fiscal year 2013. The Information Technology (IT) Department provided disposition data for County and District Courts for fiscal year 2013, with variables such as charge offense, disposition date and outcome, and attorney type (hired or appointed).

Aggregate Data Analyzed: Aggregate level data on the number of cases filed and disposed by disposition type for all counties, separated by court level, were collected from the state Office of Court Administration (OCA) reporting system. These reports also include the time it takes to dispose a case. Annual data by county and court on the number of indigent cases paid were collected from the Texas Indigent Defense Commission (TIDC). These case payment data are disaggregated by attorney, investigation, expert witness, and other litigation expenditures at the trial and appellate level. Williamson County also provided aggregate budget information on indigent defense expenditures and for the County Attorney and District Attorney offices.

Qualitative Data Collected: The Justice Center interviewed the elected judiciary of Williamson County, as well as the court coordinators in every court hearing criminal cases, the Magistrate, the County Attorney, the First Assistant District Attorney, the District Clerk, defense attorneys serving the county, and employees of the IT Department, District Clerk, County Clerk, and County Auditor.

The Justice Center also interviewed other related stakeholders outside Williamson County. The Bell County Indigent Defense Coordinator was consulted on information technology

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capabilities and processes. The TIDC provided additional data access, technology solution descriptions and cost, and compliance interpretation. The Fair Defense Project provided background information on indigent defense practices observed in the county. The Texas Conference of Urban Counties TechShare staff hosted a workshop on case management refinements needed for Texas counties operating TylerTechnology's Odyssey software.

Additionally, the Justice Center team provided weekly updates to Ms. Pierce in Commissioner Long's Office (Precinct 2) and had numerous, wide-ranging conversations with Ms. Pierce in reporting on project management issues.

### **C. Documents and Presentations**

Justice Center staff gave three in-person presentations and submitted six PowerPoint documents at critical junctures of the project. In-person presentations were provided as follows:

- Introduction of Project – report on project goals, timeline, and some general trend data for Williamson County;
- Current Assessment Report – in depth look at case trends, Fair Defense Act (FDA) compliance, and introduction of national standards; and
- Final Assessment Report – overview of recommendations for Williamson County to address current and future needs.

PowerPoint documents were provided to the relevant county officials. The materials covered:

- Introduction of Project;
- Current Assessment Report;
- Addendum on Assessment – included comparisons of indigent defense county plans from Bell, Collin, Denton, Fort Bend, Montgomery, and Williamson County on attorney qualifications;
- Requirements Report – reviewed variables necessary to show FDA compliance and processes necessary to show compliance with ABA 10 Principles of Public Defense, NLADA's Best Practices for Assigned Counsel, and the Texas State Bar's Guidelines for Counsel in Non-Capital Cases; and
- Alternatives Report – reviewed areas Williamson County should address, alternatives to current processes, and recommendations on the alternative most effective for the county.

This final report summarizes challenges faced by the county and provides recommendations to address them.

## II. System Assessment

The right to counsel as guaranteed by the Sixth Amendment applies in serious cases in which the State's power to deprive liberty is at stake. In an adversarial system of justice, fairness and accuracy depend upon the opposition of attorneys with comparable and sufficient resources and time to discharge their duties. All attorneys are required to provide "competent and diligent" representation, to "zealously assert their client's position" in their role as advocates, and to hold "special responsibility for the quality of justice."<sup>1</sup>

Indigent criminal defense historically and repeatedly presents a challenge to these ethical demands. Criminal justice services are expensive for counties and states to provide, and indigent defense may be an under-appreciated component of those costs. Regardless of the service model (i.e., assigned counsel, public defender, managed assigned counsel, or contract), systems struggle to provide sufficient resources for lawyers and their staffs can meet caseload demands while satisfying their professional responsibility to each client. This is particularly challenging in places experiencing dramatic population growth like that seen in Williamson County.

Figure 1 shows the enormous population growth Williamson County has experienced in recent history. The county's population grew by over 1,000 percent between 1970 and 2012.<sup>2</sup>

**Figure 1: Williamson County Population Growth and New Courts, 1970-2012**

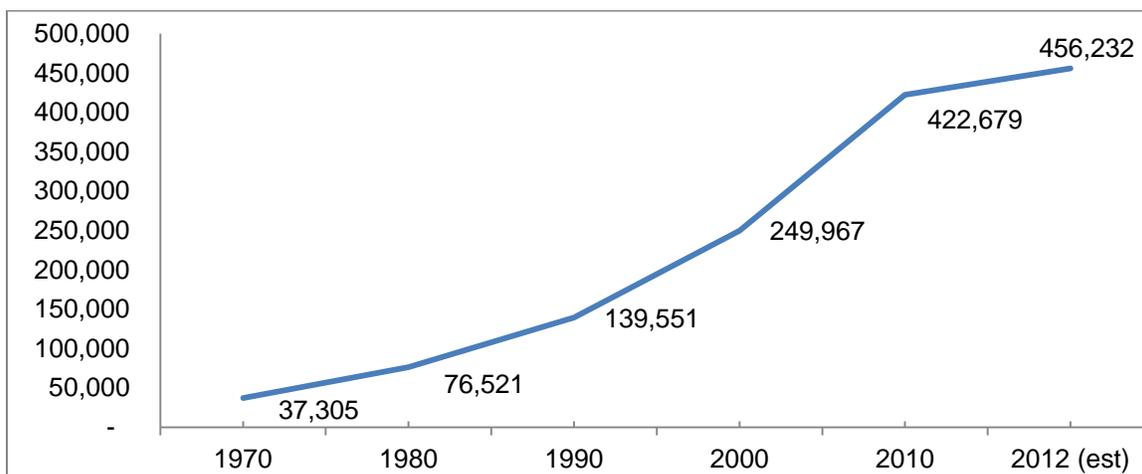


Figure 2 shows the four District Courts and four County Courts at Law that have been added to the judicial resources of the county since 1981. This expansion of the number of courts was needed to address the growing population in the county. The county received its last new

<sup>1</sup> Texas Disciplinary Rules of Professional Conduct, 1989, reprinted in Tex. Govt. Code Ann., tit. 2, subtitle G, (Vernon Supp. 1995) (State Bar Rules art X. Available at: <http://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct.aspx>. Accessed August 30, 2012.

<sup>2</sup> US Census Bureau. State & County QuickFacts: Williamson County. Accessed April 7, 2014. <http://quickfacts.census.gov/qfd/states/48/48491.html>

court in 2007. Prior to 1981, Williamson County operated with only the 26<sup>th</sup> District Court and the Constitutional County Court.<sup>3</sup>

**Figure 2: Court Creation in Williamson County, 1981 to 2007**

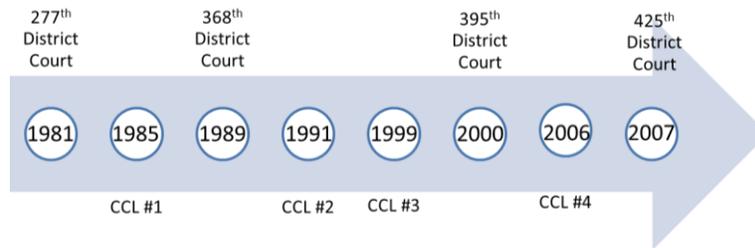


Table 1 shows the number of misdemeanor and felony case filed and the number and proportion of cases with appointed counsel between FY 2002 and FY 2013. The number of misdemeanor cases filed increased by 55% during this period (from 7,002 in FY 2002 to 10,512 in FY 2013), or an average of four percent annually. During the same period, misdemeanors represented by appointed counsel grew 1,360 percent from 275 in FY 2002 to 4,014 in FY 2013. Much of the increase was driven by the doubling of the 1,506 appointed cases in FY 2008 to 4,014 in FY 2013. The proportion of misdemeanor cases with appointed counsel increased over nine-fold, from four percent to 38 percent.

The number of felony cases filed increased by 53 percent while the number with appointed counsel increased by 161 percent, from 490 cases in FY 2002 to 1,277 in FY 2013. The proportion with appointed counsel increased steadily between FY 2002, at 32 percent, to FY 2009, at 69 percent and started dropping after that.<sup>4</sup>

<sup>3</sup> Garcia, Angela. RE: Judicial Census. Email Correspondence. January 22, 2014.

<sup>4</sup> Texas Office of Court Administration Court Activity Reporting. Misdemeanor Activity Detail. <http://card.txcourts.gov/>. Accessed December 21, 2013. And Lieurance, Joel. RE: data ask/question. Email Correspondence. February 7, 2014.

**Table 1: Number Misdemeanor and Felony Cases Filed and Number and Proportion Cases with Appointed Counsel, FY 2002 to FY 2013**

	Misds Filed	Misd with Appointed Counsel	Proportion of Misd Indigent	Felonies Filed	Felonies with Appointed Counsel	Proportion of Felonies Indigent
<b>FY 2002</b>	7,002	275	4%	1,511	490	32%
<b>FY 2003</b>	7,464	366	5%	1,811	653	36%
<b>FY 2004</b>	7,423	511	7%	1,731	725	42%
<b>FY 2005</b>	8,438	584	7%	1,844	797	43%
<b>FY 2006</b>	9,849	793	8%	1,777	1,061	60%
<b>FY 2007</b>	11,344	1,273	11%	1,785	1,123	63%
<b>FY 2008</b>	9,669	1,506	16%	1,803	1,068	59%
<b>FY 2009</b>	9,168	2,622	29%	1,793	1,243	69%
<b>FY 2010</b>	9,826	3,242	33%	2,047	1,224	60%
<b>FY 2011</b>	10,043	3,372	34%	2,022	1,221	60%
<b>FY 2012</b>	11,171	3,741	33%	2,064	1,182	57%
<b>FY 2013</b>	10,512	4,014	38%	2,314	1,277	55%
<b>FY02 to FY13 Change</b>	<b>55%</b>	<b>1,360%</b>		<b>53%</b>	<b>161%</b>	

Table 2 shows the county's expenditures on indigent defense by case level from FY 2002 to FY 2013, which increased by 202 percent during that time. Misdemeanor cost drove the total county cost with a 1,255 percent increase. The growth in appointments was a natural reaction to increased scrutiny of, and litigation about, indigent defense practices in the county. Statewide expenditures, comparatively, increased by 90 percent.<sup>5</sup> Only administrative costs dropped in the county (40% decrease), which reflects a rule change related to documentation of the exact proportion of time and materials spent on administrative tasks.<sup>6,7</sup>

<sup>5</sup> Lieurance, Joel. RE: question. Email Correspondence February 6, 2014.

<sup>6</sup> Lieurance, Joel. RE: data ask/question. Email Correspondence February 7, 2014.

