

Texas Mental Health Defender Programs



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I. INTRODUCTION

Texas's largest mental health facility is the Harris County Jail.¹ The Dallas County Jail is a close second.² The large number of persons with mental illness cycling in and out of jails and prisons is one of the most expensive, vexing problems faced by county and state officials.

About one million adult Texans have a serious mental illness (SMI)³—550,000 of whom live in poverty.⁴ Approximately 65,000 of Texans with an SMI are “super-utilizers,” who frequently cycle through jails, emergency rooms, hospitals, and homeless services.⁵

Nearly a quarter of Texas inmates have a mental health need,⁶ and over 40% of individuals booked into Texas county jails have previously encountered the public mental health system.⁷ Local jails spend at least \$450 million a year for people with severe needs; at least \$230 million a year is spent on local juvenile justice system costs for this population.⁸ The problem of mental health and criminal justice in Texas is formidable.

This white paper focuses on the role of indigent defense at the intersection of mental health and criminal justice. It looks at how Texas addresses mental health and indigent defense, explores the benefits of mental health defender programs, and examines several mental health defender programs. Ultimately, TIDC hopes this publication encourages wider adoption of mental health defender programs.

Jails Are Ill-Equipped to Handle Defendants with Mental Illness

Although there are a significant number of defendants with mental illness, many Texas jails are ill-equipped to handle them or implement new requirements of the Sandra Bland Act (SB 1849). In a recent survey of jailers, the Texas Commission on Jail Standards found the following:

- Only 18 of 231 county jails (8%) had 24-hour mental health care on-site at the jail;
- 91 of 231 county jails (39%) have tele-psychiatry equipment;
- 85 of 228 county jails (37%) are members of a non-network pharmacy, and 100 of 227 jails (44%) contract for pharmacy services so they can provide prescription medication for inmates;
- About 58% of county jails have a Memorandum of Understanding with the Local Mental Health Authority for mental health services and support for inmates;
- About 68% of county jails do not have an inpatient mental health treatment facility available for diversion; and
- About 75% of county jails do not have a contract or MOU with an inpatient mental health treatment facility in their jurisdiction.

Source: Texas Commission on Jail Standards and the Meadows Mental Health Policy Institute

II. MENTAL HEALTH AND CRIMINAL JUSTICE IN TEXAS

The 85th Legislative Session may mark a turning point in how Texas addresses mental illness and crime. The Legislature enacted major legislation⁹ to promote:

- Diversion of low-level offenders;
- Early identification, assessment, and bonding of arrestees with mental illness and intellectual disabilities;
- Outpatient competency restoration (OCR); and,
- Jail-based competency restoration (JBCR).

The legislation also creates resources for community-based treatment, in-patient competency restoration, and community collaboration for addressing mental illness in the criminal justice system.¹⁰ Here, we describe the intersection between criminal justice and mental health in Texas, with a focus on the effects of recent legislation.

A. Diversion

In 2017, the Texas Legislature passed the Sandra Bland Act (S.B. 1849),¹¹ named after the woman who committed suicide in the Waller County jail after being arrested in July 2015 during a traffic stop for failure to use a turn signal.¹² The legislation enacted various reforms related to criminal justice and mental health, including adding Art. 16.23 to the Code of Criminal Procedure to promote diversion of nonviolent persons with mental illness out of the criminal justice system.

Diversionary programs, which typically offer treatment-oriented alternatives to traditional criminal adjudication and sanctions, can occur pre- or post-arrest, and pre- or post-adjudication. By diverting persons with mental illness to a medical facility in lieu of arrest and booking, law enforcement can minimize the negative consequences of incarceration and maximize savings.¹³

Law enforcement agencies across Texas are establishing Crisis Intervention Teams (CIT)—local partnerships between law enforcement, mental health providers, and advocates that coordinate diversion to mental health services.¹⁴ CITs also train police how to respond to mental health crises.¹⁵

For example, the Houston Police Department (HPD) established its Crisis Intervention Response Team (CIRT) in 2008, partnering a CIT officer with a masters-level licensed professional clinician from the Harris Center for Mental Health.¹⁶ The officer and clinician ride together in a patrol car, responding to CIT-related calls involving serious mental health crises. In 2016, CIRT was responsible for 347 jail diversions. Department-wide, HPD reported 1,981 jail diversions in 2016.¹⁷

Similarly, in 2018, Dallas announced that it would establish a pre-arrest diversion program called RIGHT—Rapid Integrated Group Healthcare Team—to reduce jail bookings of persons undergoing a mental health crisis. The program is a joint effort by the Dallas Police Department, Dallas Fire-Rescue Department, Parkland Health and Hospital System, and the Meadows Mental Health Policy Institute.¹⁸

B. Early Identification, Assessment, and Bonding

In addition to the Sandra Bland Act, the 85th Legislature passed S.B. 1326 to expedite identification and assessment of arrestees who show signs of mental illness. Under the new law, sheriffs who have custody of a defendant must notify the magistrate within 12 hours if they “receive credible information that may establish reasonable cause to believe that the defendant has a mental illness or is a person with an intellectual disability.”¹⁹ Upon the magistrate’s determination that there is reasonable cause to believe the defendant has a mental illness or intellectual disability, the judge must order the Local Mental Health Authority (LMHA) or other qualified mental health expert to provide the magistrate with a written assessment regarding whether the defendant has a mental illness or intellectual disability.²⁰

Texas Code of Criminal Procedure, Art. 17.032, establishes a preference for releasing on personal bond defendants charged with nonviolent offenses who have been assessed and determined to have a mental illness or intellectual disability if “appropriate community-based mental health or intellectual disability services for the defendant are available.”

C. Representation

Eight counties have a public defender office with a mental health division, and three have a “managed assigned counsel” (MAC) program,²¹ whose attorneys have special training and are assigned to represent most defendants with a mental illness or intellectual disability. (Travis County has both a specialized mental health defender office and a MAC). Both public defender offices and MACs have social workers or caseworkers with

training in behavioral health to assist attorneys represent their clients by obtaining mental health personal bonds, determining if a competency examination should be requested, placing clients in treatment services, and helping clients comply with court-imposed bond conditions.²²

There are also 23 mental health and co-occurring disorder courts across Texas that seek to ensure that defendants take their medications, refrain from illicit drug and alcohol use, and abide by other court orders. Defense counsel will be in these courts as part of the mental health court “team.”

