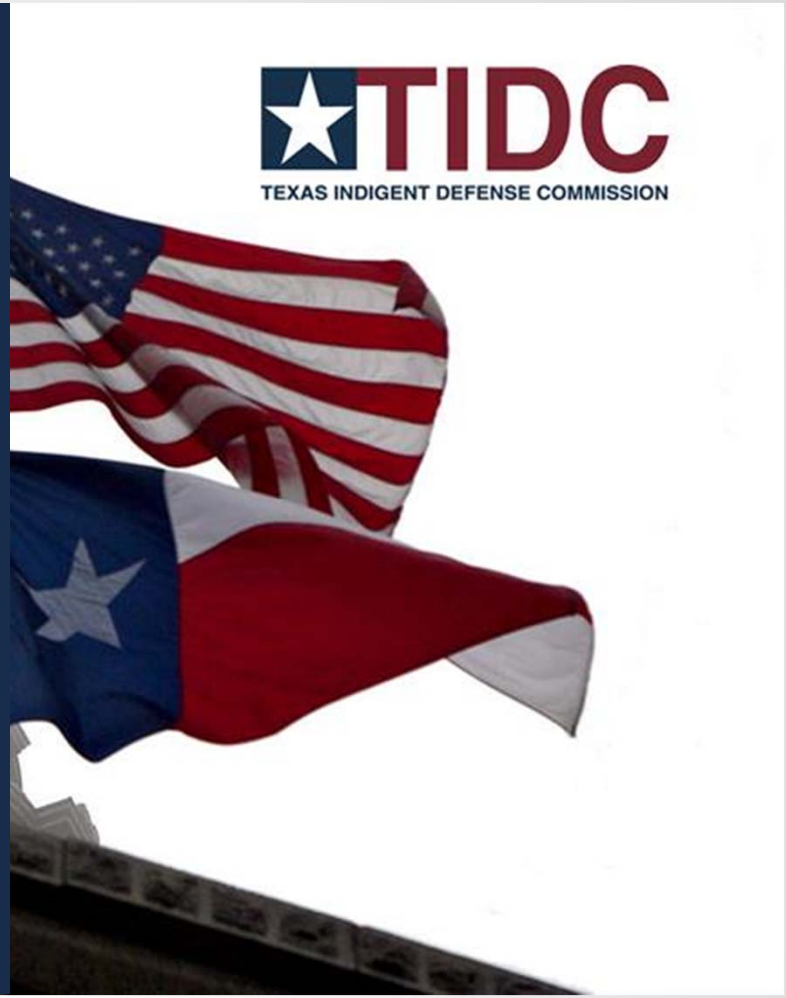
Ethical Indigent Defense: Systems & Clients

Don Hase, **Commission Member, TIDC, Criminal Defense Attorney and**
Jim Bethke, **Executive Director, TIDC**

Lubbock, Texas

January 10, 2015

http://tidc.texas.gov



January 10, 2015

6th Amendment/Right to Counsel (1791)

Gideon v. Wainwright (1963)

Texas Fair Defense Act (2001)