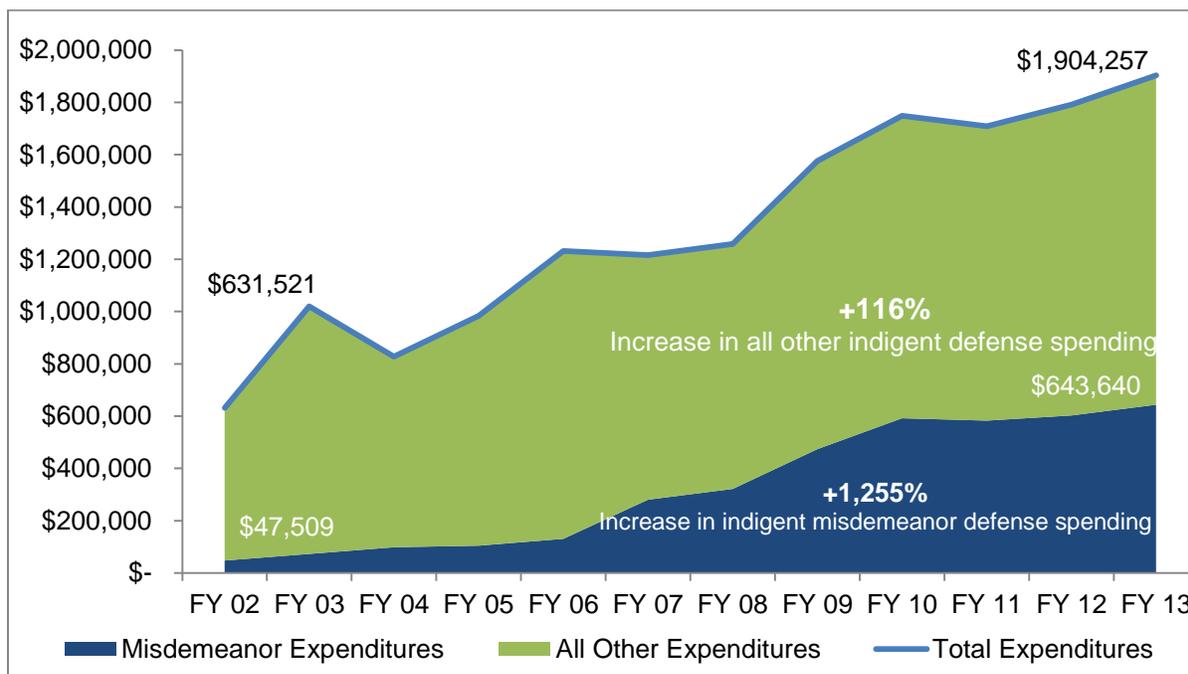
<sup>7</sup> Williamson County Auditor's Office. February 6, 2014. Phone Call Regarding Administrative Cost Calculations.

**Table 2: Williamson County Expenditures on Indigent Defense by Case Level, FY 2002 to FY 2013**

	Misd	Felony	Juvenile	Appellate	Admin	No Filing	Total
<b>FY2002</b>	\$47,509	\$321,302	\$76,400		\$186,310		\$631,521
<b>FY2003</b>	\$72,748	\$583,333	\$119,138		\$244,746		\$1,019,964
<b>FY2004</b>	\$98,377	\$592,563	\$133,685		\$2,388		\$827,012
<b>FY2005</b>	\$104,334	\$644,906	\$120,100		\$113,650		\$982,990
<b>FY2006</b>	\$130,541	\$810,359	\$100,400	\$37,959	\$112,898	\$40,025	\$1,232,181
<b>FY2007</b>	\$280,388	\$686,003	\$153,850	\$19,760	\$63,488	\$12,550	\$1,216,038
<b>FY2008</b>	\$321,477	\$649,090	\$165,195	\$34,152	\$74,924	\$13,818	\$1,258,656
<b>FY2009</b>	\$473,699	\$792,236	\$178,605	\$18,634	\$85,747	\$27,295	\$1,576,216
<b>FY2010</b>	\$591,913	\$847,479	\$188,150	\$23,082	\$82,555	\$16,350	\$1,749,530
<b>FY2011</b>	\$582,818	\$823,543	\$188,100	\$20,387	\$80,332	\$13,470	\$1,708,651
<b>FY2012</b>	\$602,470	\$897,717	\$165,350	\$42,152	\$83,702		\$1,791,391
<b>FY2013</b>	\$643,640	\$941,894	\$185,182	\$22,195	\$111,345		\$1,904,257
<b>FY02 to FY13 Change</b>	<b>1,255%</b>	<b>193%</b>	<b>142%</b>		<b>-40%</b>		<b>202%</b>

Figure 3 shows the county expenditures graphically. The graph depicts the 202 percent increase in county expenditures, powered by a 1,255 percent increase in misdemeanor expenditures between FY 2002 and FY 2013.<sup>8</sup>

**Figure 3: Williamson County Expenditures for Indigent Cases, FY 2002-2013**



County courthouse personnel are facing a transition. The county is changing from a small town culture to a major urban county with all its related growing pain. The courts have traditionally operated semi-autonomously, with dedicated court coordinators and no umbrella function of court administration. The court system has reached a size where collegial but administratively independent courtrooms may not be enough to maintain the efficiency of the courts' operation.

County officials are seeking to preserve the positive aspects of its courthouse culture, yet reengineer the county's court processes and adopt technology to meet the demands of the times. The county's 2010-2014 strategic plan highlights the use of technology and asserts a vision to maintain "cohesive county government, committed to effective governance, [that] operates as a team to guarantee continual high quality services to its citizens."<sup>9</sup>

In the course of interviews in furtherance of this assessment, Justice Center staff made the following general observations of judges, prosecutors, and other county officials:

- Earnestness and a desire to do right;
- Concern for defendants' rights;
- Appreciation of staff;
- Desire to use technology; and

<sup>8</sup> Lieurance, Joel. RE: data ask/question. Email Correspondence February 7, 2014.

<sup>9</sup> Williamson County Internal Assessment and Strategic Plan. 2011.

<http://www.wilco.org/Portals/0/Williamson%20County%20Strategic%20Plan%201-11-11.pdf> . Accessed April 7, 2014.

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- Willingness to embrace change and eagerness to move forward.

Local officials appear willing and able to adopt new practices and heighten their collaboration together and with the bar. This readiness for change is encouraging in light of the growth that has occurred, and the growth that is expected to occur in the future. The next section presents the findings of this assessment and suggests strategies to address the issues discussed.

### III. Findings

#### A. Compliance Accountability

The analysis showed three areas for improving indigent defense policies: (1) demonstrating compliance with the Fair Defense Act (FDA); (2) making all points of the attorney appointment process more efficient; and, (3) proactively planning for continued growth in the criminal justice system.

The FDA lays out standards in six areas – magistration; indigence requirements; attorney qualifications; prompt appointment; fair, neutral, and non-discriminatory attorney selection; and payment. Williamson County incorporated all points into its Local Rules Plan. The county can show compliance on certain parts of all the categories, but cannot show full concurrence of practice and requirement with the current case management software, the Odyssey application by TylerTechnologies. This also means the county cannot show whether it meets its own internal standards, embodied in the Local Rules Plan, which incorporated all TIDC requirements.

One judge succinctly addressed the current technology approach, remarking, “Odyssey is robust, but it is hard to know all the things it can do.” Working with the county to extract data and assess different areas of the FDA showed this to be the case. It appears that about 70 percent of indigent process information is already captured, or can be captured, in Odyssey.<sup>10</sup> This was confirmed by a recent workshop on the system capabilities attended by the Justice Center team and Williamson County staff, and organized by the Texas Conference on Urban Counties.

Despite Odyssey’s structural ability to collect denials for appointment, reasons for those denials, and appointment time and date, these variables could not be extracted for analysis. In fact, the Justice Center had to do a random sample of cases to analyze and show compliance with the prompt appointment section of the FDA. Time to appointment should be an automated report, not something that requires manual data collection.

Table 3 shows average time to appointment for felonies and misdemeanors, daily average, and the standard by day of the week, using the results from the analysis of the samples. TIDC Rule 1 TAC §174.28(4)(C), [Texas Administrative Code], presumes a county to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile), at least 90 percent of indigence determinations are timely.<sup>11</sup> Williamson County has an opportunity to improve weekend felony appointment time. On average, the county appoints in a timely fashion, but Saturday and Sunday requests are slightly above the time allotments.

<sup>10</sup> Skipworth, Caren. March 17, 2014. Presentation: CIJS Common Integrated Justice System. 2014 Indigent Defense Conference.

<sup>11</sup> Texas Administrative Code.

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=1&pt=8&ch=174&rl=28](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=8&ch=174&rl=28) Accessed January 30, 2014.

**Table 3: Appointment Standards, Total Time to Appointment, and Average Time to Appointment by Day**

	Total	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
Standard	2.9 Days	1.8 Days	1.4 Days	1.3 Days	2.4 Days	2.6 Days	1.8 Days	1.9 Days
90% of Misdemeanors	1.2 Days	.8 Days	.9 Days	.7 Days	1.1 Days	2.6 Days	1.5 Days	.9 Days
90% of Felonies	2.0 Days	1.2 Day	0.7 Days	1.5 Days	2.7 Days	2.4 Days	3.1 Days	2.3 Days

**Recommendation:**

*The county must learn the unused functions of Odyssey to record and extract data through report generation.*

Following training from TylerTechnologies, the county can structure data collection protocols to ensure that future compliance questions can be answered quickly and completely. TylerTechnologies offers training online and at user conferences. In April 2014, for example, they held Connect 2014 in San Antonio, which had attorney manager, courts, and public safety tracks.<sup>12</sup> The company can and will provide Williamson County with a dedicated technical assistant.

**Recommendation:**

*Improve the functionality of the Odyssey system to be able to fully report on all compliance items.*

Currently, Odyssey does lack the functionality to report on all points of the FDA. As stated above, about 30 percent of the collection necessary for showing compliance is not currently included in the application.

TIDC awarded Collin County \$436,240 to create indigent defense improvements within the system, working with the Texas Conference of Urban Counties and TylerTechnologies. This will provide an alternative for Collin County, to adopting a third party module such as the “FIDo” system developed in Bell County with TIDC funding. All counties in Texas will have access to this product at no cost, though they will be responsible for costs associated with operations and maintenance. That cost has yet to be determined, because factors to include in the cost of operations cannot be estimated.<sup>13</sup>

Williamson County is already a member of TechShare and the Conference of Urban Counties, so there are no barriers to entry related to joining a new group; therefore, cooperating with Collin County, and other county participants, makes sense. If the county begins working with Collin during the planning process, it can help steer the direction of the final product. This software upgrade is basically guaranteed to allow any county to show FDA compliance, as that is the goal of the project and the reasoning behind TIDC’s grant support. Additionally, there is a

<sup>12</sup> TylerTechnologies. Connect 2014 Class Selection Worksheet. <https://custom.cvent.com/67FD2751D0ED44AAB92BABF30589D83A/files/25e9f765d9784d9f9efb68b3f74ddc1f.pdf>. Accessed April 21, 2014.

<sup>13</sup> Gray, Charles, CUC TechShare director. RE: Wilco again. Email Correspondence April 17, 2014.

short event horizon – the system will go live in time to collect data for fiscal year 2015 compliance reports.

**Recommendation:**

*Update the County Indigent Defense Plan to reflect improvements in reporting/data capture, and adjust the qualifications to be included on the appointment list to meet the county’s needs.*

The third area to improve for compliance reporting follows directly from the two points above. Williamson County must update its County Indigent Defense Plan. The new protocols for data collection need to be addressed in the plan as well as any updates to staffing or processes adopted from this report. Since the county will be updating the plan, it should consider incorporating some additional changes that came up during the project, and address the blank qualifications sections in its current online plan.

