



TFDP

TEXAS FAIR DEFENSE PROJECT

Front-End Processes for Indigent Defense

Texas Association of Pretrial Services Agencies
1st Annual Conference and Training Institute
Austin, Texas
March 27, 2014



<http://tidc.texas.gov>





The mission of the Texas Indigent Defense Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

TFDP

TEXAS FAIR DEFENSE PROJECT

<http://www.texasfairdefenseproject.org/>

The Texas Fair Defense Project (TFDP) is a nonprofit organization that works to improve the fairness of Texas's criminal courts and ensure that all Texans have access to justice. TFDP focuses on improving the public defense system and challenging policies that create modern-day debtors' prisons filled with poor people who cannot afford to pay commercial bond fees and post-conviction fines and costs.

BY THE NUMBERS

Over 50 percent of those coming through the criminal justice system in Texas are too poor to hire counsel

New Criminal Cases 2013

	Filed	Appointed
Felonies	272,990	192,045
Misdemeanors	549,030	228,357
Total	822,020	420,402

2711 TRIAL COURTS

457

District

510

County

1744

JP/Municipal

Gideon vs. Wainwright 1963

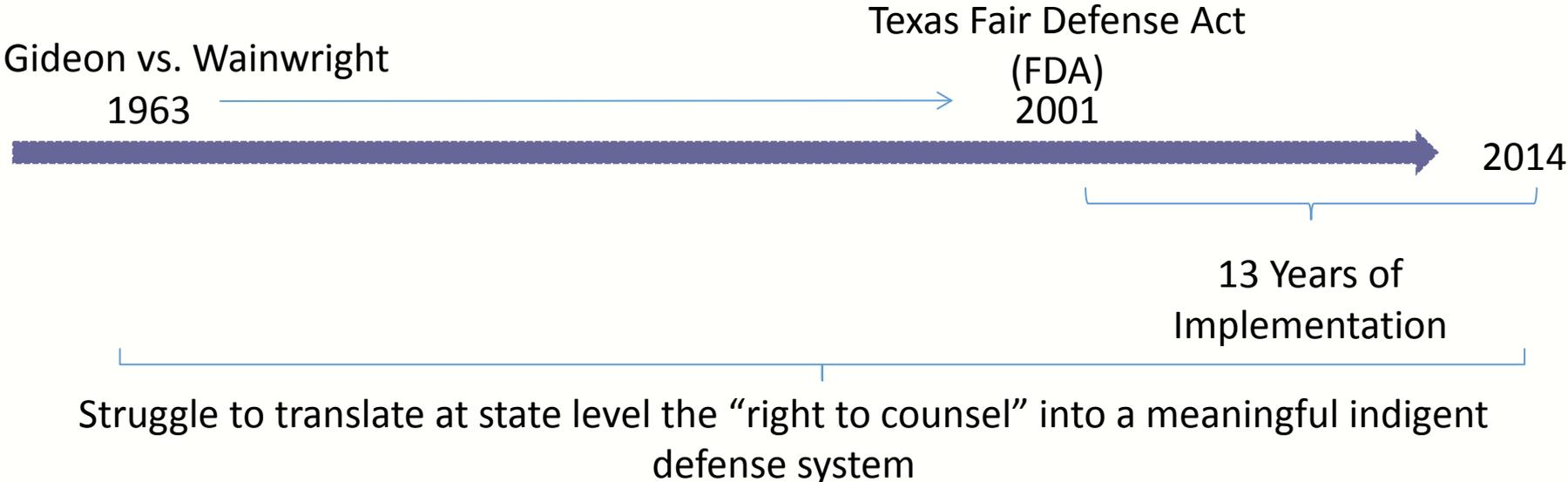
In our adversarial system of criminal justice....

With government “quite properly” spending “vast sums of money to establish machinery to try defendants accused of crime”.....you need

..... “procedural and substantive safeguard designed to assure fair trials before impartial tribunals in which defendants stands equal before the law”

“This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

Long Road to Make Indigent Defense Meaningful



Fair Defense Act of 2001 Adopted to Address Major Grievances with Texas Indigent Defense