D. Competency Restoration

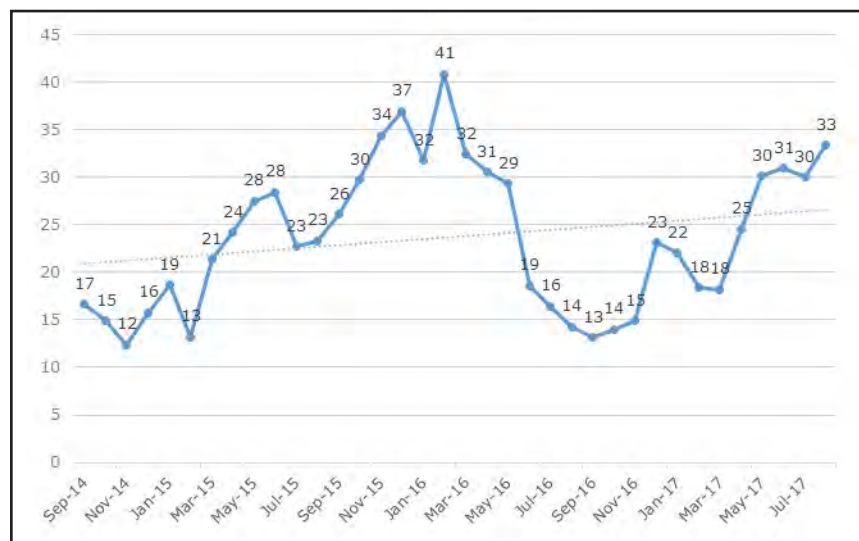
Texas Code of Criminal Procedure Art. 46B governs competence to stand trial. To plead or go to trial, a defendant must be mentally competent. Defendants are presumed competent to stand trial, unless proved incompetent by a preponderance of the evidence.²³

Competency restoration is the “treatment or education process for restoring a person’s ability to consult with the person’s attorney with a reasonable degree of rational understanding, including a rational and factual understanding of the court proceedings and charges against the person.”²⁴ In Texas there are four competency restoration options:

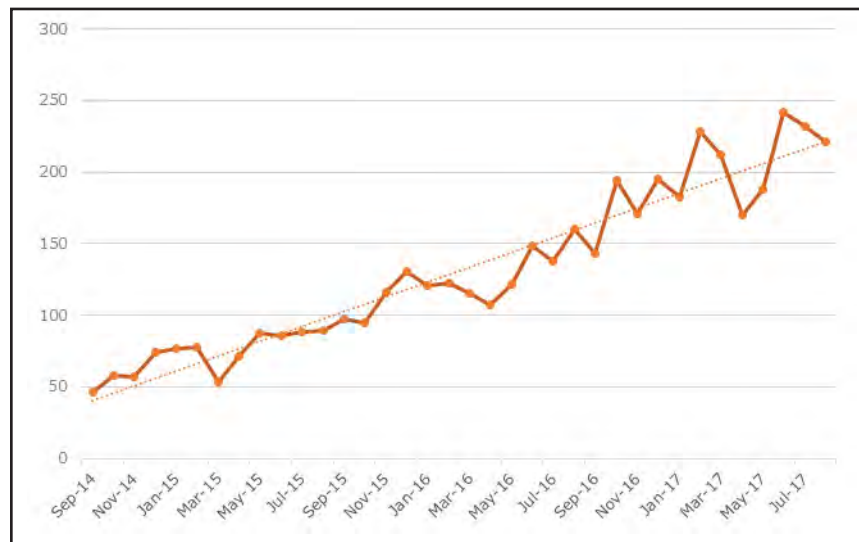
- (1) State-run psychiatric hospitals;
- (2) Community and privately-owned psychiatric hospitals;
- (3) Outpatient competency restoration programs; and
- (4) Jail-based competency restoration programs.²⁵

Texas courts rely primarily on 10 state-run psychiatric hospitals to restore competency. Defendants charged with violent felonies are committed to North Texas State Hospital’s Vernon campus or Rusk State Hospital.²⁶ There were 1,252 forensic patients²⁷ in state hospitals as of October 2017—61% of the state hospital system’s patient population.²⁸ Because the demand for competency restoration services exceeds the supply of forensic beds, defendants often spend long periods in jail, waiting for a state psychiatric hospital bed to become available. On average, defendants wait 228 days for a maximum security, and 43 days for a non-maximum security forensic bed to become available for competency restoration at a state hospital.²⁹

**Figure 1. Average Wait Time, in Days,
for Non-Maximum Security Competency Restoration
(9/1/2014-8/31/2017)**



**Figure 2. Average Wait Time, in Days,
for Maximum Security Competency Restoration
(9/1/2014-8/31/2017)**



The Texas Health and Human Services Commission also contracts with county governments, hospital systems, and LMHA's for competency restoration services and other inpatient psychiatric services. For FY 2019, HHSC has purchased 617 local inpatient psychiatric beds; of those, approximately 137 are for competency restoration.³⁰

E. Specialized Dockets

Many Texas counties have specialized mental health dockets focused on mental health and substance abuse treatment. Since it began in 2009, Travis County's felony and misdemeanor mental health dockets have disposed of over 5,000 cases.³¹ The County's Mental Health Public Defender attorneys and assigned counsel collaborate with the Travis County Attorney, Austin Travis County Integral Care, the Travis County Sheriff's Office social worker, and Travis County Pretrial Services to resolve cases to the benefit of defendants and the community.³² Defense participation on court teams of this kind ensure that due process rights are upheld.

F. Mental Health Courts

Mental health courts (MHCs) divert mentally ill defendants from jail and prison into court-mandated, community-based treatment programs.³³ As of December 5, 2016, there were 17 mental health courts in Texas. Another 6 specialty courts were identified as being "Co-Occurring Disorder" courts that address both drug addiction and mental illness. Veterans courts, like the El Paso Veterans Mental Health Court, also address mental health issues of veteran defendants, even though they are categorized as a veterans court by the Governor's Criminal Justice Division (CJD).³⁴ For FY2018, CJD awarded \$351,378 to mental health courts.³⁵

G. Out-of-Custody Outpatient and Inpatient Treatment

Judges can order out-of-custody defendants with a mental illness into a treatment program, either pretrial or postconviction.