Table 4 shows the qualifications and experience required for appointed attorneys in Williamson County and comparison counties. Williamson’s qualifications are below the average of the comparison counties. Williamson has the lowest years of practice necessary for felonies and is below average for number of trials. Many respondents indicated partnering with a mentor should serve as a proxy for trial experience. The judges should reevaluate these thresholds, adjust if desired, and update them in the plan.

**Table 4: Average Years of Practice and Number of Trials by Case Type and County**

	Years of Practice				Number of Trials <sup>14</sup>		
	Misd	State Jail Felony; Felony 3	Felony 2	Felony 1	Misd	State Jail and Felony 3	Felony 1 and 2
Bell	1	2	4	4	1	2	3
Collin	2	2	2	2	3	4	8
Denton	NA	2	3	3	5	3	5
Fort Bend	1.0 <sup>15</sup>	2	2	4.5 <sup>16</sup>	1	1	4
Montgomery	NA	3	5	5	1	2	5
Williamson	.5 Years	1	1	1	2	5	10
<b>Average</b>	<b>.75 Years</b>	<b>2</b>	<b>2.8</b>	<b>3.25</b>	<b>2.2</b>	<b>2.8</b>	<b>5.8</b>

Table 5 shows the same comparative analysis for hours of Continuing Legal Education (CLE) necessary for inclusion on appointment lists. Williamson County’s requirement is lower than Collin, Denton, and Fort Bend, but similar to that of Bell and Montgomery counties.

<sup>14</sup> Trial experience is difficult to give an average for, because it depends on the first/second char placement and the relationship with a mentor. Detailed comparisons were included in *March 7 Addendum*.

<sup>15</sup> Depends on the case type so average was used. Cases had between zero and two years required.

<sup>16</sup> Aggravated first degree felonies and non-capital murders require five years and the rest require four.

**Table 5: CLE Hours Necessary to Be on Misdemeanor and Felony Appointment Lists**

	Misdemeanor	Felony
Bell	6	6
Collin	8 <sup>17</sup>	10
Denton	10	10
Fort Bend	15	15
Montgomery	6	6
Williamson	6	6
<b>Average</b>	<b>8.5 Hours</b>	<b>8.8 Hours</b>

Stakeholders suggested creating CLE covering the practice of criminal law in Williamson County. Fort Bend County has this requirement for all case levels and produced a video CLE called “Practicing Law in Fort Bend.”<sup>18</sup> This concept seems to be appealing to stakeholders in Williamson County. Other CLE areas of interest included: (1) introducing attorneys to working with clients with mental health issues; (2) advancing professional wellness, to address mental health and substance abuse in the legal community; and (3) attorney incorporation of implementing the State Bar of Texas *Performance Guidelines for Non-Capital Criminal Defense Representation* into standard practice.

The State Bar’s *Guidelines* are a step-by-step guide to what lawyers should do in a criminal case, a truly valuable resource. They were designed to serve as tools to improve the criminal justice system, and in this case offer a practical standalone outline, or a framing device/ supplement for Williamson County-specific CLE. Such a local curriculum, like the *Guidelines*, should cover arraignment, plea process, trial preparation, and sentencing and include timeliness guidelines for meeting with clients and prosecuting attorney.<sup>19</sup>

Table 6 shows residency requirements in Williamson County in relation to the comparison counties. In interviews and at presentations, concerns surfaced regarding the lack of a residency requirement for inclusion on the Williamson County appointment list. The surrounding counties have adopted rules related to having an office in the county. These are unfair to Williamson County attorneys because lawyers from other counties can work in Williamson, but Williamson County attorneys do not have the same opportunity to expand their practices geographically. Williamson County does require attorneys on the felony wheel to have an address within the county or a contiguous county.<sup>20</sup>

<sup>17</sup> 16 hours over two year period

<sup>18</sup> Fort Bend District and County Courts Plan. <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=202> Accessed April 7, 2014.

<sup>19</sup> Blackburn, Jeff and Andrea Marsh. July 2011. *Texas Bar Journal*. State Bar of Texas: Performance Guidelines for Non-Capital Criminal Defense Representation. Adopted January 2011.

[https://www.texasbar.com/AM/Template.cfm?Section=Texas\\_Bar\\_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703](https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703). Accessed April 10, 2014.

<sup>20</sup> Bell County. TIDC: District Court and County Court Plan. Accessed March 11, 2014.

<http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=271> Collin County. TIDC: District Courts Indigent Defense Plan. Accessed March 11, 2014. <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=463> and County Courts:

<http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=322>. Denton County. TIDC: Current Indigent Defense Plan. Accessed March 11, 2014. District Courts: <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=169> <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=169> and County Courts: <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=73>. Fort Bend. Plan Document: Fort Bend District and County Court Appointment and Qualification – County Courts. TIDC.

<http://tidc.tamu.edu/IDPlan/Documents/Fort%20Bend/Fort%20Bend%20District%20and%20County%20Court%20Appointment%20%20Qualifications%20-%20County%20Courts.doc> Fort Bend. Plan Document: Fort Bend District and County Court Appointment and Qualification.doc.

**Table 6: Residency Requirements in Williamson County and Comparison Counties by Charge Level**

	Misdemeanor	State Jail Felony	Felony 3	Felony 2	Felony 1
Bell	✓	✓	✓	✓	✓
Collin	✓	✓	✓	✓	✓
Denton	✓	✓	✓	✓	✓
Fort Bend	✓	✓	✓	✓	✓
Montgomery	✓	✓	✓	✓	✓
Williamson		✓*	✓*	✓*	✓*

Before the county changes this section of its Indigent Defense Plan, it should undertake an investigation of the current number of attorneys on the appointment list and determine if the list would provide full coverage, for all levels and special needs, if those without Williamson County addresses were removed. (This assessment identified, for example, one attorney as a “go to” person for mental health cases, and she lives in Austin.)

Table 7 shows the number of lawyers on the felony appointment list, by in-county and out-of-county address, and by appointment level.<sup>21</sup> There are 35 attorneys, or 54 percent, of total attorneys on the felony appointment list, with in-county addresses. The Felony A list, for attorneys representing clients in first and second degree felony cases, is almost evenly split, with 12 of the attorneys in Williamson County and 11 of them from outside the county. It seems neither desirable nor practical for the Williamson County attorneys to double their appointed caseloads.<sup>22</sup>

**Table 7: Number and Percentage of Lawyers on the Felony Appointment Lists by In County and Out of County Address**

	Number In County	Percent In County	Number Out of County	Percent Out of County	Total
Felony B List	23	55%	19	45%	42
Felony A List	12	52%	11	48%	23
<b>Total Attorneys</b>	<b>35</b>	<b>54%</b>	<b>30</b>	<b>46%</b>	<b>65</b>

After addressing the attorney qualifications, the county should develop policy and language in the plan about case acceptance. Appointed attorneys are by definition qualified to accept every case with an offense level below the level of the offenses handled by their appointment list, e.g., qualifying to represent defendants with third degree felonies automatically makes one capable of representing those charged with state jail felonies or misdemeanors. Interviews with stakeholders indicated problems with appointing counsel for defendants with

<http://tidc.tamu.edu/IDPlanDocuments/Fort%20Bend/Fort%20Bend%20District%20and%20County%20Court%20Appointment%20%20Qualifications.doc> . Montgomery County Courts Plan. TIDC. Accessed March 11, 2014.

<http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=266> . Williamson County. Qualifications for Attorneys Seeking Appoints in Misdemeanor Cases. Accessed March 12, 2014.

<http://www.wilco.org/Portals/0/Departments/CCL1/Attorney%20qualifications%20for%20Misdemeanor%20Appointments.pdf> . Williamson County. Accessed March 12, 2014. <http://www.wilco.org/Portals/0/Departments/District%20Courts/IndigentDefense.pdf>

<sup>21</sup> The data on the misdemeanor appointment list did not include addresses.

<sup>22</sup> Eastes, Tom. January 10, 2014. Re: Attorney appointment lists. Email Correspondence

mixed charges – felony and misdemeanor - because the county court had to wait for the district court to appoint on the felony charge before appointing on the misdemeanor. Even then, the attorneys appointed for felonies were not always willing to take the misdemeanor case.

Figure 4 shows the proportion of clients facing mixed charges at magistration and disposition in FY 2013. As shown on the left side of Figure 4, mixed charge cases represent nine percent of clients magistrated, and on the right, that by the time of case disposition, only one percent of clients had mixed charge cases. The drop in proportion is presumably caused by law enforcement filing multiple charges, visible at magistration, and then prosecutors refining the charges for case disposal.

Despite the low frequency of occurrence, the county court coordinators must check every client request for a mixed charge. Checking for each client and then waiting in cases with mixed charges is a time-wasting process, which may threaten compliance with timely appointment. Williamson County could, and should, mandate in their Indigent Defense Plan that attorneys take lower charged cases, even if the attorneys do not want to be on the lower charge list.

**Figure 4: Magistration (Left) and Disposition (Right) Proportions of Clients Facing Mixed Charges, FY 2013**

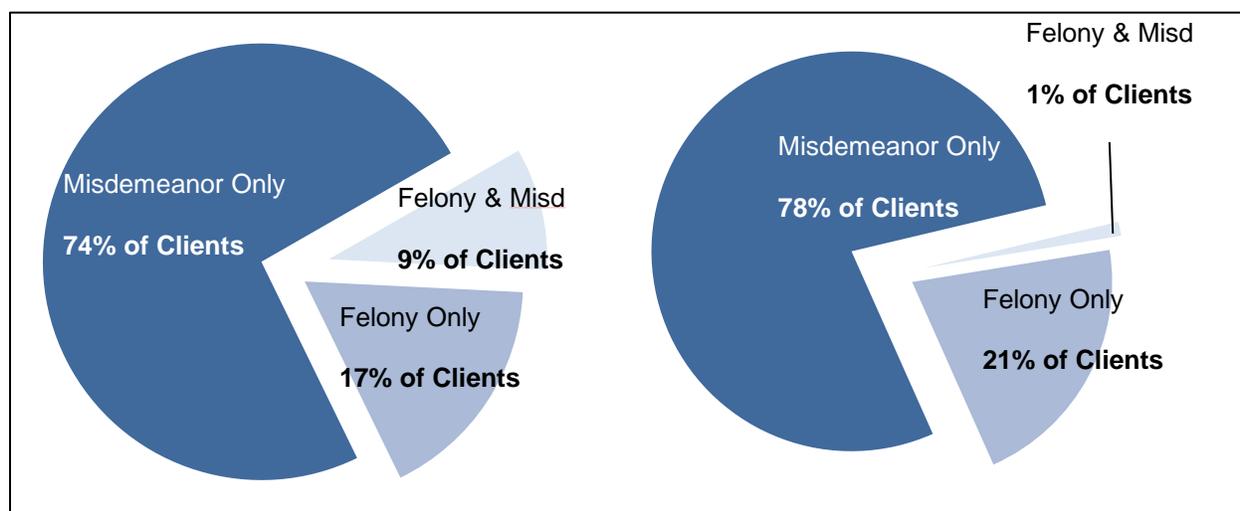


Table 8 summarizes the suggested Indigent Defense Plan updates. Plans are due to the TIDC on November 1st of odd numbered years.<sup>23</sup> If the county makes changes in process, it is a recommended practice to update the plan with TIDC at that time.