est. Task Force on Indigent Defense

now Texas Indigent Defense Commission

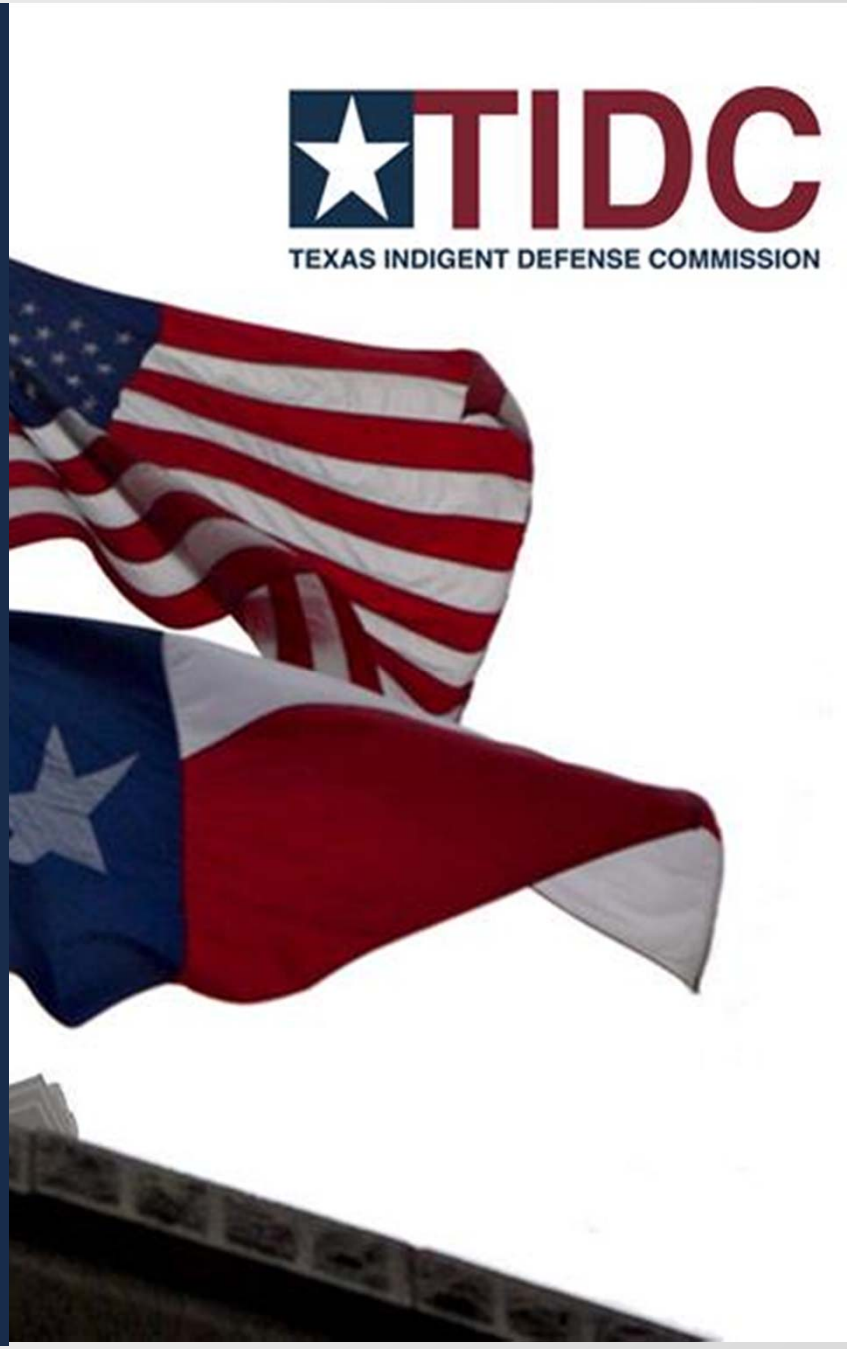
Chair:
The Honorable Sharon Keller
Presiding Judge, Court of Criminal Appeals

Vice Chair:
The Honorable Olen Underwood

Ex Officio Members:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Royce West
Honorable Roberto Alonzo
Honorable Abel Herrero

Members Appointed by Governor:
Honorable Olen Underwood
Honorable Sherry Radack
Honorable Jon Burrows
Honorable B. Glen Whitley
Honorable Linda Rodriguez
Mr. Anthony Odiorne
Mr. Don Hase