**Texas Indigent Defense
Commission
(formerly Texas Task
Force on Indigent
Defense)**



**Set infrastructure to
address grievances and
implement FDA in 2001**

**No uniformity in local indigent defense
appointment practices**

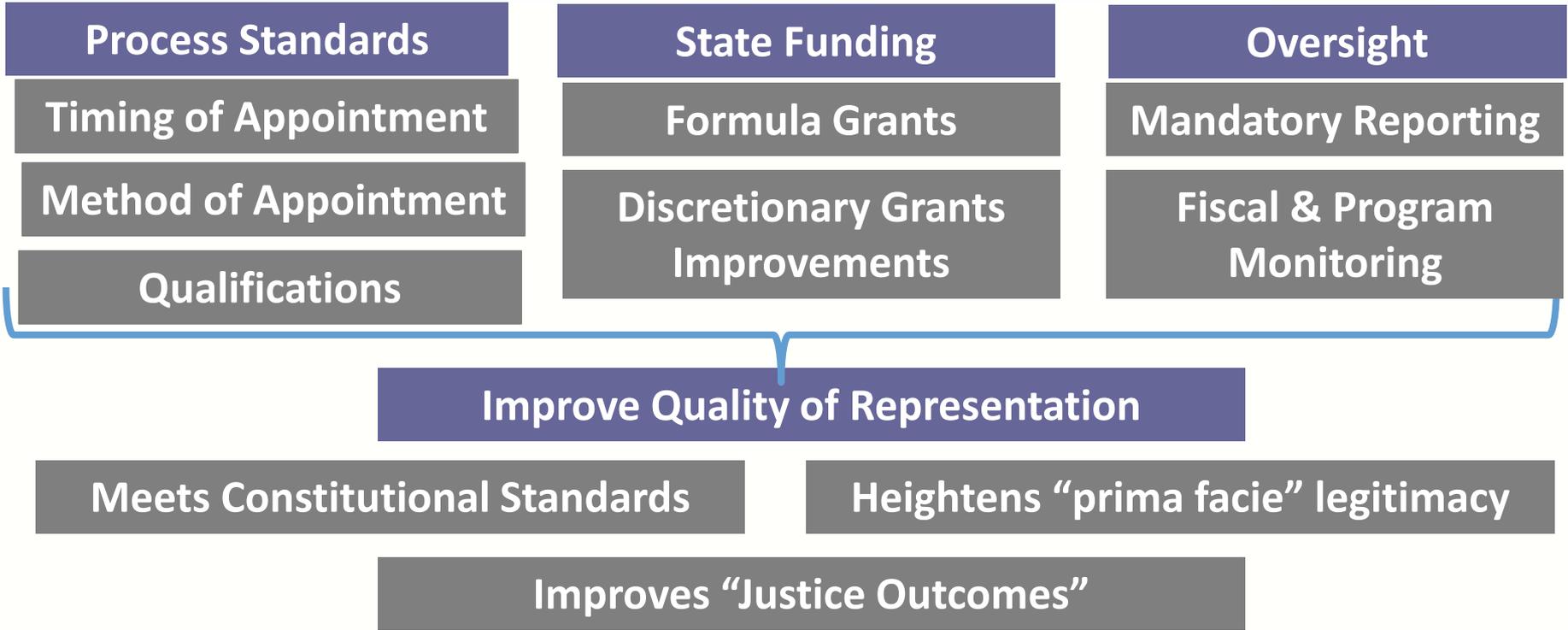
**Judges' discretion to select counsel and
pay fees fueled appearance of cronyism**