<sup>23</sup> Texas Government Code, Sec. 79.036. <http://www.statutes.legis.state.tx.us/docs/GV/htm/GV.79.htm>. Accessed April 22, 2014.

**Table 8: Indigent Defense Plan Suggestions**

Area to Update	Details
Attorney Qualifications	<ul style="list-style-type: none"> <li>• Fill in missing information on Qualification Requirements in the current Indigent Defense Plan</li> <li>• Increase years of practice and trial experience as quality control of the appointment list</li> <li>• Formal allowance of mentor participation or second chair experience for trial experience</li> </ul>
CLE	<ul style="list-style-type: none"> <li>• Create “Practicing in Williamson County” CLE, similar to Fort Bend’s required CLE</li> <li>• Incorporate into “Practicing” or supplement with State Bar Performance Guidelines for Non-Capital Criminal Defense Representation</li> <li>• Other suggestions included “Wellness” on mental health and substance abuse in the legal community and “Mental Health” introduction for attorneys curious about the MH Wheel</li> </ul>
Residency	<ul style="list-style-type: none"> <li>• Investigate the county’s ability to staff all cases with Williamson County attorneys before making a decision</li> </ul>
Mixed Caseload	<ul style="list-style-type: none"> <li>• Qualifying for felony list makes one qualified to be on misdemeanor list – felony case assignment automatically attaches misdemeanor charge to that attorney’s caseload</li> </ul>
Adopted Changes	<ul style="list-style-type: none"> <li>• Reflect use of electronic systems where necessary</li> <li>• New processes related to restructuring of staff and responsibilities</li> </ul>

**B. Efficiencies in the Attorney Appointment Process**

Williamson County’s process to review applications for inclusion on an appointment list, record data related to applications, and address concerns expressed about counsel would benefit from centralization. Attorneys, defendants, and judges should have a dedicated point of contact for all appointment list matters.

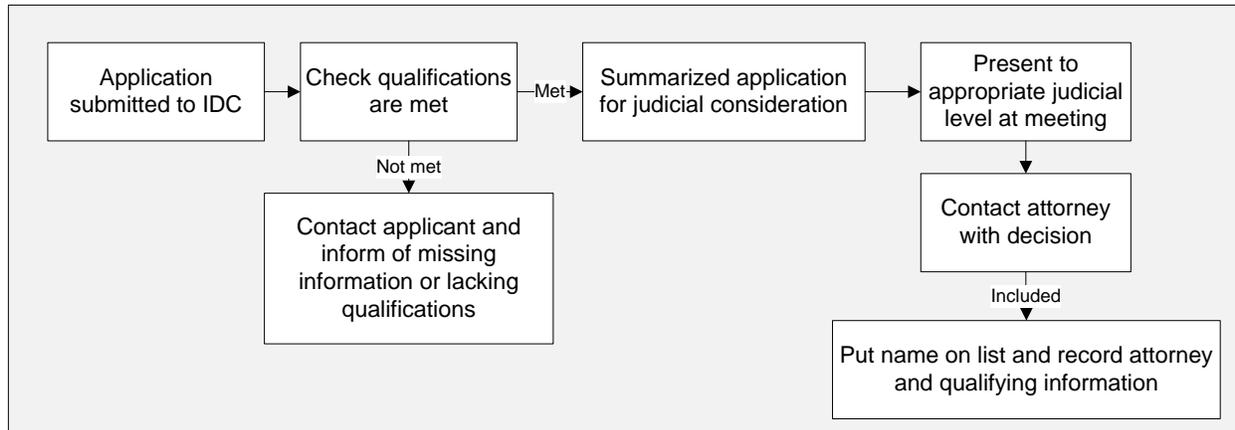
***Recommendation:***

*Centralize all aspects of attorney appointment list under an Indigent Defense Coordinator.*

For inclusion on the misdemeanor list, applications are submitted to County Court 3. If they pass the preliminary review for completeness and inclusion of supporting documents, the applications are emailed to the other county court judges who vote on inclusion. The district courts do not have a centralized intake for the applications, but the process is similar – review application for completeness and vote.

Figure 5 below shows a suggested centralized process, with data collection, stemming from the office of the Indigent Defense Coordinator (IDC, described below).

**Figure 5: Suggested Centralized Application Review**



Judges address concerns with attorneys as they come up; however, neither the complaint nor the resolution is formally tracked. Persons with concerns about attorneys also have no centralized point of contact to inform the judiciary or the county. The IDC, described in detail below, should create a formal process to collect concerns and report them to judges if they arise. The position should take over CLE audits from the Presiding Judge’s office and monitor attorney management reports, possible with Odyssey training and program enhancements, for compliance issues. For example, do attorneys meet FDA guidelines for client contact?

Bell County’s Indigent Defense Coordinator (who doubles as department director for Pre-Trial Services) checks records of attorney-client contact to ensure no attorney has a burdensome amount of cases. Bell County assumes that lack of contact is a sign of an overcommitted attorney. An attorney who cannot make contact is given a reprieve from the wheel for three months, which acts as an incentive to take only as many cases as the attorney can handle.

Administration of Williamson County’s courts remains fragmented in a primarily judge-by-judge arrangement, a collegial but inefficient structure for a rapidly growing county. In other words, each judge has a court coordinator who implements that court’s version of the process. Fortunately, some centralization of indigent defense case processing occurs through the magistrate’s office.

Figure 6 depicts the current indigent defense appointment process in the county. The left side shows the misdemeanor process. An indigent defense specialist in the magistrate’s office collects financial information from defendants, determines eligibility, and grants or denies counsel by signing the affidavit of indigence. This information is submitted electronically to the appropriate county court, where the judge assigns an attorney on granted cases, then has the court coordinator contact the attorney with the appointment. The appointment list is separately maintained in each court. Although the names on the list are the same, it is not centralized,

which means one attorney could receive three appointments in a day. An exception to this process occurs in CCL #2, which allows the magistrate's office to appoint counsel in two specific circumstances – defendants with mental health needs, or defendants with existing, appointed cases.

For felony cases, on the right side of Figure 6, the indigent defense specialist collects defendant financial information, the staff reviews the financial qualifications, and recommends for or against appointment on the affidavit of indigence. The Magistrate walks these files across the street to the district courts. Each district judge currently reviews all the requests to finalize the grant or deny appointment decision. If counsel is appointed, the court coordinator contacts the appointed attorney, also chosen off a paper list maintained in each office, via fax or email. Every court is effectively following the same process, relying on the same information collected during the magistration process.

**Figure 6: Current Indigent Defense Practices**

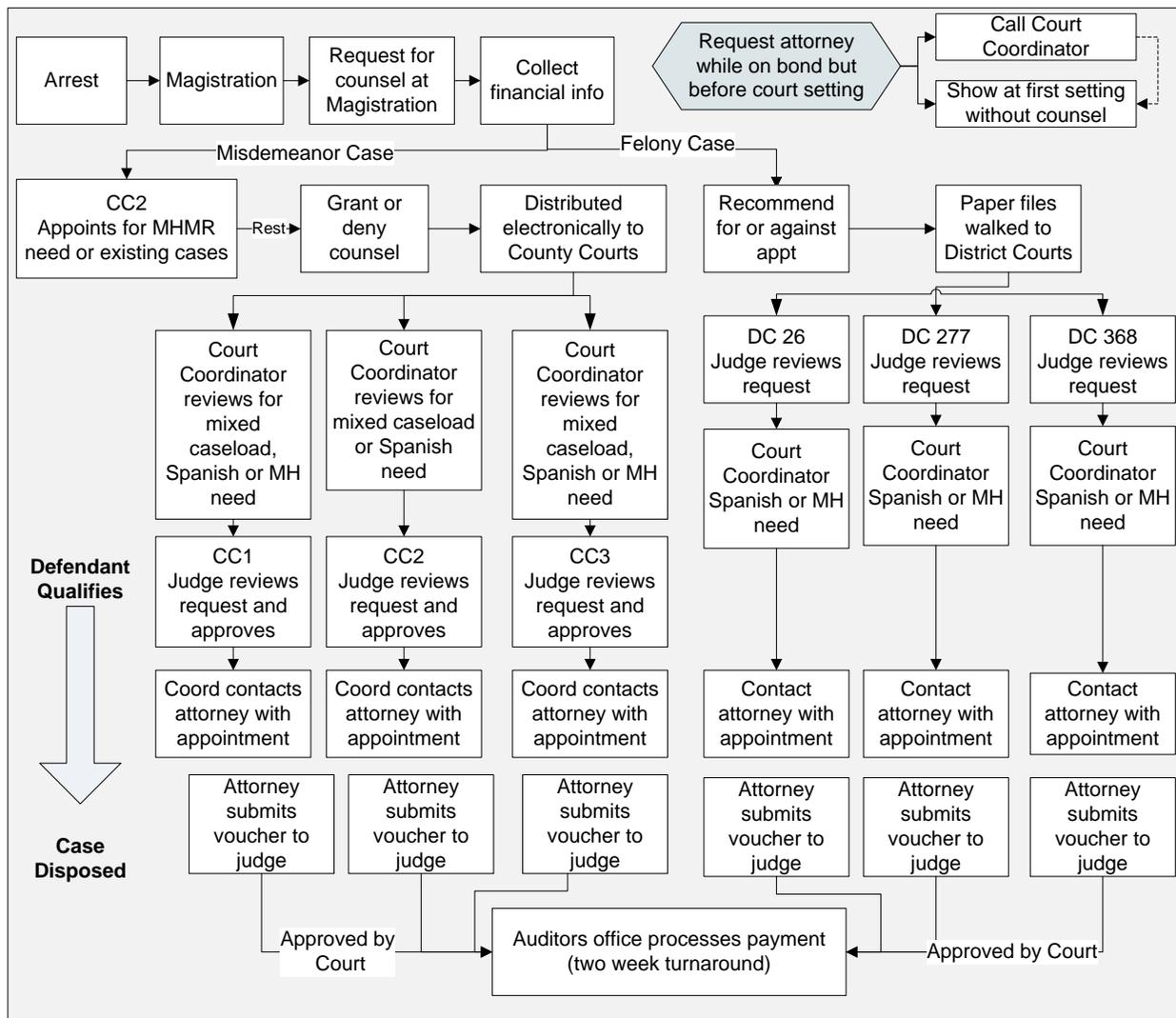


Table 9 shows a comparison of expected indigent cases to reported number of indigent cases in each county court. There is one county court with a much lower appointment rate than the other two, and Table 9 illustrates this point by comparing the number of cases that were treated as indigent, with the number of cases that would be expected based on the county court average rate of appointment. During FY 2013, the county filed 10,512 misdemeanors and 38 percent received appointed counsel (4,014) cases. CCL #2 appointed in 30 percent of cases; however, CCL #1 and CCL #3 both appointed at a rate of 46 percent.<sup>24</sup> If CCL #2 were appointing at the average rate (38%), there would be 1,997 cases in that court, and there are actually 1,573, which is an appointment rate of 30 percent. This appointment rate is markedly lower than the other two courts.