Bond conditions: Judges can order defendants to submit to inpatient or outpatient mental health treatment or intellectual disability services as a condition of a mental health personal bond.³⁶

Community supervision conditions: Judges can order defendants with a mental illness or intellectual disability to submit to inpatient or outpatient treatment as a condition of community supervision (probation). The mental impairment must be chronic, or there must be proof that the defendant's ability to function independently will deteriorate if the defendant doesn't receive treatment. The judge must also determine that mental health or intellectual disability services are available.³⁷

Medical release: A judge can release a defendant convicted of a state jail felony to a medically suitable placement if the judge determines the defendant is not a public safety threat and the Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) prepares a case summary and medical report identifying the defendant as being a person with a mental illness or disability and prepares with the community

supervision and corrections department “a medically recommended intensive supervision and continuity of care plan.”³⁸

H. In-Custody Treatment

Unfortunately, many persons with mental illness receive treatment while incarcerated rather than in the community. Sometimes this is necessary due to the serious nature of the criminal allegation; other times it is due to a lack of affordable mental health services in the community.

Jails: Texas jails are major mental health treatment providers. The Meadows Mental Health Policy Institute estimates that Texas governments incur at least \$450 million in local jail costs due to people with severe mental health needs.³⁹ Travis County Jail, for instance, has set aside more beds for mental health services than the Austin State Hospital, making it the largest provider of mental health services in the County.⁴⁰

While some persons with severe mental illness in Texas receive treatment in jail, many jails lack the capacity to effectively provide such services. As Burnet County Justice of the Peace Roxanne Nelson testified at the hearing to establish the Texas Judicial Commission on Mental Health, “They’re not getting treatment in our jails. They should not be in jails.”⁴¹ According to a 2012 survey of Texas jails, about half offered in-house care, while the other half referred inmates to the Local Mental Health Authority.⁴²

Prison: The Correctional Managed Healthcare Committee (CMHCC) is a collaboration between the Texas Department of Criminal Justice, which operates the state prison system, Texas Tech University Health Science Center (TTUHSC), and the University of Texas Medical Branch (UTMB).⁴³ UTMB and TTUHSC provide all mental health services for TDCJ facilities in their respective university sectors.⁴⁴ The 84th Texas Legislature appropriated about \$247.9 million in both FY 2016 and FY 2017 for behavioral health and substance use services within TDCJ.⁴⁵ While the average daily cost for a TDCJ inmate was \$54.89 in FY 2014, it was \$145 per day per inmate in a psychiatric correctional facility.⁴⁶

I. Reentry

The Texas Correctional Office on Offenders with Medical or Mental Impairments provides prerelease screening and referral to aftercare treatment services for special needs offenders released from correctional settings, local jails, or other referral sources. TCOOMMI contracts with Local Mental Health Authorities across the state to provide continuity of care services for persons on probation or parole by linking them with community-based interventions and support services.⁴⁷

III. BENEFITS OF MENTAL HEALTH DEFENDER PROGRAMS

Defense attorneys are key stakeholders in many of the areas described above. At each “intercept” in the criminal justice system, defense counsel can support efforts to identify people with mental illness and divert them appropriately. This is especially true in the 14 counties that have specialized indigent defense programs for mental health matters. This section describes how specialized, team-based representation benefits these programs’ clients, communities, and criminal justice systems.

A. Reduce Jail Populations

Public defender offices and managed assigned counsel programs can reduce jail populations by:

- Ensuring that defendants are promptly appointed counsel;
- Ensuring lawyers and defense team social workers meet with clients in jail to improve medication compliance and reduce decompensation;
- Developing “safety plans” or treatment plans to obtain a mental health personal bond under Code of Criminal Procedure art. 17.032; and
- Advocating for earlier release under mental health personal bonds.

Mental Health Defender Programs Reduce Jail Populations, Save Counties Money

Bexar Co. Public Defender’s Office (BCPDO): An estimated 3,615.5 days of confinement were avoided in FY2016-2017 thanks to the office’s program representing defendants with mental illness at magistrations. Since 2015, approximately 6,255 days of confinement were avoided.

Ft. Bend Co. Mental Health Public Defender’s Office: The office reduced jail days from 56.9 days to 19.4 days for misdemeanor defendants with mental illness. Savings ranged from \$32.26 per case to \$734.51 per case.

Wichita Co. Public Defender’s Office: An estimated 730 jail bed days were averted in the first 15 months of the program by identifying mentally ill defendants sooner and sending them more quickly to North Texas State Hospital. This saved the county an estimated \$48,000.

Collin Co. Mental Health Managed Counsel Program: The program saved the county an estimated \$176,133 in 2013 and \$630,406 in 2014 by reducing jail bed days for clients released on mental health personal bonds and reducing jail days for clients who need to be restored to competency. Additional jail savings that weren’t quantifiable include savings in multi-county cases due to effective case management and early case disposal.

Source information for statistics about public defender outcomes in this chapter are cited in the descriptions of the offices in Chapter IV, Mental Health Defender Programs in Texas.

B. Reduce Unnecessary Competency Evaluations

Some mental health defender programs have reported saving counties money by reducing requests for competency evaluations. Competency evaluations can be expensive and result in longer stays for defendants waiting to be evaluated. By reducing competency evaluations, savings can be realized through reduced evaluation costs and reduced jail costs.

These savings are not certain, however. If a county has a low level of competency evaluation requests, that could be indicative of the need for better trained defense counsel, magistrates, or jail personnel. Adding attorneys and social workers trained in mental health could result in more defendants being accurately identified as incompetent. Better trained attorneys will also result in better representation, which could mean advocating for a second opinion when a forensic psychiatrist fails to make such a finding.

Mental Health Defender Programs May Reduce Unnecessary Competency Evaluations

Collin Co. Mental Health Managed Counsel Program (MHMC): Stakeholders reported that the program saved the county money because fewer competency evaluations were being requested thanks to MHMC attorneys being better trained and experienced in recognizing competency issues.

Wichita Co. Public Defender’s Office: The office saved the county an estimated \$37,500 in the first 15 months of the program due to fewer competency exams being requested.