Lack of standards regarding qualifications

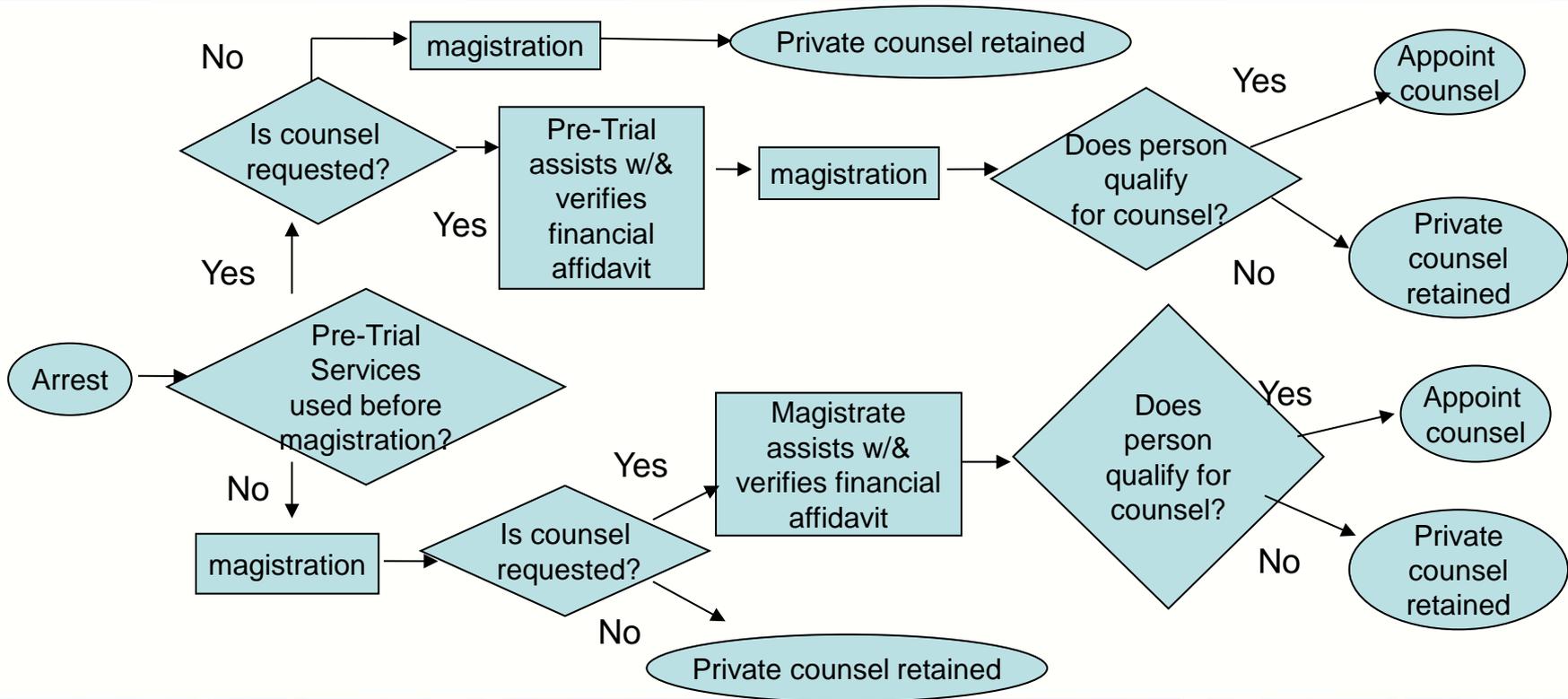
No state funding or oversight

No reporting on budget/performance

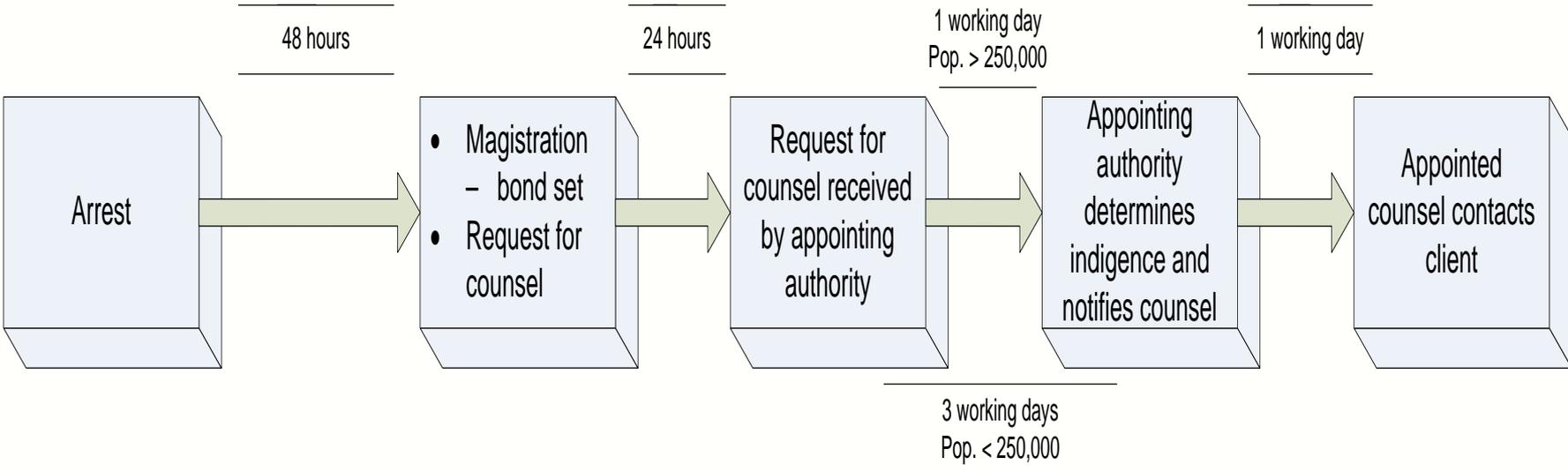
Fair Defense Act Put Structure in Place for Improving Indigent Defense in Texas