**Table 9: Comparison of County Court Appointment Rates with Expected Appointment Rates, FY 2013**

	County Court 1	County Court 2	County Court 3	Total
<b>Proportion of Criminal Cases</b>	20%	50%	30%	100%
<b>Expected Distribution</b>	2,102	5,256	3,154	10,512
<b>Expected Indigent Cases (38% of Distribution)</b>	799	1,997	1,199	4,014
<b>Reported Number of Indigent Cases</b>	975	1,573	1,466	4,014
<b>Proportion of Expected Distribution</b>	46%	30%	46%	38%

Several problems--processes operating in individual court silos, a low rate of appointment in one court, and lack of dedicated appointment list management--can be addressed with the same relatively simple solution: employ a centralized point of contact with responsibility for indigent defense.

As depicted in Figure 6 (above), the process for determining indigence and assigning an attorney does not vary appreciably by court. As the number of defendants grows, this process takes more time away from the other responsibilities of court coordinators and judges. Williamson County should empower a centralized point of contact for indigent defense process coordination across all courts, which will standardize the application of indigence standards, among many other beneficial effects.

<sup>24</sup> TIDC. Williamson County Expenditure Report Summary, Fiscal Year 2013. <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=246&fy=2013> Accessed February 7, 2014.

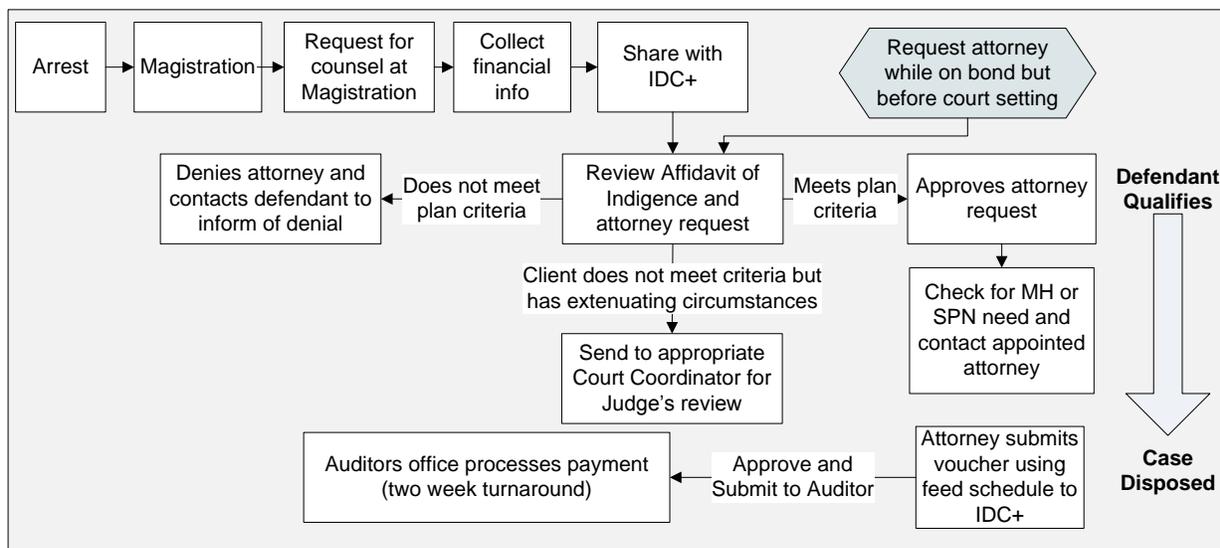
**Recommendation:**

Expand the concept of the IDC so this position becomes a centralized point of contract for indigent defense process coordination across all courts, which will standardize the application of indigence standards, among many other beneficial effects.

Figure 7 shows the process after creation of an indigent defense coordinator “plus” (IDC+). We use the terminology “plus” to differentiate the recommended position from a purely administrative position, which is often used in smaller counties with less volume. This position should be a robust, professional version of the administrative role, with appointment responsibilities, consistent interaction with the judiciary, and proactive monitoring of attorney performance. The Magistrate should supervise this position as it supplements the indigent defense processes already occurring in that division.

The IDC+ would receive and process all requests for counsel electronically and appoint counsel. The magistration process generates the affidavit of indigence to assess if the applicant meets the county’s standards. Williamson County’s Indigent Defense Plan indicates a defendant qualifies for representation if the person has a household income at or below 125 percent of the latest poverty guidelines established by the United States Department of Health and Human Services, and whose liquid assets do not exceed \$5,000 for felony cases or \$2,500 for misdemeanor cases.<sup>25</sup> These standards are clear and determined by the judges while writing the County Indigent Defense Plan. The magistration process already grants or denies counsel for misdemeanors, appoints counsel for misdemeanor cases with mental health needs, and advises the district courts on whether defendants qualify financially for appointments. The judges indicated in cases where the defendant has extenuating circumstances, but too high of an income to qualify, they will sometimes appoint counsel. In such instances, the IDC+ could refer the application to the appropriate court if the judges want to maintain this safeguard.

**Figure 7: Suggested Redesign of Indigent Defense Assignment Process Using an Indigent Defense Coordinator “Plus”**



<sup>25</sup> Williamson County Indigent Defense Plan: Indigence Determination Standards. <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=380>. Accessed April 7, 2014.

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The IDC+ would be positioned to carry out several other key responsibilities that would close potential gaps and create efficiencies in case processing:

- Appoint counsel for persons who apply after receiving bond;
- Centralize the appointed counsel lists;
- Check on those in jail to ensure all have attorneys attached to their cases, which CCL #1 does currently;
- Communicate with both clients and attorneys on appointments;
- Enter case data about the process to show compliance with the Fair Defense Act;
- Receive and process payment vouchers from attorneys, with the ability to refer specialized voucher circumstances to the appropriate judge; and
- Conduct verifications of indigence, if the county chooses to implement that concept.

To elaborate on the final point, the issue of indigence verification surfaced in the assessment, and resources on that topic have been provided to the county. TIDC has concluded, based on the evidence to date, that verification of financial information is not cost effective because there are relatively few arrestees who underreport income or assets to the extent that verification would result in a denial of indigence. On the other hand, having such a process, one may identify defendants who are not indigent. Conducting indigence verification may also increase confidence in the system, as well as credibility with those who suspect attorneys are provided too easily.

An active screening process, rather than verification, is the more important part of the equation. The process for gathering the financial information should not be merely passing a form to an arrestee in the holding cell pre-magistration. The better practice is having a county employee collect the information. The interactive process allows defendants and county to ask clarification questions to gather correct and complete information. Williamson County already employs the latter process during magistration.<sup>26</sup>

The IDC+ could help alleviate the weekend backlogged felony appoints shown above in Table 3. If not adopted, the problem of timely appointment of counsel for weekend cases will require continued vigilance and fine tuning by county officials. The county should continue to provide targeted magistration coverage by watching the booking load and adopting a new approach to get caught up on felony appointments.

Figure 8 shows the distribution of bookings by time of day and overlays the times when magistration is conducted. Bookings are most frequent in the times shown in dark red, and least frequent in the times shown as dark green. There is good overlap in dedicated scheduling and high booking traffic, showing this thought process is already embedded in scheduling, and it should be continued. This also suggests felony appointment lag is not explained by time to magistration. The county should continue to monitor booking times to ensure proper overlap occurs.

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<sup>26</sup> The Brennan Center for Justice has published a very good report on point, "Eligible for Justice: Guidelines for Appointing Defense Counsel." The study recommends a set of practical guidelines to help states and counties with the task of determining eligibility. It is a quick read and provides practical guidance and insight into the process of determining eligibility for court appointed counsel. Available at: <http://www.brennancenter.org/publication/eligible-justice-guidelines-appointing-defense-counsel>

**Figure 8: Booking Times by Day of Week and Hour of Day**

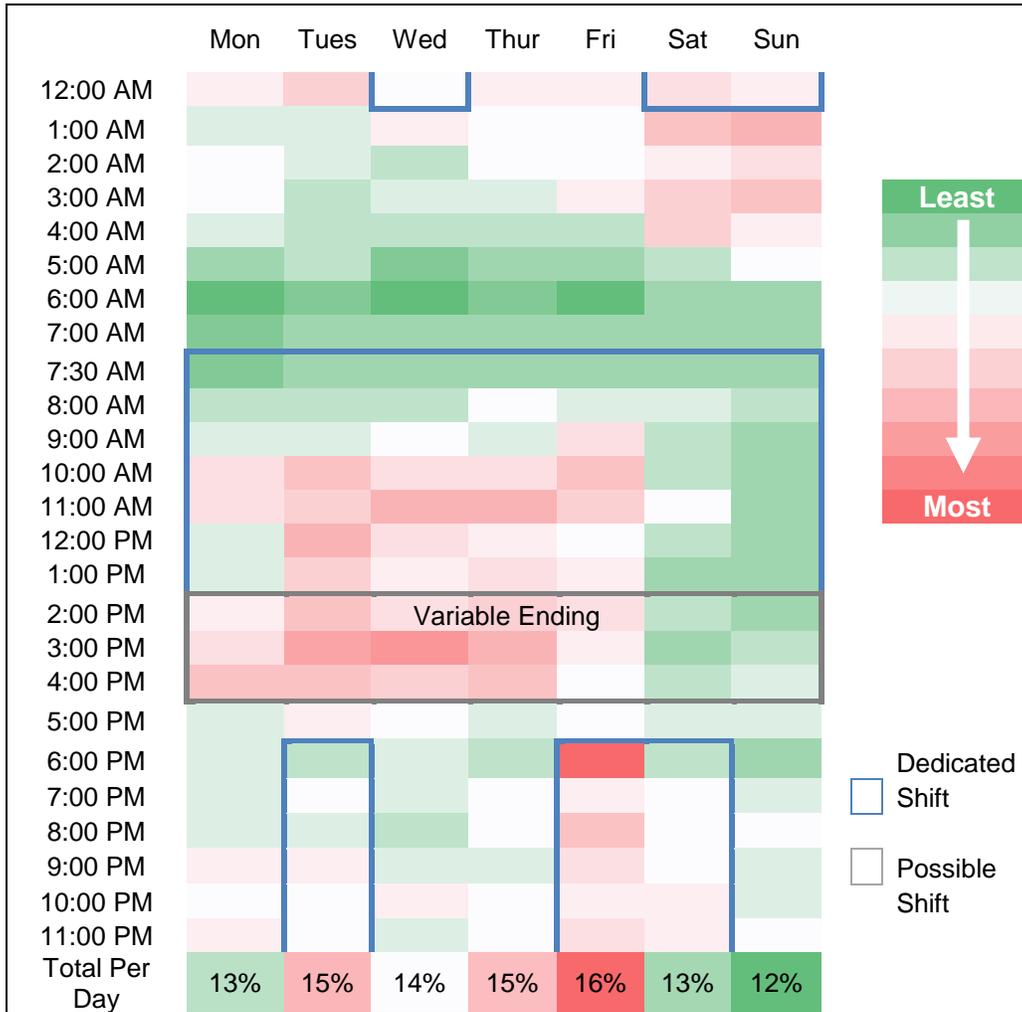


Table 10 summarizes the benefits to the judiciary resulting from the IDC+ position’s attorney management, case management, and financial management responsibilities. The position also moves the county into compliance with the American Bar Association’s first principle of indigent defense delivery: “The public defense function, including the selection, funding, and payment of defense counsel, is independent.”<sup>27</sup>

<sup>27</sup> American Bar Association. “Ten Principles of Public Defense Delivery Systems,” February 2002, accessed April 27, 2014. [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf).