Executive Director:
James D. Bethke



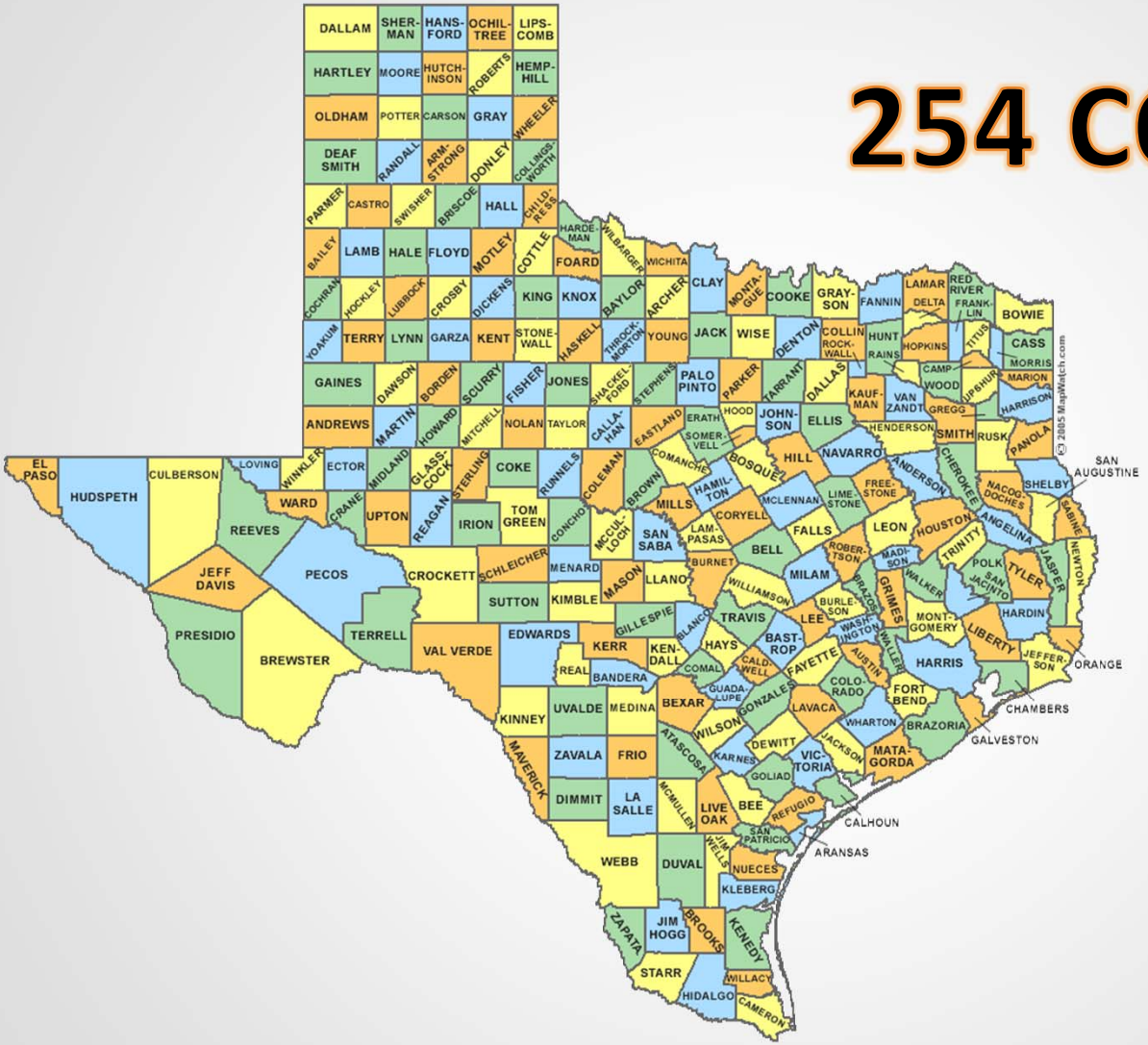
The mission of the Texas Indigent Defense Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Four Basic Types of Appointment System

1) Assigned Counsel Systems
2) Public Defender Systems
3) Contract Defender Systems
4) Managed Assigned Counsel Systems

- Many variations within these basic types
- Some systems are a hybrid of 2 types

