

Collin County

Indigent Defense Workshop

November 17, 2014

<http://tidc.texas.gov>



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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



Which Type or System is Best?

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



What is an Assigned Counsel System?

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



Potential Advantages of Assigned Counsel Systems

- Utilizes existing pool of private attorneys
- Lets attys combine public & private practice
- Can attract top quality attorneys
- County not responsible for atty overhead
 - But County has to compensate for overhead



Potential Risks with Assigned Counsel Systems

- No systematic attorney training
- No systematic attorney supervision
- No systematic monitoring of attorney performance
- No systematic monitoring of attorney caseload
- Lacks independence from judiciary if “wheel” not strictly followed
- Can be refuge for incompetent attorneys



Potential Risks with Assigned Counsel Systems

- Administrative costs borne by courts
 - Screening and maintaining appointment lists
 - Managing appointments
 - Managing attorney compensation
 - Managing expert/investigator compensation
- Higher time burden on courts and court administrators



What is a Public Defender System (PD)?

- Defense services and representation by:
 - A county or state agency
 - Non-profit org'n under contract with the county
- Analogous to prosecutor's office on the defense side
- Attorneys are salaried employees
- Attorneys are full-time defense specialists



What is a Public Defender System (PD)?

- Still requires a secondary system for conflicts cases
 - Usually assigned counsel
 - Sometimes a conflict-PD office / other states



Potential Advantages of Public Defender Systems

- Predictable costs / easier to budget
- Systematic attorney training
- Systematic attorney supervision
- Systematic monitoring of atty performance
- Systematic monitoring of atty caseloads
- Ability to retain experienced attorneys
- Ability to fire less competent attorneys



Potential Advantages of Public Defender Systems

- Attys are full-time defense specialists
- Reduced court administrative costs
 - Screening and maintaining appointment lists
 - Managing appointments
 - Managing attorney compensation
 - Managing expert / investigator compensation
- Reduced time burden on courts and administrators



Potential Advantages of Public Defender Systems

- Provides better input into improving the local criminal justice system
- Public defender program can be a training and resource center for the private criminal bar



Potential Risks with Public Defender Systems

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



What is a contract Defender System?

- Many different variations
 - One private attorney or law firm contracts to handle all cases or a small number of attorneys or firms contract to handle a large block of cases
- Like a public defender, but private for-profit
- May need a separate system for conflicts



Potential Advantages of a Contract Defender System

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



Potential Risks with Contract Defender Systems

- Can create economic incentive to dispose of cases too quickly
- Economic disincentive to
 - Investigate cases
 - Try cases
 - Utilize experts
- Can encourage a low-bid approach
 - Caseloads may then exceed original projections



Potential Risks with Contract Defender Systems

- Usually no systematic training
- No systematic supervision
- No systematic monitoring of performance
- No systematic monitoring of caseloads
- Can become subject to favoritism or patronage



What is a Managed Assigned Counsel System?

- A new option for counties to achieve some of the benefits of public defender system within an assigned counsel system
- Defense services are administered by:
 - A county department; or,
 - Non-profit org'n under contract with the county



Potential Advantages of Managed Assigned Counsel System

*Improved **oversight** and **accountability** of defense function:*

- Systematic attorney training
- Systematic attorney supervision
- Systematic monitoring performance
- Systematic monitoring of caseloads



Potential Advantages of Managed Assigned Counsel System

- Does **not** require a secondary system for conflicts cases like a public defender system
- Does **not** grow government significantly/uses private sector to provide direct client services
- Reduces time burden on judges and court administrators



Potential Advantages of Managed Assigned Counsel System

- Uses existing pool of qualified attorneys
- Shifts administration of defense function from courts to an defense entity
- Centralized forum for criminal defense lawyers
- Enhances independence of defense function
- Better ability to apply for State and Federal grants



Potential Costs/Risks of Managed Assigned Counsel System

- Some start-up costs
- Costs associated with administration of program likely more than currently being provided
- Could become politicized
- Choosing the right Managing Attorney is critical.