**Table 10: Summary of IDC+ Benefits for the Judiciary**

Area to Update	Details
Attorney Management	<ul style="list-style-type: none"> <li>• Screen applications for wheel requirement compliance, audit CLE hours, and check management reports</li> <li>• Prepare packets for judicial review on applications and problems</li> <li>• Serve as liaison between the defense bar, the prosecutor’s office, and the courts, and support bench/bar workgroups</li> </ul>
Case Management	<ul style="list-style-type: none"> <li>• Assign attorneys to defendants meeting financial qualifications (including prior to first setting but after bond release) and check on acceptance of case by attorney</li> <li>• Ensure that the appropriate notices are sent to the attorney assigned to the case, the designated court, the bond company, Detention Center, and pre-trial services, and monitor cases to ensure they are set for trial</li> <li>• Handle client inquiries regarding (lack of) attorney communications</li> </ul>
Financial Management	<ul style="list-style-type: none"> <li>• Process vouchers in a timely fashion</li> <li>• Submit requests out of compliance with fee schedule to judges</li> <li>• Manage paperwork for direct deposit and serve as contact point for attorneys awaiting payment</li> </ul>

The IDC+ position should not be created without judicial consensus. This position’s scope of work must be designed to best suit the needs of judges, court coordinators, defendants, and attorneys in the county. Williamson County should write standard operating procedures and refine flow charts for appointments, attorney application processes, and attorney performance interventions, to refine the scope responsibilities.

Figure 9 shows the suggested organizational placement of this position within the Magistration Division of the County. Williamson County’s Magistrates are required to be attorneys. Currently, the Magistrate is also the Indigent Defense Coordinator and the position oversees the Indigent Defense Specialists who collect financial information from defendant applicants.

**Figure 9: Current Magistration Division Organization**

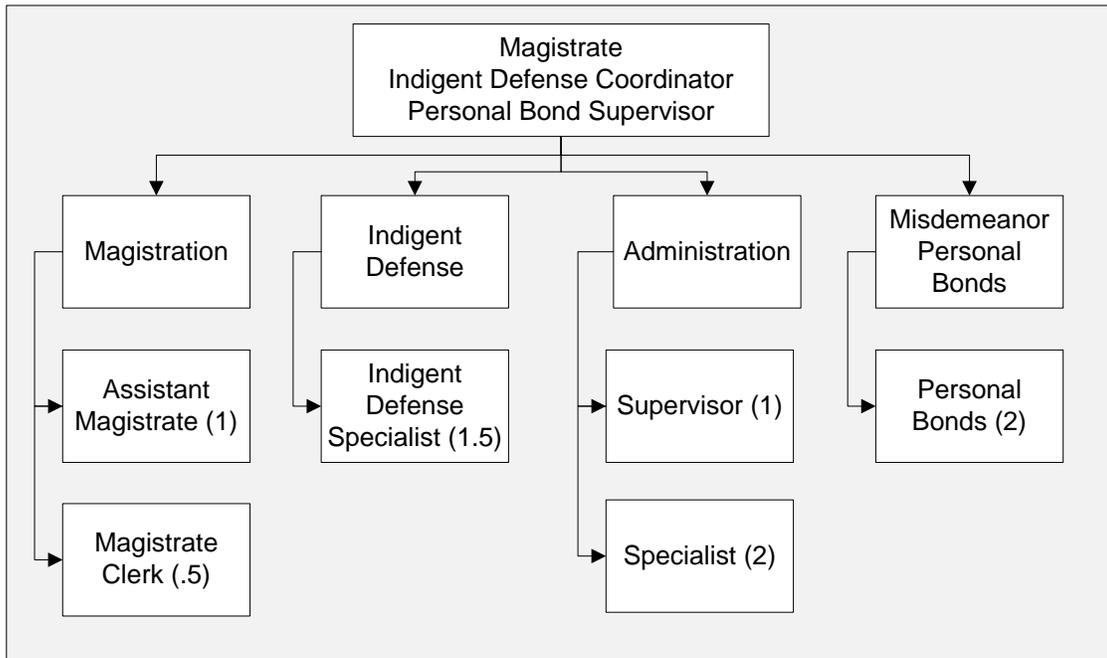
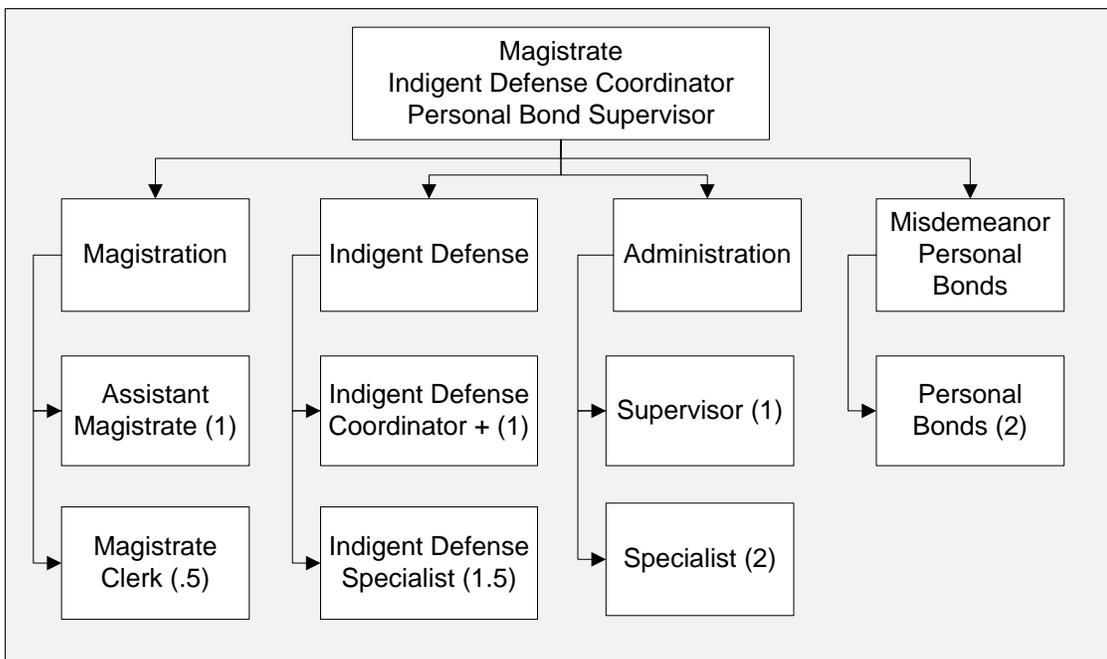


Figure 10 shows the updated organization chart with the Indigent Defense Coordinator. This position clearly fits under the indigent defense functions of the Magistrate.

**Figure 10: Suggested Magistration Division Organization with New Position**



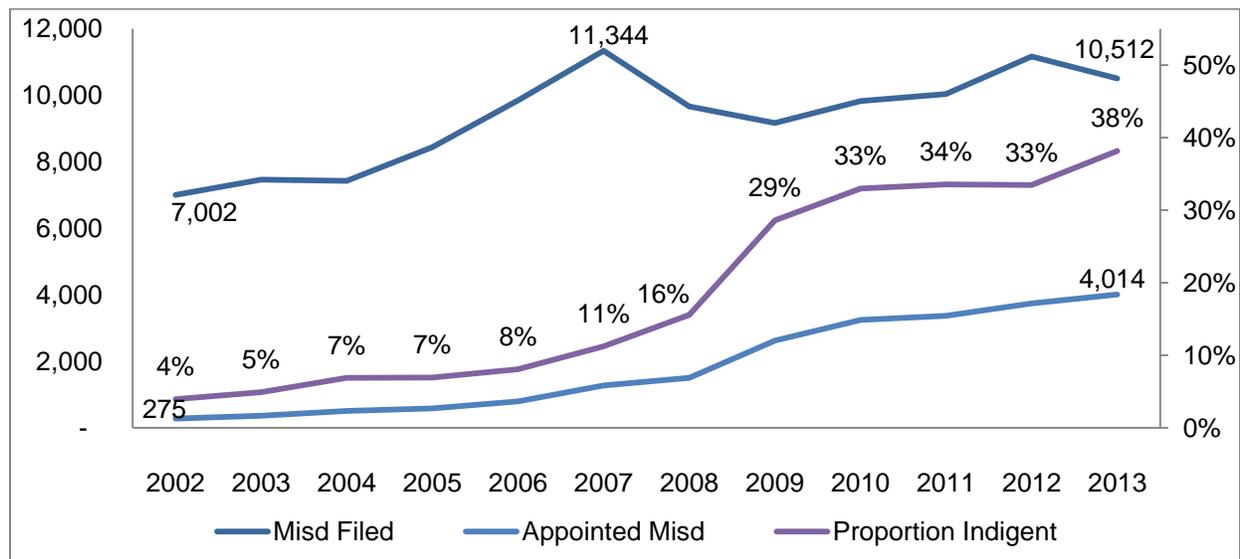
County officials should seek a TIDC grant to subsidize the first year expense of implementation of the Indigent Defense Coordinator position, with an application for up to \$50,000 from TIDC through a New Menu Option Discretionary Grant. The grant will pay for half of the cost of an IDC and supplies for one year for a new position; grant funds cannot be used to supplant current functions. Although the position has the same title as a current position, the functionality does not seem to supplant current duties of the IDC.<sup>28</sup> Williamson County has a short timeline for turnaround on this single year grant program. Online submissions, which require a resolution from Williamson County Commissioners Court and a letter of support the affected judges, are due May 9, 2014.<sup>29</sup>

### C. Planning for Growth

Table 1, Table 2, and Figure 3 above illustrated the dramatic increases in misdemeanors filed, misdemeanors with appointed counsel, and the associated 1,255 percent increase in cost.

Figure 11 shows the number of misdemeanor cases filed, the number of indigent cases, and the proportion of indigent cases out of the total of misdemeanor cases. The number of misdemeanor cases filed grew by 50 percent between FY 2002 and FY 2013, though the number has fallen off from an FY 2007 peak of 11,344. The number of indigent cases increased by 1,360 percent during the same period. The proportion of indigent cases with appointed counsel jumped from 16 percent in FY 2008 to 29 percent in FY 2009 and has steadily increased every year since – the number of cases with appointed counsel increased from 1,506 to 2,622 during the same period.

**Figure 11: Misdemeanors Filed, Appointed Counsel, and Proportion with Appointed Counsel, FY 2002 to FY 2013**



<sup>28</sup> Gonzales, Dominic. Phone Call. April 23, 2014.

<sup>29</sup> FY15 Competitive Discretionary Grant Program. TIDC. January 14, 2014.

<http://www.courts.state.tx.us/tidc/pdf/FY15DiscretionaryGrantRFAFinal.pdf> Accessed April 23, 2014.

The rising cost of misdemeanors is unlikely to reverse itself. Future increases can be predicted based on three assumptions – cost per case, total number of cases, and indigent appointment rate.

In November 2013, the county increased the fee schedule for misdemeanor cases. In FY 2013, the county paid \$175 per misdemeanor for a simple plea and now the schedule says the cases will cost 29 percent more at \$225 for the first case and \$50 for each additional case. The Justice Center assumption for planning purposes is that each case will cost the county \$206, which takes the 29 percent increase in pay per case instituted for fiscal year 2014 and applies the increase to the \$160 average cost per case during fiscal year 2013 to get \$206 cost per case.