254 COUNTIES



Wilbur v. City of Mt. Vernon

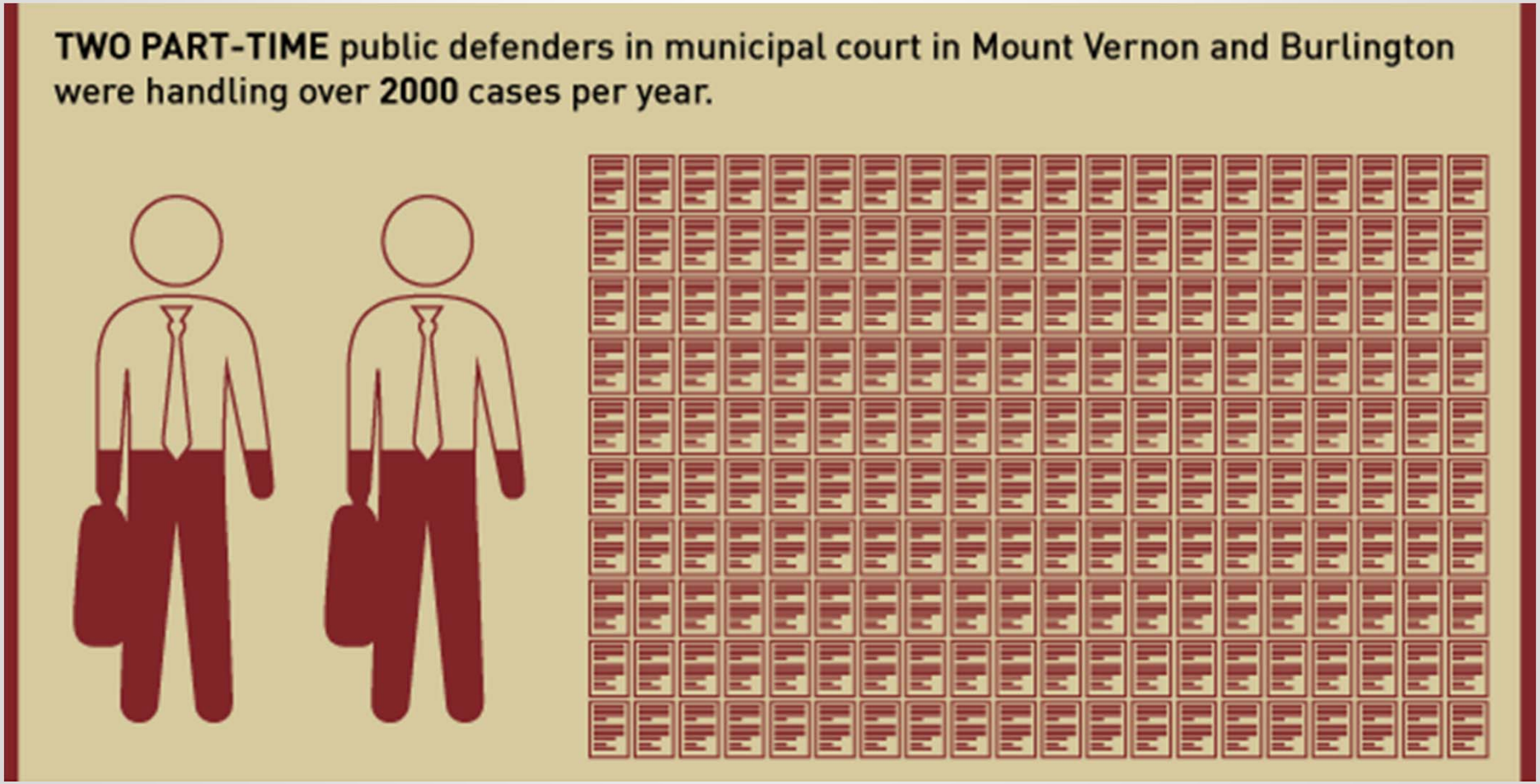
2013 U.S. Dist. LEXIS 171187 (W.D. Wash., Apr. 25, 2013)

A Landmark Case on Indigent Defense:
Defending the Right to a Fair Trial

According to the US and Washington state constitutions, **EVERYONE HAS THE RIGHT TO AN ATTORNEY,** including the right to an attorney paid by the government if the person is indigent.

Wilbur v. City of Mt. Vernon

2013 U.S. Dist. LEXIS 171187 (W.D. Wash., Apr. 25, 2013)



Wilbur v. City of Mt. Vernon

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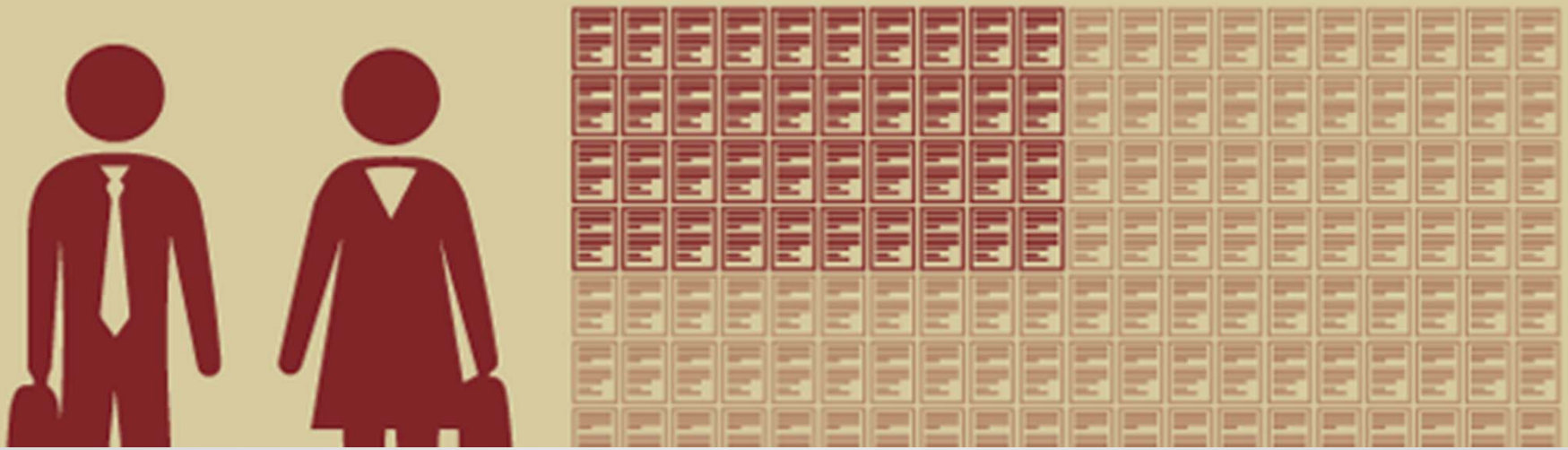
This meant the public defenders spent only a **HALF-HOUR OR LESS,** from start to finish, on some of their cases.