Screening & Verification Overview



Timelines for Appointment of Counsel



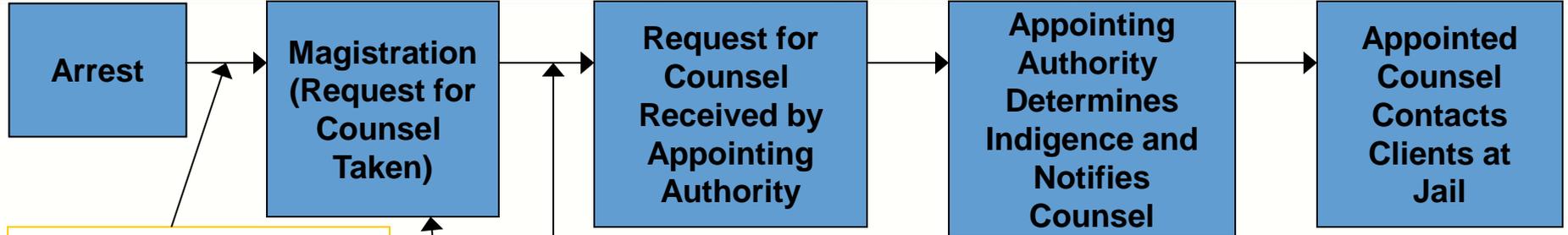
Front-end Processing Issues

48 hours

24 hours

1 or 3 workdays

1 workday



Issue 1:
No date/time of arrest recorded, so time to magistration not determinable

Issue 2:
No assistance w/ affidavit or jailer assists w/ affidavit

Issue 3:
No timely transfer of request

Issue 4:
Denials of indigence are often not documented, so timely determination may not be determinable

Issue 5:
Pre-case filing events not centrally tracked, so timely processing not determinable

Issue 6:
Percentage of cases assigned to same counsel

2014 Texas Defense Delivery Systems

<u>MODEL</u>	<u>STATEWIDE NUMBERS</u>
Public Defenders	20 programs
Managed Assigned Counsel	3 programs

<u>MODEL</u>	<u>STATEWIDE NUMBERS</u>
Contract Defenders	14 District Courts 10 County Courts 10 Juvenile Board
Ad-Hoc Assigned Counsel	210 District Courts 220 County Courts 216 Juvenile Board

Using Data to Inform Decision Making

County Data Sheets



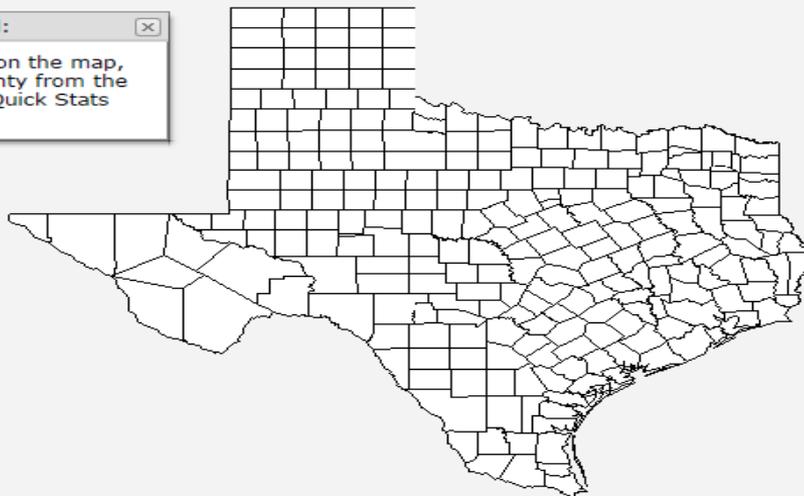
Quick Links

- ▶ Summary of Funding
- ▶ County Indigent Defense Plan
- ▶ **County Datasheet**
- ▶ County Dashboard
- ▶ List of Public Defender Managed Assigned Counties
- ▶ TIDC Home Page
- ▶ Login

Getting Started:

Click a county on the map, or select a county from the drop-down in Quick Stats 2011 panel.