Table 11 shows the projected number of misdemeanors cases, the number of appointed cases, and the cost under a conservative set of assumptions. Specifically, it was assumed that the average annual change in the number of misdemeanors of one percent from 2006 to 2013 will continue during the projection years. Starting with the 10,512 filed in 2013, one percent annual growth yields just over 11,150 cases by 2019. It was also assumed that 40 percent of the projected cases will receive appointed counsel. Williamson County currently appoints counsel in 38 percent of cases, and this proportion has been increasing annually. Forty percent was chosen as it was also the average misdemeanor appointment rate for Williamson County's comparison counties.<sup>30</sup>

**Table 11: Projected Increase in Number of Misdemeanors Filed, Appointed Cases, and Cost**

	Cases Filed	Percent Change	Projected Filing	Projected Increase	Appointed Cases (Assumes 40% Rate)	Misdemeanor Cost (\$206/ Case)
<b>2006</b>	9,849					
<b>2007</b>	11,344	15%				
<b>2008</b>	9,669	-15%				
<b>2009</b>	9,168	-5%				
<b>2010</b>	9,826	7%				
<b>2011</b>	10,043	2%				
<b>2012</b>	11,171	11%				
<b>2013</b>	10,512	-6%				
<b>2014</b>			10,617	1%	4,247	\$874,851
<b>2015</b>			10,723	1%	4,289	\$883,599
<b>2016</b>			10,831	1%	4,332	\$892,435
<b>2017</b>			10,939	1%	4,376	\$901,360
<b>2018</b>			11,048	1%	4,419	\$910,387
<b>2019</b>			11,158	1%	4,463	\$919,459
<b>Average</b>	<b>10,198</b>	<b>1%</b>		<b>1%</b>		<b>Total: \$3,623,641</b>

<sup>30</sup> Texas Indigent Defense Commission. County Dashboard. <http://tidc.tamu.edu/public.net/>. Accessed January 8, 2014. Bell County appointed in 45% of cases, Collin in 35%, Denton in 41%, Fort Bend in 35%, Montgomery in 44%, and Williamson in 40%. They had an average 9,286 cases filed and 3,706 appointments.

**Recommendation:**

*Williamson County should seriously consider the alternative to the use of a strictly assigned counsel system with the creation of a Misdemeanor Public Defender Office (MPDO).*

Table 12 shows an estimate of the potential five-year savings for Williamson County by creating an MPDO, subsidized by the TIDC. As shown in Table 11, under conservative growth assumptions, the county is projected to spend over \$3.6 million for misdemeanor indigent defense. If the county decides to create an MPDO, then applies for and receives a TIDC grant for this purpose, the county is projected to save half of this cost. TIDC offers competitive discretionary grants to fund direct client service programs that represent indigent defendants. The grant application is due in January 2015 and will provide support which can begin in fiscal year 2016 (October 1, 2015). TIDC grants pay 80 percent of first year cost, 60 percent of second year cost, 40 percent of third year cost, and 20 percent of fourth year cost.<sup>31</sup>

**Table 12: Potential Savings Opportunity for Williamson County by Creating a Misdemeanor Public Defender Office**

	Assumed Misdemeanors Filed	Appointed Cases	Cost	Proportion Covered by TIDC Funding	State Grant Covers	Williamson County Cost
2014	10,617	4,247	\$874,851			
2015	10,723	4,289	\$883,599			
2016	10,831	4,332	\$892,435	80%	- \$713,948	= \$178,487
2017	10,939	4,376	\$901,360	60%	- \$540,816	= \$360,544
2018	11,048	4,419	\$910,387	40%	- \$364,155	= \$546,232
2019	11,158	4,463	\$919,459	20%	- \$183,892	= \$735,567
<b>2016-2019 Total</b>	<b>43,976</b>	<b>17,590</b>	<b>\$3,623,641</b>	<b>50%</b>	<b>\$1,802,811</b>	<b>= \$1,820,830</b>

Table 13 shows the number of attorneys necessary each year, and the per attorney budget, if the MPDO adopts the National Advisory Council (NAC) Standard of 400 misdemeanor cases per attorney per year.<sup>32</sup> The number of attorneys necessary is the number of appointed cases (4,463 cases by 2019) divided by 400. The annual budget per attorney also uses the NAC 400 case standard. The \$86,500 per attorney budget is the 400 case caseload multiplied by \$206, which is the projected per case expenditure under the appointed system.

<sup>31</sup> New Multi-Year Discretionary Grants – Fiscal Year 2015. <http://www.txcourts.gov/tidc/pdf/FY15DiscretionaryGrantRFAFinal.pdf> Accessed March 7, 2014.

<sup>32</sup> National Advisory Council of the US Department of Justice Task Force on the Courts. 1973. Reprinted in Farole, Donald J. Bureau of Justice Statistics. Census of Public Defender Offices, 2007. September 2010. <http://www.bjs.gov/content/pub/ascii/clpdo07.txt>. Accessed April 22, 2014.

**Table 13: Number of Attorneys Necessary and Annual Budget per Attorney**

	Appointed Cases	Cost	Number of Attorneys Carrying 400 Caseload	Annual Budget Per Attorney
2014	4,247	\$874,851	10.6	\$86,500
2015	4,289	\$883,599	10.7	\$86,500
2016	4,332	\$892,435	10.8	\$86,500
2017	4,376	\$901,360	10.9	\$86,500
2018	4,419	\$910,387	11.0	\$86,500
2019	4,463	\$919,459	11.2	\$86,500

The salaries in the public defender office can achieve parity with the salaries of the County's Attorney's Office and, under the above scenario, the county will have additional funds to pay for other aspects of the operation of the office. For FY 2013, the average salary for assistant prosecutors in the County Attorney's Office was \$57,957.<sup>33</sup> Assuming a 30 percent add-on for benefits, the attorneys cost \$75,344 each. If the MPDO has a parity of resources on salary to the prosecuting attorneys, as recommended by the ABA, each attorney will leave a balance of \$11,156 (\$86,500 minus \$75,344). In the first year (FY 2016), when it employs 10.8 attorneys, there will be 10.8 times \$11,156, or \$120,485, available for facilities and support. The county will spend exactly what it is projected to spend on misdemeanor defense using appointments, but in a more predictable and efficient fashion with grant funding offsetting half the cost.

Implementing a public defender office would have the added benefit of bringing the county into compliance with the ABA's second principle of public defense delivery: "Where the caseload is sufficiently high, the public defense delivery system consists of both an assigned counsel or defender office, and the active participation of the private bar."<sup>34</sup>

In addition to the financial and legal incentives, there are further efficiencies likely to save Williamson County money. The MPDO will be part of the justice complex, so attorneys are located in the county. They can meet with clients, judges, and prosecutors almost immediately, if necessary. The attorneys will know the Williamson County system inside and out, so there are no questions on county process. Plus, once the client is found financially qualified, the case is assigned to the MPDO and represented by the MPDO. There is an automatic assignment and acceptance process on over 4,000 cases per year.

**Recommendation:**

*Integrate defense into the pretrial release decision process, and use public defenders for misdemeanors to control expenditures and improve results.*

The MPDO attorneys will also be available to represent misdemeanor clients at magistration and advocate for bond reconsiderations. This is not only a financial savings

<sup>33</sup> Williamson County 2012 to 2013 Budget. <http://wilco.org/Portals/0/Departments/Budget/FY12.13BudgetWilco.pdf>. Accessed April 3, 2014.

<sup>34</sup> American Bar Association. "Ten Principles of Public Defense Delivery Systems," February 2002, accessed April 27, 2014. [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf).

opportunity, but it also places Williamson County at the forefront of a nationally emergent issue. Bond status affects case outcomes and jail costs, which will only increase as the county grows in population. The magistration process works for the current system, but additional volume may create inefficiencies not currently seen, and the county should be proactive for felony and misdemeanor magistration.

Around the country and in Texas, counties that are serious about refinements to their criminal justice system are recognizing that there may be substantial, perhaps counter-intuitive advantages, to involving defense counsel at the bonding stage of the criminal case.<sup>35</sup> In other words, providing advocacy on the defendant's behalf to reduce the amount of bond, or allow release on recognizance or with conditions.

This helps judges by having an attorney to interact with, rather than a defendant who is likely not to understand the nuances of the situation. It also helps the county, as defendants who are out on bond obviously save enormous jail costs. Significantly, it would also ensure compliance with *Rothgery v. Gillespie County*, where the Supreme Court held that a defendant's Sixth Amendment right to counsel attaches at an Article 15.17 hearing.<sup>36</sup>

Pretrial release has been shown to have a positive effect on the case outcome. In New York City, defendants who are detained pretrial are more likely to be convicted, if convicted they are more likely to be sentenced to incarceration, and if incarcerated, their sentences are likely to be longer.<sup>37</sup> The Harris County Public Defender's Office avoided a final conviction in felonies because their cases were either dismissed or because they received deferred adjudication. For clients incarcerated pretrial this result occurred for 34 percent of clients, and for clients on bond for 58 percent.<sup>38</sup>

Bond release status affects outcomes in Williamson County. To test the impact of bond status and attorney type on defendants, the case data provided by Williamson County to the Justice Center team was analyzed. The outcomes of clients were coded based on their "worst" outcome in a case. From best to worst, the categories used were: all dismissed, guilty on all, guilty on one or more and dismissal on others, and deferred. Then four datasets were built, equal on highest charge's offense level, gender, and number of charges. The datasets were client on bond with a hired attorney, client incarcerated with a hired attorney, client on bond with an appointed attorney, and client incarcerated with an appointed attorney.

Figure 12 shows the outcomes for felony cases by attorney type and bond status.<sup>39</sup> Hired attorneys for those on bond got all cases dismissed for clients in 53 percent of cases (blue bar, far left grouping). This is 1.8 times more frequently than appointed attorneys for clients on bond, which was the second highest "all dismissed" rate. Conversely, appointed attorneys for clients jailed pretrial (purple bar, second grouping from left) had 61 percent of clients found

<sup>35</sup> Bunin, Alex and Andrea Marsh. 1/29/2014. Proposal for Counsel at TEX. CODE CRIM. PROC. ART. 15.17 Proceedings. Voice for the Defense Online. <http://www.voiceforthedefenseonline.com/story/proposal-counsel-tex-code-crim-proc-art-1517-proceedings>. Accessed April 18, 2014. Cox, Jerry J. June 2013. Lawyers Make a Difference at First Appearance and on Pretrial Release. *The Advocate: Journal of Criminal Justice Education & Research*.

<http://www.pretrial.org/download/advocacy/Kentucky%20Pretrial%20Release%20Manual%20-%20Kentucky%20Dept.%20of%20Public%20Advocacy%202013.pdf>. Accessed April 18, 2014. Phillips, Mary T. August 2012. A Decade of Bail Research in New York City. <http://www.cjareports.org/reports/DecadeBailResearch.pdf>. Access April 18, 2014.

<sup>36</sup> *Rothgery v. Gillespie County*, 554 US 191 (2008).

<sup>37</sup> Phillips, Mary T. August 2012. A Decade of Bail Research in New York City. <http://www.cjareports.org/reports/DecadeBailResearch.pdf>. Access April 18, 2014.