C. Reduce Recidivism

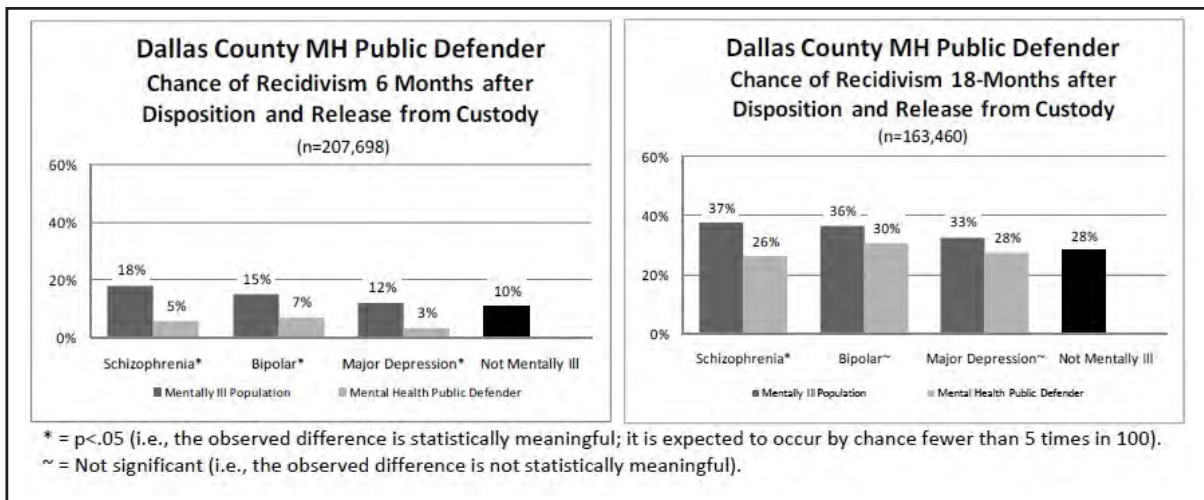
By providing quality representation, reducing incarceration, and connecting clients with mental health and social services, defense counsel can reduce recidivism. As a result, communities are safer and public resources are saved through reductions in rearrests and reincarceration.

Mental Health Defender Programs Reduce Recidivism

Travis County Mental Health Public Defender (MHPD): For clients with disposed cases between FY2009-13, 39 percent of MHPD clients were rearrested, as compared to 50 percent of defendants represented by counsel from the mental health wheel.⁴⁸

Dallas County Mental Health Public Defender (DCMHPD): An evaluation of the DCMHPD found that six months after case disposition, the office’s clients experienced significantly lower rates of recidivism compared to a control population not represented by the office. Re-arrest rates for DCMHPD clients with schizophrenia and major depression were about two-thirds lower than the control group, and about half lower for persons with bipolar disorder. Recidivism was still significantly lower 18 months after case disposition for persons with schizophrenia who were represented by the DCMHPD.⁴⁹

Figure 3. Recidivism Rates of Dallas County Mental Health Public Defender Clients at 6 and 18 months



D. Improved Quality of Representation and Case Outcomes

Mental health defender teams include attorneys, social workers, investigators, and support staff who specialize in representing defendants with mental illness or intellectual disabilities. This specialty team approach results in better, more efficient representation and better case outcomes, because each team member is specialized in his or her area of practice while also benefiting from interdisciplinary collaboration: attorneys are well-versed in relevant law; social workers assist attorneys in finding available services and developing treatment plans; and all staff are trained in working with clients with special needs. Dedicated teams can also build rapport with prosecutors and the judiciary that can result in favorable case dispositions.

Mental health defender programs also train the private defense bar to improve the quality of representation for defendants with mental illness who are not represented by the mental health defender program due to a conflict of interest or a lack of capacity by the defender office.

Mental Health Defender Programs Improve Representation and Case Outcomes

Ft. Bend Co. Mental Health Public Defender's Office: Over 85% of the office's clients who were surveyed reported being satisfied or very satisfied with the quality of the office's services.

Harris Co. Public Defender's Office (HCPDO): Misdemeanor dismissals were almost five times more likely for HCPDO clients with mental health diagnoses than for a similar group of defendants with assigned counsel. HCPDO secured dismissals for 27% of clients vs. 6% in the match group. County court judges who refer cases to the Mental Health Division reported being "thrilled with the office's work and said attorneys were 'extremely professional.'"

Travis Co. Mental Health Public Defender Office: Clients were more likely to receive dismissals compared to assigned counsel on the mental health wheel. The office received dismissals in 47% of their cases, compared with 19% of assigned counsel cases. The office also provides training opportunities on mental health issues to members of the private bar, including those on the mental health wheel.

Capital Area Private Defender Service (CAPDS; Travis Co.): In the first quarter of FY2018, CAPDS reported completing 30 attorney requests for mitigation assistance, which can result in cases being dismissed or other favorable case dispositions. The office has provided many mental health CLEs and trainings for its panel attorneys, investigators, and mentees. The social workers also host an annual CAPDS Resource Fair in the courthouse to expose court personnel to available social services for diversion, pretrial services, probation, and reentry.

E. Improved Efficiency of Courts and Case Processing

Mental health defender programs coordinate legal, treatment, and social services. Multidisciplinary coordination leads to quicker case disposals and earlier access to treatment and social services, as well as additional cost savings.

Mental Health Defender Programs Improve Efficiencies

Collin Co. Mental Health Managed Counsel Program (MHMC): The office identified various cost savings that were not quantifiable but nonetheless occurred due to efficiencies created by the office. The office noted jail and medical cost savings due to effective case management, expedited dispositions, and release of defendants; transportation, jail, and court savings due to MHMC acting as a liaison with the state hospital; and medical savings due to MHMC court liaison activities.