WA State Bar Association standards indicate the maximum number of misdemeanor cases a **FULL-TIME** public defender should handle per year is **400.**



Wilbur v. City of Mt. Vernon

2013 U.S. Dist. LEXIS 171187 (W.D. Wash., Apr. 25, 2013)

Without an adequate public defense system, these cities could not guarantee that low-income defendants would get a **FAIR TRIAL.** So the ACLU and private attorneys sued the cities.

On December 5, 2013, the US District Court in Seattle found that Mt. Vernon & Burlington deprived indigent defendants of their constitutional right to counsel. As a result the cities must:

CREATE A POLICY to guarantee adequate defense.

Hire a **SUPERVISOR** to assure that they are providing adequate defense.

Wilbur v. City of Mt. Vernon

2013 U.S. Dist. LEXIS 171187 (W.D. Wash., Apr. 25, 2013)

The court will have jurisdiction over the case for the next **THREE YEARS** to assure compliance.

Cities and counties across the state are on notice to fix their inadequate public defense systems. **IF THEY DO NOT**, they run the risk of:

EXPENSIVE, time-consuming litigation.

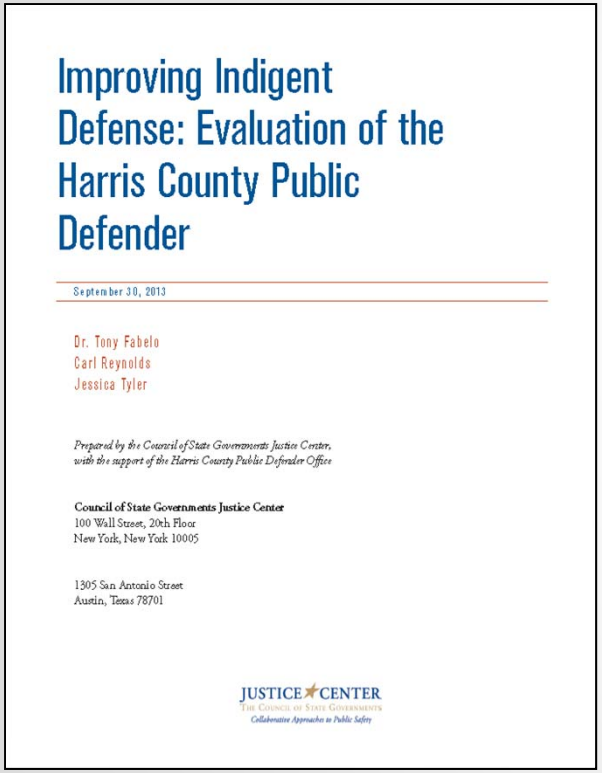
COURT MONITORING and oversight of their operations.

Wilbur v. City of Mt. Vernon

2013 U.S. Dist. LEXIS 171187 (W.D. Wash., Apr. 25, 2013)

The services offered to these "indigent clients amounted to little more than a 'meet and plead' system…A warm body with a law degree, able to affix his or her name to a plea agreement, is not an acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration."

