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Harris County's system for defending the poor remains inadequate, state audit finds

Overburdened defense lawyers don't perform well, critics say

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The Harris County Courthouse's system of providing legal representation to defendants who can't afford it is flawed and overburdened, a state audit has found, as some elected judges continue to appoint their favorite attorneys and allow them to take on far more cases than recommended.

As a result, many private defense attorneys are not providing a vigorous defense because accepting plea deals is the fastest way to clear cases and collect a fee, according to information in a report by the Texas Indigent Defense Commission.

"The report reconfirms that Harris County has a system of indigent defense and pretrial bail where freedom and justice are contingent on how much money you have rather than guilt or innocence, and that clearly and systematically violates the letter of the law on a daily basis," said state Sen. Rodney Ellis, D-Houston, who requested the audit and also authored the state's fair defense act.

Furthermore, commission officials concluded that juvenile judges fail to provide 40 percent of underaged defendants with appointed attorneys within the time specified by state law - though the county was told to remedy that problem back in 2012.

Commission officials, who monitor criminal defense services statewide, reviewed county court records and lawyers' bills, as well as surveyed 176 attorneys who provide court-ordered defense.

One in five lawyers agreed the system does not allow for adequate representation, largely due to the sheer volume of cases that many attorneys agree to accept. "Attorneys are generally selected for their efficiency with moving the court's docket," wrote one attorney. "This rarely translates to quality representation."

Caseloads exceed limits

In 2014, nearly half of the court's 325 court-appointed defense attorneys handled case loads that exceeded recommended maximums of either 128 felonies or 226 misdemeanors, the audit shows. Seventy-six attorneys had more than twice the recommended limits, and some handled more than 500 cases per year.

One lawyer, Jeanie Dickey, took on 969 court appointed cases in 2014 - including both felonies and misdemeanors. She did not respond to requests for comment.

"Without reasonable time to devote to their cases, attorneys may struggle to provide zealous representation," the report concluded. "Defense counsel's workload must be controlled to permit the rendering of quality representation. Implementation of reasonable case load limits would help achieve this goal."

Judges maintain total discretion over whom they appoint, and 37 percent of attorneys surveyed said appointments are made unfairly. There is also no prohibition on attorneys contributing to judges' campaigns. Judges generally do not limit case loads but tend to defend the quality of the attorneys they appoint.

Denise Collins, judge for the 228th District Court, relies heavily on two long-time appointed attorneys who she said split the work in the more than 500 felony cases they accepted in 2014, the audit shows.

Reached by phone, Collins said that she does not accept contributions from "term attorneys." But in 2014, Collins received 12 contributions from other attorneys whom she had appointed, supplying a substantial chunk of her campaign war chest.

Michael McSpadden, the judge for the 209th District Court, also rarely uses the county's public defender's office. Instead, he appoints six trusted private attorneys, who handled between 190 and 321 cases in his court in 2015.

McSpadden said he prefers to appoint defense attorneys whose work he knows well.

"You just don't trust that it will be handled like it should," McSpadden said, adding that he believes recommended caseload limits are "way too low" for competent attorneys. Regardless, he said, judges should not accept donations from attorneys they appoint.

Snub of public defenders

Harris County's indigent defense system is the largest in the state and has long been plagued with problems stemming from inadequate representation of poor defendants, thousands of whom spend weeks or months in jail before adjudication.

In 2009, the Houston Chronicle reported how even some of the county's death row defense attorneys accepted massive appointed case-loads.

Since then, Harris County has set up a public defenders office, staffed with 40 attorneys who are limited to recommended caseload levels and are paid a salary, rather than per case fees. The state's audit found those defense

attorneys more often use investigators and achieved better outcomes for clients than court-appointed private defense attorneys.

Records show that four district judges - Mary Lou Keel, Jim Wallace, Katherine Cabaniss, and Jeannine Barr - almost never use the public defenders, though state law requires that those attorneys be given priority. That frustrates Alex Bunin, who runs the county's public defenders office.

"If every judge in the county would give us more cases, I could go to the Commissioners Court and ask for more lawyers," Bunin said. Having more cases handled by people who spend adequate time on each case might cost more on the front end, he acknowledged, but it would reduce Harris County's high rate of exonerations on the back end.

Keel, the judge in the 232nd District Court, said she stopped using the public defender's office after a dispute with Bunin involving post-conviction writs. Other judges who do not often use the office could not be reached Wednesday. Other Texas counties have set caseload limits for private attorneys and also taken attorney appointments out of the hands of judges, the audit says.

Other problems

The state's audit found judges sometimes set bail amounts higher than the county-approved levels, clogging the county jail with pre-trial inmates.

Judges were particularly reluctant to grant "personal recognizance" bonds even for mentally ill people, which allow defendants to go free without posting bail, despite a requirement that judges do so if a treatment plan is in place, the audit showed.

In addition, the audit found that judges had inconsistent standards for determining whether a defendant was poor enough to deserve a court-appointed attorney, did not meet state standards for swiftly appointing

lawyers either for indigent teens or for indigent adults. Only 72 percent of misdemeanor offenders and only 59 percent of juveniles were assigned defense attorneys within 24 hours of requesting them, the report showed.

The report wasn't entirely critical. The commission praised Harris County for providing speedy hearings despite its massive size and for accurately tracking of defense attorneys' required training. But overall, the report leaves no doubt that Harris County's system for representing the poor falls short on many fronts.

"For assigned counsel cases, the distribution of attorney appointments fell outside of the Commission's threshold for presuming an appointment system is fair, neutral, and nondiscriminatory," the report said. "The district courts need to put in place a system that meets this threshold."

Jay Jenkins, Harris County project attorney with the Texas Criminal Justice Coalition, who reviewed the audit, put it more bluntly.

"We have a judiciary that is elected and often campaigns on their law and order credentials," he said.

"The report shows that they are not stringent in adhering to the letter of the law, when it comes to their own behavior. And what gets left in the lurch is the indigent defendants.