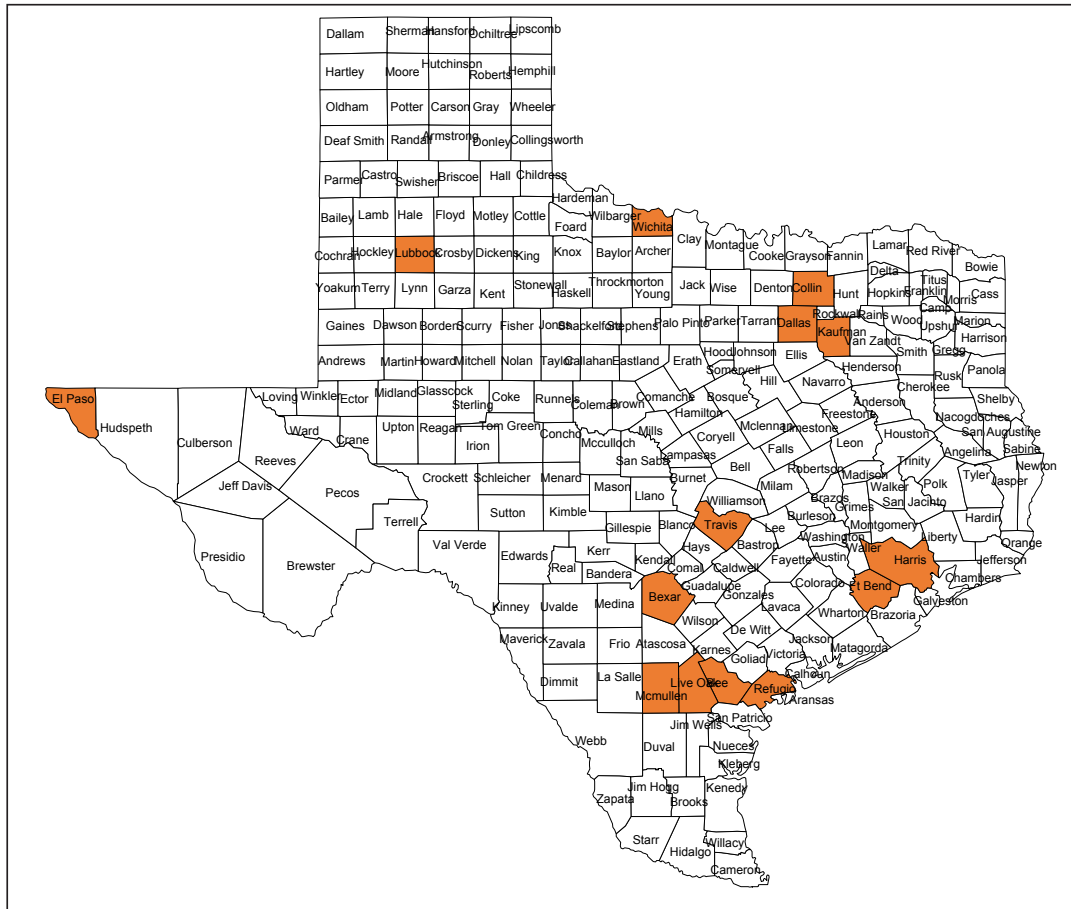
Travis Co. Mental Health Public Defender (MHPD): The office's cases were disposed quicker, on average, than assigned counsel cases. The MHPD disposed a case in an average of 51.09 days, while assigned counsel took an average of 91.49 days, a difference of 40.40 days per case.

Wichita Co. Public Defender's Office: The mental health case manager saved the county approximately \$7,500 by reducing time that private appointed counsel spent on cases involving defendants with a mental illness.

IV. MENTAL HEALTH DEFENDER PROGRAMS IN TEXAS

TIDC has helped 14 counties establish or expand public defender offices or managed assigned counsel programs that specialize in mental health representation through its discretionary grant program, providing \$10.1 million in funding since 2003. This section describes their operations, program features, and outcomes.

Mental Health Defender Programs Across Texas



Counties with a mental health defender program: Bee, Bexar, Collin, Dallas, El Paso, Fort Bend, Harris, Kaufman, Live Oak, Lubbock, McMullen, Refugio, Travis, and Wichita.

A. Public Defender Offices with a Mental Health Division or Specialization

1. Bee County Regional Public Defender

- **Established:** 2008; Mental Health Division established October 2, 2017.
- **Departments:** Felonies (non-capital); Misdemeanors; Juvenile; Mental Health
- **Mental Health Staff:** Laurie Hallmark, Mental Health Attorney; D.S. “Red” Gilbert, Peer Support Specialist.
- **Services Provided:** Representation of misdemeanor and felony clients with serious mental illnesses such as schizophrenia, schizoaffective disorder, bipolar disorder 1 with psychosis, PTSD with psychosis, and major depression with psychosis; utilization of supported decision-making to create self-determination-based legal documents such as supported decision-making agreements, psychiatric advance directives, medical powers of attorney and powers of attorney; advocacy for appropriate mental health services, substance abuse recovery services, housing, public benefits, employment, and education services; and advocacy to maximize natural family and community-based supports and services.
- **TIDC Investment:** \$3.3 million for the office overall since FY2009; \$35,880 for the Mental Health Division since FY2018.

Program Description

The Bee County Regional Public Defender is operated by Texas Rio Grande Legal Aid (TRLA) on a contract basis with Bee, Live Oak, McMullen, Refugio, Lavaca, and Goliad counties. The Mental Health Division primarily serves Bee, Live Oak, McMullen, and Refugio counties. The program is unique in that it uses supported decision-making to employ psychiatric advance directives (PAD) to structure services based on the client’s needs as identified in the PAD.⁵⁰ The Mental Health Division also employs a Certified Peer Support Specialist to facilitate communication and trust with clients, which has resulted in fewer clients being sent to Rusk or Vernon for competency restorations. The Mental Health Division also uses additional self-determination-based documents such as Supported Decision-Making Agreements (SDMAs) in its practice, an established guardianship alternative tool, which reduce the number of people declared incapacitated.⁵¹

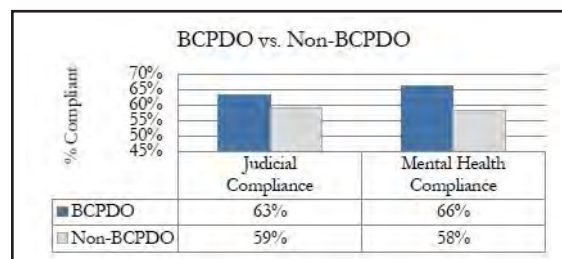
2. Bexar County Public Defender’s Office

- **Established:** 2005 (Appellate Public Defender); Sept. 1, 2015 (representation of defendants with mental illness at magistration).
- **Departments:** Trial, Appellate, Mental Health, and Central Magistration Division.⁵²
- **Staff:** 18 total; 7 full-time attorneys specialize in representing clients with a mental illness (3 at magistration for mental health personal bonds; 2 for civil commitments; and 2 for misdemeanor representation).
- **Services Provided:** Representation at magistration (24/7) and bond hearings; mental health and general personal bond advocacy; full representation of misdemeanor and felony defendants with mental illness; and civil commitment hearings.
- **TIDC Investment:** \$1,639,656.32 for the office since FY2005; \$523,774.44 for representation of defendants with mental illness at magistration from FY2016-2019.