Recent Harris County Study



Improving Indigent Defense: Evaluation of the Harris County Public Defender

September 30, 2013

Dr. Tony Fabelo
Carl Reynolds
Jessica Tyler

Prepared by the Council of State Governments Justice Center, with the support of the Harris County Public Defender Office

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100 Wall Street, 20th Floor
New York, New York 10005

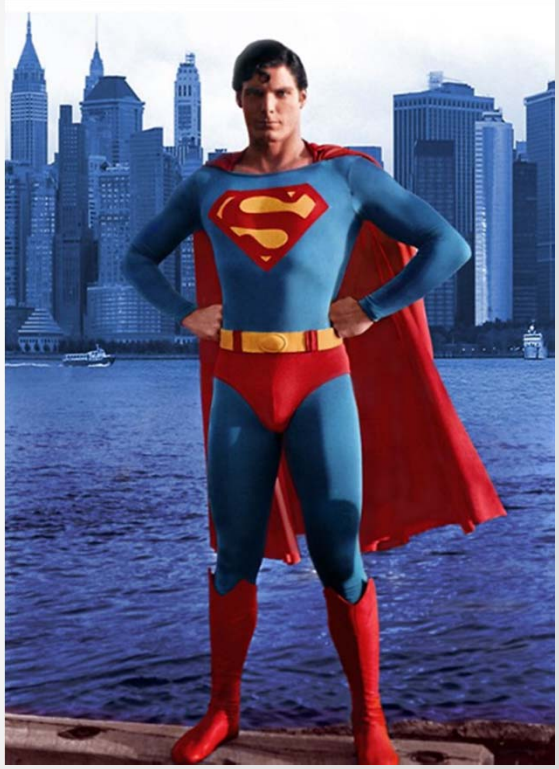
1305 San Antonio Street
Austin, Texas 78701

JUSTICE CENTER
The Council of State Governments
Collaborative Approaches to Public Safety

- How widespread is the problem?
  - Harris County, 2012:
    - Top 10% averaged 632 appointments
    - 32 attorneys received more than 400 cases
    - One attorney took 952 cases
    - 45% of felony cases were represented by attorneys with caseloads >150 clients

A lawyer with an "S" on his chest for Superman couldn't represent this many people.

- Professor Norman Lefstein



Weighted Caseload Study

House Bill 1318

Not later than January 1, 2015, the Texas Indigent Defense Commission shall conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that… allows the attorney <u>to give each indigent defendant the time and effort necessary to ensure effective representation.</u>