Texas Counties



Quick Stats 2011

Current Population Estimate

Total Indigent Defense Costs

Formula-Based Grant Amount

Discretionary Grant Amount

Non-Capital Felony Trial-Level Cases Paid

Misd. Trial-Level Cases Paid

Juvenile Trial-Level Cases Paid

Appeals Cases Paid

Capital Cases Paid

Travis County At a Glance:

- **New Cases Added**
- **Appointment Rates**
- **Costs**
- **Grants**

Travis County

Year	2001	2009	2010	2011	2012	2013	Texas 2013
Population (Non-Census years are estimates)	834,450	1,009,466	1,024,266	1,024,266	1,059,887	1,083,288	26,251,278
Felony Charges Added (from OCA report)		13,646	13,297	13,057	11,065	12,251	272,990
Felony Cases Paid		8,632	8,570	8,614	7,663	8,623	192,045
% Felony Charges Defended with Appointed Counsel		63.26%	64.45%	65.97%	69.25%	70.39%	70.35%
Felony Trial Court Attorney Fees		\$4,036,832.00	\$3,625,130.00	\$3,430,383.00	\$3,218,941.19	\$3,109,106.13	\$96,567,898.10
Total Felony Court Expenditures		\$4,503,515.00	\$4,187,449.00	\$4,032,347.00	\$3,629,897.07	\$3,586,200.68	\$109,898,235.77
Misdemeanor Charges Added (from OCA report)		34,263	35,260	35,997	32,774	32,454	549,030
Misdemeanor Cases Paid		13,074	14,462	18,736	17,192	16,683	228,357
% Misdemeanor Charges Defended with Appointed Counsel		38.16%	41.02%	52.05%	52.46%	51.41%	41.59%
Misdemeanor Trial Court Attorney Fees		\$1,917,963.00	\$2,117,684.00	\$2,806,819.00	\$2,567,274.40	\$2,653,582.58	\$36,880,978.23
Total Misdemeanor Court Expenditures		\$1,993,339.00	\$2,197,985.00	\$2,891,967.00	\$2,656,178.34	\$2,762,978.08	\$37,705,538.29
Juvenile Charges Added (from OCA report)		2,436	2,122	1,797	1,702	1,744	33,504
Juvenile Cases Paid		2,975	2,232	2,552	2,818	2,880	48,114
Juvenile Attorney Fees		\$116,736.00	\$113,082.00	\$110,289.00	\$130,393.72	\$112,655.34	\$10,468,295.88
Total Juvenile Expenditures		\$116,736.00	\$113,082.00	\$110,289.00	\$130,393.72	\$112,655.34	\$11,196,725.86
Total Attorney Fees		\$3,224,518.00	\$7,038,039.00	\$7,114,842.00	\$6,647,806.00	\$6,031,829.40	\$149,496,691.36
Total ID Expenditures		\$4,682,371.00	\$8,865,461.00	\$9,625,449.00	\$9,279,571.00	\$8,653,665.68	\$8,670,134.12
Increase In Total Expenditures over Baseline		89.34%	105.57%	98.18%	84.81%	85.17%	144.69%
Total ID Expenditures per Population	\$5.61	\$8.78	\$9.40	\$9.06	\$8.16	\$8.00	\$8.27
Commission Formula Grant Disbursement		\$429,859.00	\$430,945.00	\$533,825.00	\$444,326.00	\$810,429.00	\$19,883,998.00
Commission Equalization Grant Award			\$296,882.00	\$520,406.00	\$230,886.00		

Notes: Not all cases paid or disposed are reflected in counts. No charges filed and appeals cases are excluded from counts.

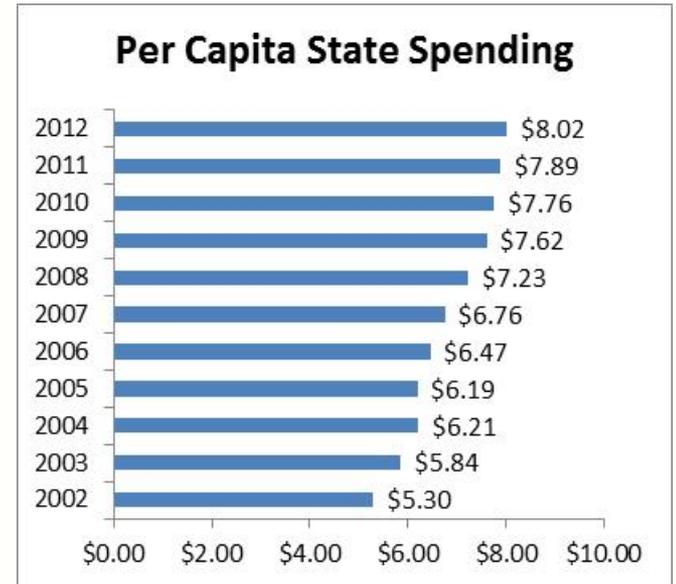
Public Defender cases are included in cases paid counts but not included in expenditure categories. Public Defender Expenditures are included in Total Indigent Defense Expenditures.