Outcomes

- *Case Reviews:* In FY 2016-2017, the office reviewed 7,781 booking slips of defendants with an indication of mental illness. This was up by about 400 case reviews from the previous year. Cases with indications of mental illness range from 10-19% of all magistrations, depending on the month.
- *Presentations to the Magistrate:* The program presented 424 cases before magistrates at Central Magistration (CMAG) in FY 2016-2017 in an attempt to get clients a mental health personal bond; this was 178 more cases than the previous year (42% increase). The office presents 3-7% of the cases it reviews every month (ranging from a low of 20 presentations in April 2017 to a high of 48 in March 2017).
- *Personal Bonds Granted:* “Of the 424 presented cases, 305 were granted and effectively diverted into the Center for Healthcare Services program; a 66% increase from the previous year.”⁵³ Magistrates granted mental health personal bonds to BCPDO clients 72% of the time; personal bond presentations made by pretrial services were successful 53% of the time.⁵⁴
- *Jail Day Savings:* It was estimated that a total of 3,615.5 days of confinement was avoided in FY 2016-2017 thanks to the program. “Since 2015, the mental health PR bond jail diversion grant has successfully avoided approximately 6,255.1 days of confinement.”⁵⁵
- *Higher Compliance Rates:* BCPDO clients have higher rates of compliance with court-mandated conditions of personal bonds, as well as complying with mental health requirements of the Center for Healthcare Services, Bexar County’s LMHA.⁵⁶

Figure 4. Compliance Rates of Bexar Co. Public Defender Office Clients vs. Defendants Not Represented by the BCPDO



3. Dallas County Public Defender's Office⁵⁷

- **Established:** 1983; Mental Health Division established 2006.
- **Case Types Represented:** Felony; Misdemeanor; Juvenile; CPS; Family; Mental Health; DNA/Innocence; Appeals; and Capital.⁵⁸
- **Mental Health Division Staff**
 - *Mental Health Diversion, ATLAS, and SET Public Defender:* 1 full-time attorney;
 - *Competency Public Defender:* 1 full-time attorney;
 - *Mental Health Public Defender (MHPD):* 1 full-time and 1 part-time attorney;
 - *Civil Commitment Mental Illness Public Defender:* 2 full-time and 2 part-time attorneys;
 - *Mental Health PR Bond Program Public Defender:* 1 full-time attorney; and,
 - *Case Managers:* 4 full-time employees.
- **Services Provided:** Representation of specialty court participants; competency restoration representation; representation of misdemeanor and felony defendants with a mental health diagnosis or who suffer from brain injuries, dementia or Post-Traumatic Stress Syndrome; civil commitment representation in probate court; mental health personal bond representation; case management; trainings on mental health issues for assistant public defenders and the private bar.
- **TIDC Investment:** \$389,143 for the Mental Health Division from FY2005-2009.

Outcomes

The Public Policy Research Institute, National Center for State Courts, and the Council of State Governments Justice Center researched the Dallas County Public Defender's Office and other programs seeking to address mental illness among defendants. The organizations published the report, *Representing the Mentally Ill Offender: An Evaluation of Advocacy Alternatives*, in April 2010 for the Texas Task Force on Indigent Defense (now the Texas Indigent Defense Commission). Some of the promising findings included:⁵⁹

- *Mental Health Treatment Engagement:* "People represented by the MH public defender have significantly more mental health treatment contact than their otherwise identical peers during the six months after the case is disposed."
- *Case Dispositions:* "MHPD clients are 3 to 5 percentage points less likely to be found guilty and face punishment compared to otherwise identical peers."... "MHPD clients with schizophrenia are 17% less likely to face a jail sentence, while those with other diagnoses are 36% less likely compared to people with other forms of counsel."
- *Recidivism:* "Six months after case disposition, people represented by the mental health public defender experience significantly lower rates of recidivism than otherwise identical people who are not in the program. Recidivism continues to be suppressed up to 18 months after case disposition for people with schizophrenia."

4. El Paso County Public Defender



Paul Coronado, Investigator for the EPCPD Mental Health Advocacy and Litigation Unit.

- **Established:** 1987; Mental Health Unit established 2004 (reorganized into the Mental Health Advocacy and Litigation Unit).
- **Case Types Represented:** Felony; Misdemeanor; Juvenile; CPS; Criminal Failure to Pay Child Support; Mental Health; Appeals; and Capital.
- **Mental Health Advocacy and Litigation Unit Staff:** Trial chief; 5 attorneys; chief social worker; a master's level social worker; an investigator and two legal secretaries.
- **Services Provided:** Mental health personal bond advocacy; development of safety plans as part of bond advocacy; competency proceedings; investigation; medical and educational records; and mitigation.
- **TIDC Investment:** \$1.9 million for mental health-related legal services from FY2004-2019.⁶⁰

Program Description

The El Paso County Public Defender (EPCPD) provides representation for defendants with mental illness and intellectual disabilities through its Mental Health Advocacy and Litigation Unit (MHALU or Unit). Staff conduct initial screenings for all felony and misdemeanor clients upon appointment. When a client is identified as a MH/ID client, the case is referred to the MHALU for representation and services. Defense counsel's first priority for jailed clients is getting a bond reduction or mental health personal bond. Social workers assist in this regard by obtaining a psychosocial history, prior mental health treatment, and information on family and community support. The social workers then develop a "safety plan," linking the client with medical, mental health, and other community services in order to obtain a mental health personal bond. In addition to obtaining early bond release, the Unit investigates and prepares the client's defenses, mitigation, and mental health history for use at trial or plea negotiations.



Social workers with the Mental Health Advocacy and Litigation Unit (L-R): Alexandra Ruiz, Chief Social Worker, and Jennifer Mond, Social Worker.



EPCPD Mental Health Advocacy and Litigation Unit staff (L-R, front): Patsy Fonseca, Legal Secretary, John Allicock, Attorney, Nick Ballesteros, Attorney, Edy Payán, Division Chief, Stephanie Carnero, Attorney. (L-R, back): Brent Stephens, Unit Chief, Andres Caballero, Attorney, Porscha Brown, Attorney.