Rep. Sylvester Turner
District 139

Rep. Armando Walle
District 140

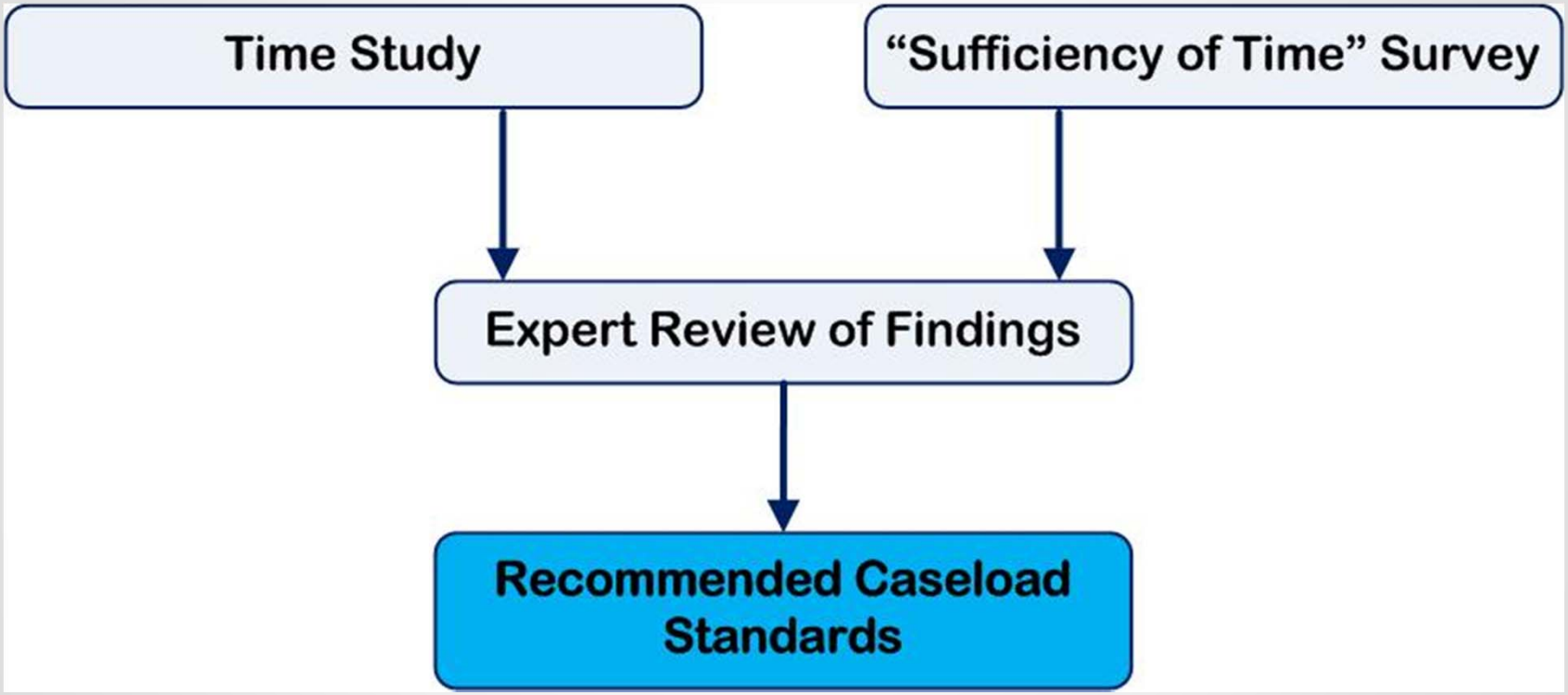
Sen. John Whitmire
District 15

Sen. Rodney Ellis
District 13

Sen. Sylvia Garcia
District 6

WCL Advisory Panel

Three Components of the Study



1. Timekeeping Study Results

195 Texas Attorneys

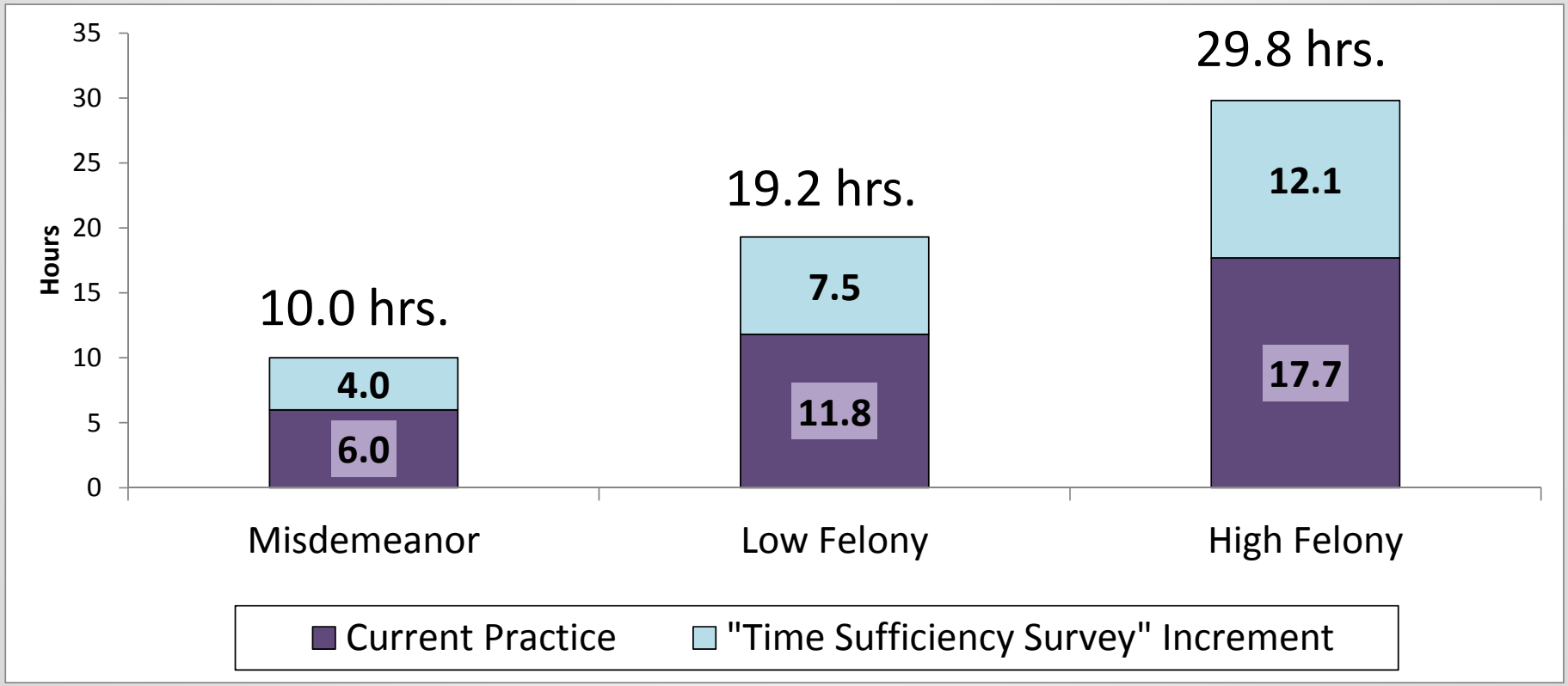
Type of Case	Result
Misdemeanor, Class B	**4.7 hours**
Misdemeanor, Class A	**7.6 hours**