NR Not Reported. Cases added were not reported by county to OCA. This notation is only available starting in 2011

* The county did not report cases added for all twelve months to OCA. This is likely a partial value. This notation is only available starting in 2010.

Texas Indigent Defense Spending

- 48th in per-capita spending
- Counties pay over 85%



Spending and State Reimbursements

	Total County Spending (millions)	State Reimbursements (millions)	Percent Reimbursement
2001	\$91.4	\$0.0	0.0%
2002	\$114.0	\$7.3	6.4%
2003	\$129.3	\$11.6	9.0%
2004	\$138.3	\$11.8	8.5%
2005	\$140.3	\$14.3	10.2%
2006	\$149.0	\$14.3	9.6%
2007	\$161.1	\$17.5	10.9%
2008	\$174.2	\$21.5	12.3%
2009	\$186.9	\$28.4	15.2%
2010	\$195.1	\$28.0	14.4%
2011	\$198.4	\$33.6	16.9%
2012	\$207.5	\$28.3	13.6%
2013	\$217.1	\$27.4	12.6%



Why should a defense lawyer care about client's pretrial custody status?

- Build relationship with client
- Protect presumption of innocence
- Help prepare defense
- Address the problem
- Remove pretrial detention as factor in client decisionmaking

**BOND STATUS
DETERMINES
CASE OUTCOME**

Harris Co Public Defender Office by Bond Status

	NO BOND	BOND
DISMISS	15%	27%
DADJ	19%	31%

Harris Co Appointed Counsel by Bond Status

	NO BOND	BOND
DISMISS	6%	16%
DADJ	18%	53%

Harris Co Retained Counsel by Bond Status

	NO BOND	BOND
DISMISS	11%	20%
DADJ	15%	40%

Wichita County

Individuals released on bond were:

- 30% more likely to have all charges against them dismissed than defendants who were detained prior to trial
- Three times more likely to receive deferred adjudication
- Served 54% fewer days in jail if convicted

Laura and John Arnold Foundation Study

Individuals detained for the entire pretrial period:

- 4x more likely to be sentenced to jail than defendants who obtained pretrial release
- 3x more likely to be sentenced to prison

In practice: no defense lawyers
at bail hearings

In law:

- Right to counsel “attaches” at bail hearing (*Rothgery v. Gillespie County*, U.S. Supreme Court)
- “The magistrate shall allow the person arrested reasonable time and opportunity to consult with counsel and shall . . . admit the person arrested to bail if allowed by law.” (CCP art. 15.17(a))

National Movement to Increase Access to Counsel at Initial Bail Hearings

- In 1998: 19 states with no lawyers at bail hearings
- Now: Only 9 states with no lawyers at bail hearings
 - Texas is an outlier

[Home](#) > [News](#) > [Baltimore Crime Beat](#)

Court restores right to public defenders at bail hearings



By **Tricia Bishop**, *The Baltimore Sun*

9:37 p.m. EDT, September 25, 2013

Maryland's highest court ruled Wednesday that poor suspects should have access to counsel at all bail hearings, overturning the General Assembly's attempt to spare already-stretched public defenders from attending hundreds of thousands of proceedings each year.

What would a lawyer do at bail hearing?

- Help develop and present information on all bail factors and facilitate individualized bail determination required by law
- Prevent client from making incriminating statements to court in course of arguing for lower bail

Would having a defense lawyer at bail hearings really matter?

Baltimore study—Defendants with lawyers:

- More than 2X more likely to be released on own recognizance
- If money bail set, on average \$500 less than bail amounts in similar cases in which arrestee was not represented at bail hearing

Additional Resources

- Depenalizing Poverty: A Proposal for Improving Harris County Bail Policies
 - <http://www.texasfairdefenseproject.org/type/reports/>
- Proposal for Counsel at Tex. Code Crim. Proc. Art. 15.17 Proceedings
 - Voice for the Defense, Jan/Feb 2014
 - <http://www.voiceforthedefenseonline.com/edition/features/1848>

***The right to counsel is required by the
U.S. Constitution and Texas law.***

It is NOT discretionary.