5. Ft. Bend County Public Defender's Office

- **Established:** 2010, originally as the Ft. Bend Co. Mental Health Public Defender's Office (MHPDO); expanded to represent defendants without mental illness in 2016.
- **Case Types Represented:** all non-conflict misdemeanor and felony defendants with mental illness (90% of mental health cases); approximately 12.5% of non-capital felony and misdemeanor cases not involving a defendant with mental illness.
- **Mental Health Division Staff:** 20 total.
 - o *Chief:* Roderick "Rocky" B. Glass;
 - o *Trial Section:* 5 Attorneys, 2 Investigators, 1 Office Assistant, and 1 Administrative Assistant; and,
 - o *Mental Health Section:* 4 Attorneys, including a Section Chief; 4 Case Workers; 1 Social Worker; 1 Office Assistant.
- **Services Provided:** representation of defendants charged with a misdemeanor or felony who have been diagnosed with "at least one major priority population diagnosis including schizophrenia, bi-polar disorder, or major depression, or a mental disability;⁶¹ identification of treatment options and other social services in the community; social work and case management; allows private appointed attorneys on the Mental Health Wheel to use services of office's social workers and case workers.
- **TIDC Investment:** \$1.1 million for the Mental Health Public Defender's Office from FY2010-2014.

Outcomes

- Over 85% of the MHPDO's clients surveyed reported being satisfied or very satisfied with the quality of the office's services.⁶²
- Misdemeanor defendants with mental illness "who entered the program before it was fully formed had on average 56.9 jail days compared to 19.4 [jail days]" for a group of MHPDO clients arrested after the office was fully operational.⁶³
- "The savings provided by the MHPDO ranged from \$32.26 per case under the most conservative assumption to \$734.51 under the most optimistic assumption."⁶⁴
- From 2010-2015, the MHPDO cut client jail bed days in half, saving the county \$2,500 per misdemeanor and \$7,000 per felony case.⁶⁵

6. Harris County Public Defender's Office

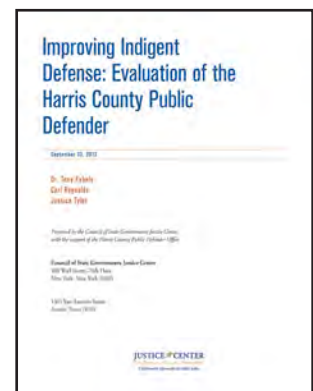
- **Established:** 2011
- **Case Types Represented:** misdemeanor defendants with a mental illness; non-capital felonies; juveniles; and appeals.
- **Mental Health Division (MHD) Staff:** 10 attorneys; 2 part-time social services staff; 1 investigator; and 1 administrator.
- **Services Provided:** Primarily represent misdemeanor defendants identified through an algorithm as having a history of mental health diagnoses; representation of any misdemeanor defendant after a finding of incompetency; representation of defendants in the 5 felony mental health courts; and assistance to clients in brokering community-based services such as mental health treatment and housing.
- **TIDC Investment:** \$12.4 million overall for the office from FY2012-2015.



Harris Co. Mental Health Division staff attorneys and leadership (L-R, front): Ana Benavides; Sarah Mueller; Floyd L. Jennings, Chief; Mary Acosta; Helen Simotas. (L-R, back): Ben Friedman; Curtis Barton; Mary Grace Ruden; Lori Gooch; Roger Donley.

Outcomes

- **Caseloads:** In FY2017-2018, the MHD was assigned to represent approximately 3,000 defendants, who represent a larger number of “cases” since defendants may have multiple charges. MHD attorneys receive no more than 250-275 cases per year.
- “Misdemeanor dismissals were five times more likely for HCPD clients with mental health diagnoses than for a matched group of similar defendants with assigned counsel.”⁶⁶
- “HCPD secured dismissals for 27 percent of clients versus 6 percent in the match group.”⁶⁷
- County court judges who refer cases to the MHD reported that they were “thrilled” with the office’s work and attorneys were “extremely professional.”⁶⁸



7. Kaufman County Public Defender's Office

- **Established:** 2006;⁶⁹ Mental Health Division (MHD) in 2012.
- **Case Types Represented:** Adult misdemeanors and felonies, including defendants with a mental health diagnosis.
- **Mental Health Division Staff:** Andrew Jordan, Chief; 1 attorney and 1 mental health advocate.
- **Services Provided:** representation in misdemeanor and felony cases; initiating the diagnostic process to identify mental health issues; coordinating conditions of supervised release or pre-trial diversion; assisting clients released on mental health bonds or probation in accessing social services, housing, proper medication, and treatment.
- **TIDC Investment:** \$120,000 for the mental health attorney/advocate team from FY 2013-2017.



Andrew Jordan, Kaufman County
Public Defender

Program Description

The MHD provides three levels of representation or assistance on cases: 1) active; 2) co-representation; or 3) consultation only. For active cases, the MHD has assessed the client's needs and fully represents him or her on criminal and mental health issues. In co-representation situations, the MHD assists public defender attorneys with clients who are mentally ill or IDD, on mitigation issues, and advises them on how mental illness or IDD issues influenced the underlying crime. In consultation situations, the MHD may provide guidance to a client or attorney regarding community resources to address mental illness or IDD.

8. Travis County Mental Health Public Defender Office

- **Established:** 2007
- **Case Types Represented:** persons diagnosed with at least one of the following priority population diagnoses: schizophrenia, bipolar disorder, major depression, and/or schizoaffective disorder.⁷⁰ The office has historically only represented misdemeanor defendants, but began representing felony defendants in 2018.
- **Mental Health Division Staff**
 - o Melissa McRoy Shearer, Chief;
 - o 2 full-time attorneys;
 - o 2 master's level social workers (one case management coordinator and one social worker); and,
 - o 3 bachelor's-level case workers.⁷²
- **Services Provided:** specialized criminal defense and intensive social services support to indigent defendants experiencing significant mental illness; also provides social services such as intensive case management, mental health assessments, psychosocial assessments, and formal mitigation reports for mental health “wheel” attorneys’ clients.
- **TIDC Investment:** \$1.5 million from FY2007-2019.



Travis Co. MHPD Legal Team (L-R, front): Amanda Austin, Assistant PD; Melissa McRoy Shearer, Chief. (L-R, back): Ryan Cooper, 2017-18 Liman Fellow; Sam Woodburn-Henry, Assistant PD.



Travis Co. MHPD Social Team (L-R): Karen Hunt, Case Worker; Anthony Macias, Case Worker; Marilyn Kell, Case Worker; Stephanie Doyle, Case Management Coordinator; Rebecca Hyatt, Social Worker; and, Randy Webster, Case Worker.

Outcomes⁷³

- Travis County MHPD cases were disposed quicker, on average, than assigned counsel cases. The MHPD took an average of 51.09 days to dispose of a case; assigned counsel took 91.49 days (40.40 days).
- Travis County MHPD clients were more likely to receive dismissals compared to assigned counsel on the mental health wheel. The office received dismissals in 47 percent of its cases, compared with 19 percent of assigned counsel cases (a 28 percent difference).