Type of Case	Result
Felony, state jail	**10.8 hours**
Felony, third degree	**12.9 hours**
Felony, second degree	**15.2 hours**
Felony, first degree	**22.3 hours**

2. Sufficiency of Time Survey

Current Practice vs. Attorneys Surveyed

66% increase at every offense level



3. Delphi Process

MAKE REASONABLE JUDGMENTS ABOUT AMOUNTS OF TIME REQUIRED IN ORDER TO PERFORM A WIDE VARIETY OF DEFENSE TASKS

HB 1318

WHAT IS REQUIRED FOR AN:

"ATTORNEY TO GIVE EACH INDIGENT DEFENDANT THE TIME AND EFFORT NECESSARY TO ENSURE EFFECTIVE REPRESENTATION"

"STUDY MUST BE BASED ON RELEVANT POLICIES, PERFORMANCE GUIDELINES, AND BEST PRACTICES"

SOURCES FOR POLICIES, GUIDELINES, AND BEST PRACTICES

1. Court Decisions
   (U.S. Supreme Court and Texas)
2. Texas Rules of Professional Conduct
3. Texas Performance Guidelines
4. ABA Standards for Criminal Justice,
   Defense Function Standards

United States v. Cronic

466 U.S. 648 (1984)

". . . the constitutional right to effective assistance of counsel is the right of the defendant to require that the government's case survive the crucible of meaningful adversarial testing."

Texas Performance Guidelines Guideline 4.1 Investigation

Counsel has a duty to conduct, or secure the resources to conduct, an independent case review and investigation as promptly as possible. Counsel should, regardless of the client's wish to admit guilt, determine whether the charges and disposition are factually and legally correct and inform the client of potential defenses to the charges.

(emphasis added).

Texas Performance Guidelines Guideline 6.1

<u>Plea Negotiation Process /Duties of Counsel</u>:

Under no circumstances should counsel recommend to the client acceptance of a plea agreement unless appropriate investigation and study of the case has been completed,

including an analysis of controlling law and the evidence likely to be introduced at trial. The amount of appropriate investigation will vary by case.

HELP!!!

Individual practitioners and local criminal bar associations need to have an active voice to make our local systems work properly.

2001 FDA LOCALS REQUIRED TO COME UP W/ PLAN

TARRANT ONE OF FIRST

BIGGEST MISTAKE */ DELEGATED DETERMINATION OF INDIGENCY TO 35 MUNICIPALS*

TRAVIS JAIL → **FINANCIAL SCREENERS**

TIDC GRANT for TARRANT

ENHANCED PUBLIC CONFIDENCE

LUBBOCK PRIVATE DEFENDER OFFICE

INDEPENDENCE

MENTORING

CASELOAD MANAGEMENT

SCREENING INDIGENCY?

CLIENT CARE

- ✓ ***COMMUNICATION***
- ✓ ***TREAT AS PAYING CLIENT***
- ✓ ***EXPECTATIONS***
- ✓ ***DIGINITY AND RESPECT***

On The Horizon

84th Legislature begins Tuesday . . .

Attorney Practice Time Results

- 3,995 attorneys completed the reports using the online portal.
- The median percentage of practice time devoted to appointed cases across all counties was about 50 percent.
- Attorneys reported working on indigent defense cases in one to 18 different counties.

Congrats to Lubbock Private Defender Office

The Lubbock Private Defender Office was able to achieve remarkable levels of compliance for the Attorney Practice Time Report. Almost 100 percent reporting in Lubbock compared to 66 percent statewide.

Only a few didn't report: one attorney had moved away and would no longer be on the LPDO list and, another tragically was murdered in Lubbock in early 2014.

Court/County Report Results

As of 12/15/14

- Payments were made to **6,090** attorneys
- Case totals per attorney varied from **one** to **1476**
- **39** cases handled was the median of all felony and misdemeanor cases disposed across all counties
- Amounts paid to each attorney ranged from **$30** up to **$419,668** across all counties with a median of just over **$15,000**