<sup>38</sup> Bunin, Alex and Andrea Marsh. 1/29/2014. Proposal for Counsel at TEX. CODE CRIM. PROC. ART. 15.17 Proceedings. Voice for the Defense Online. <http://www.voiceforthedefenseonline.com/story/proposal-counsel-tex-code-crim-proc-art-1517-proceedings>. Accessed April 18, 2014.

<sup>39</sup> Bond status indicates the defendant went out on bond, but there is no way to tell if he was "successful" on bond.

guilty on all charges compared to 44 percent for clients jailed pretrial with hired counsel (green bar, second grouping from left).

**Figure 12: Outcomes for Clients with Felony as the Highest Charge by Bond Status and Attorney Type**

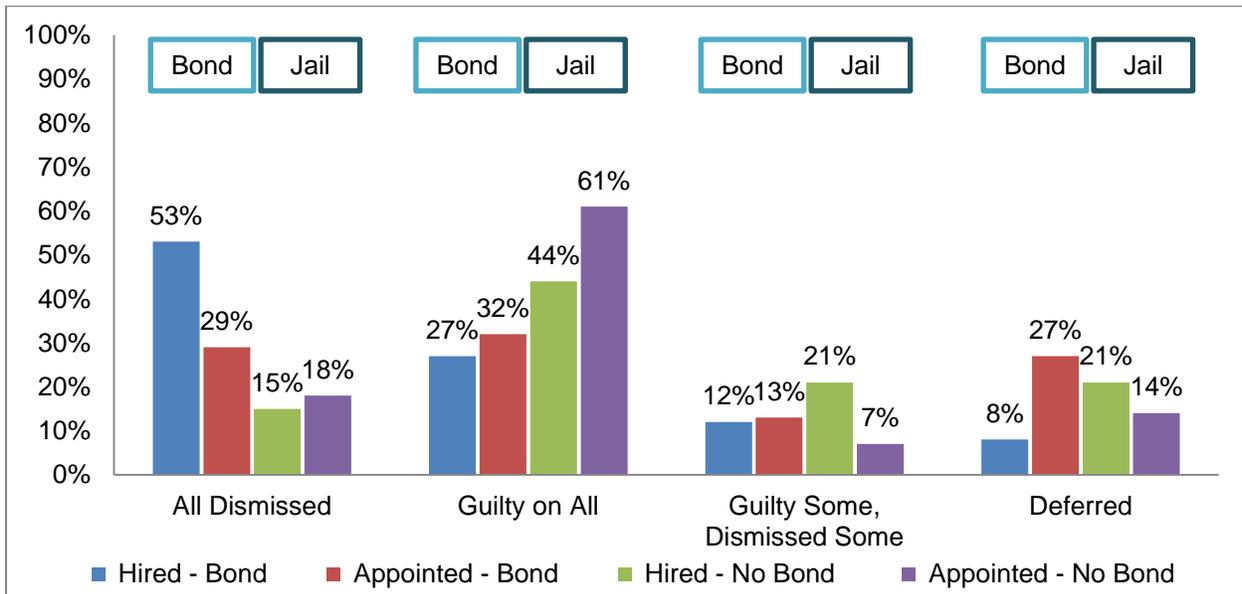
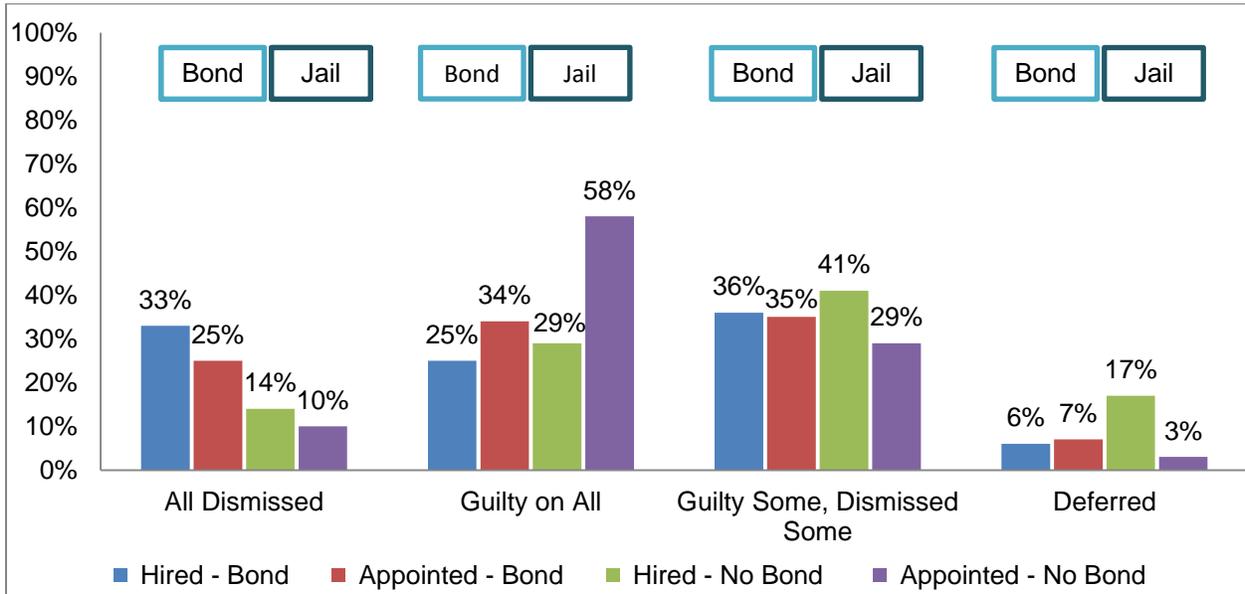


Figure 13 below shows the same analysis, but for clients with a misdemeanor as the highest charge. Defendants represented by appointed counsel who did not get out of jail on bond (purple bars) were found guilty on at least one misdemeanor charge in 87 percent of dispositions (58% guilty on all plus 29% guilty on some, dismissed on some). Hired attorneys with clients unable to bond out (green bars) had this result in 70 percent of dispositions (29% plus 41%) and clients on bond with appointed counsel had this outcome in 69 percent of dispositions (34% plus 35%). Defendants who hired counsel, but could not bond out (green bar, far right grouping) received deferred adjudication 17 percent of the time. This is three times the average deferred adjudication rate of the other three groups (5.3%).

**Figure 13: Outcomes for Clients with Misdemeanor as the Highest Charge by Bond Status and Attorney Type**



## IV. Next Steps

Williamson County needs to move forward by implementing recommendations related to using technology, staffing to achieve efficiency of appointments, and planning for continued population growth with greater attention to indigent defense.

Table 14 shows solutions to be implemented, broken out by business area and topic.

**Table 14: Topics to Address and Solutions by Business Area**

<i>Business Area: Compliance Reporting</i>	
Topic to Address	Solution
Underutilize Odyssey's data capture and reporting ability due to lack of training and data collection protocols	Attend TylerTechnology training seminar online or at a conference
	Work with Odyssey rep to directly address compliance goals and training
Odyssey lacks 30 percent of capability necessary to show compliance with FDA	Create protocols to enter data currently missing but capable of being entered in the Odyssey system
	Join Collin County and CUC to improve current technology
County Indigent Defense Plan must reflect new computer system and data entries protocols	Upgrade Odyssey to incorporate system changes
	Update plan to reflect use of new technology and data collection protocols
Other areas of the IDP should be updated to help county select the type of attorneys it wants on the appointment lists and implement processes it wants to use	Update qualifications related to experience and practice
	Formally address use of mentor as proxy for experience
	Create and require CLE covering practice of criminal law in Williamson County and supplement with topics from State Bar's <i>Guidelines</i>
	Address the blanks currently in the qualification requirements section of the plan
<i>Business Area: Efficiencies in the Attorney Appointment Process</i>	
	Topic to Address
Process to appoint is disparate and in silos	Create an IDC+ position (TIDC grant funding available) in the Magistration Department with the power to appoint counsel and monitor defendants without counsel attached to case

**Business Area: Efficiencies in the Attorney Appointment Process (cont.)**

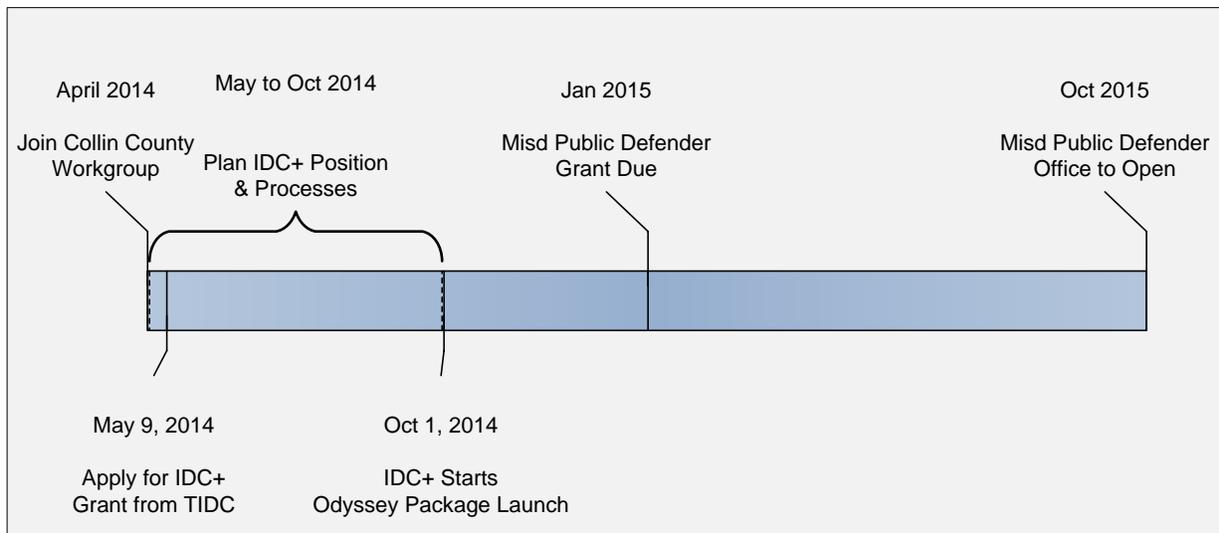
Topic to Address	Solution
Felony weekend times could be improved	IDC+ with appointing authority likely to impact this issue  IDC+ could monitor appointment times to ensure county is improving
Processes to include, monitor, or address concerns with attorneys on the appointment list should be housed with a single point of contact who can monitor management reports on attorneys	Create protocols for appointment, data tracking, and addressing concerns  Centralize functions in the Magistration Department, likely under the IDC+ who should have working relationships with appointment list attorneys

**Business Area: Growing Population**

Topic to Address	Solution
Misdemeanor cost and proportion of appointed cases projected to continue increasing	Create a Misdemeanor Public Defender Office with a predictable budget using grant funding from TIDC
Bond status affects case outcomes and jail costs, which is likely to continue as county grows	Integrate attorneys into the Magistration process

Figure 14 shows important deadlines for the above recommendations. Williamson County has already joined the Collin County workgroup, so the IDC+ position grant is the next deadline it must meet. The grant application is due May 9, 2014.

**Figure 14: Timeline for Recommendations**



The Justice Center is happy to help shepherd the grant application process. TIDC is aware of these recommendations and Williamson County can be easily connected to staff representatives to facilitate the process.