Travis Co. MHPD Admin Team (L-R): Antonia Blasini, Administrative Assistant; and Laura Mercado, Office Specialist.

- Travis County MHPD clients received shorter jail sentences than assigned counsel. “On average, Travis County MHPD client cases received 29.04 days in jail and assigned counsel clients received 37.70 days in jail, a difference of 8.66 days.” Also, “far fewer of the Travis County MHPD clients actually received jail time. MHPD clients were also less likely to receive probation (MHPD clients also received shorter probation sentences).”
- For clients with disposed cases between FY2009-2013, “Travis County MHPD clients had a lower recidivism rate in the year following the disposal of their legal cases, than those represented by counsel from the mental health wheel. Specifically, 39 percent of MHPD clients were rearrested, as compared to 50 percent in the comparison group.”

9. Wichita County Public Defender's Office⁷⁴

- **Established:** 1987; mental health case manager added in 2013.
- **Case Types Represented:** Adult misdemeanors and felonies, including defendants with a mental health diagnosis.
- **Mental Health Division Staff:** 1 Mental Health Case Manager
- **Services Provided:** The case manager supports both public defenders and private assigned counsel by:
 - o Conducting screenings for competency and sanity issues;
 - o Obtaining clients' medical and psychiatric records;
 - o Ensuring clients attend court; and
 - o Acting as a liaison between the Local Mental Health Authority, state hospital, attorneys and the court.
- **TIDC Investment:** \$123,270 for the mental health case manager from FY2013-2017.

Outcomes

Chief Public Defender, James Rasmussen, believes the mental health case manager has been a valuable addition to his office. "This position ensures that our clients are properly connected to services and resources in the community, while also creating cost-saving features, including reducing unnecessary forensic evaluations," Rasmussen observed. "We have also found that the position has created beneficial inter-agency communications that we hope to build on in the future."⁷⁵

- An estimated 730 jail bed days were averted in the first 15 months of the program by identifying mentally ill defendants sooner and sending them more quickly to North Texas State Hospital. This saved the county an estimated \$48,000.
- An additional \$37,500 was saved due to fewer competency exam requests.
- Approximately \$7,500 was saved by reducing time that private appointed counsel spent on cases. In total, approximately \$93,000 was saved thanks to the mental health caseworker in the first 15 months of the program.⁷⁶



Wichita Co. Chief Public Defender, James Rasmussen; and Mental Health Case Manager, Shawnee Lofland.

B. Managed Assigned Counsel Programs

1. Collin County Mental Health Managed Counsel Program

- **Established:** 2013; in Oct. 2016, program merged with indigent defense operations and now known as Indigent Defense/Managed Counsel Department.
- **Case Types Represented:** defendants with a mental illness charged with non-capital felonies and misdemeanors.
- **Staff:** 6 total; Alyse Ferguson, Chief Attorney; 1 Case Manager; 1 Indigent Defense Coordinator; 2 Indigent Defense Clerks; and 1 Administrative Assistant.
- **Services Provided:** coordinates defense, mental health and social services for mentally ill defendants charged with non-capital felonies and misdemeanors; oversees a list of 25 attorneys who have special expertise in handling cases involving a mental health personal bond (Art. 17.032, Code of Criminal Procedure), competency, and sanity determinations.



Collin Co. Indigent Defense/Managed Counsel Dept. staff (L-R, seated): Alyse Ferguson, Chief Attorney; Tracye Sparks, Indigent Defense Coordinator. (L-R, standing): Rachel Collard, Indigent Defense Clerk; Toni Fawks, Case Manager; Kim Bennett, Administrative Assistant; Veronica Oliver, Indigent Defense Clerk.

- o *MHMC Case Manager* assists attorneys by determining what services and placement options are available for clients, whether they are eligible, and making referrals to services. This has been helpful in assisting attorneys obtain mental health personal bonds and getting clients out of jail more quickly.
- o *MHMC Director* monitors attorney performance and caseloads; reviews and approves attorney fee vouchers for submission to the court; addresses complaints about poor defense counsel performance; approves investigators and experts for defense attorneys; and coordinates trainings for its attorneys, staff, and other criminal justice and mental health stakeholders.
- **Budget:** \$460,008 for central office operations and personnel in FY2017.⁷⁷
- **TIDC Investment:** \$377,000 from FY2013-2016.

Outcomes

Cost-benefit analyses of the first two years of the MHMC operations show that the program more than paid for itself by reducing jail days for MHMC clients released on mental health personal bonds and reducing jail days for clients in need of competency restoration. It was estimated that the MHMC saved Collin County over \$176,000 in 2013—and in 2014, over \$630,000.

Figure 5: Cost Savings of Collin Co. MHMC (2013-2014)⁷⁸

	2013	2014
Collin County Cost	\$24,860	\$62,153
Less Mental Health Bond Jail Days Savings	-\$80,466	-\$419,610
Less Competency Savings	-\$120,527	-\$272,949
Program Cost (Savings)	(\$176,133)	(\$630,406)

Even if grant funds from TIDC are included (see “TIDC Grant Match” line item below), the program reduced expenditures and saved money overall.

Figure 6: Operations Costs of Collin Co. MHMC (2013-2014)⁷⁹

	2013	2014
Collin County Grant Match	\$24,860	\$62,153
TIDC Grant Match	\$99,533	\$126,847
Total Cost of Operation	\$124,392	\$189,000

Numerous other savings were identified but weren't quantifiable, including jail savings in multi-county cases due to effective case management and early case disposal; medical cost savings due to expedited disposition and release; transportation, jail, and court savings due to MHMC acting as a liaison with the hospital; jail, court, and medical savings due to MHMC court liaison activities; and other savings that cannot be fully calculated.⁸⁰

One other area of savings noted during interviews of stakeholders were savings that result from fewer competency evaluations being requested due to the fact that MHMC attorneys are better trained and experienced in recognizing competency issues. Because competency evaluations can be expensive and result in longer jail stays for defendants waiting to be evaluated, reductions in competency evaluations can save money both through reduced evaluation costs and reduced jail costs.⁸¹

2. Lubbock Private Defender Office

- **Established:** 2009, Lubbock Special Needs Defender's Office; 2011, expanded to include all defendants and office renamed Lubbock Private Defender Office (LPDO).
- **Case Types Represented:** non-capital felony and misdemeanor defendants, including those with a mental health diagnosis.
- **Staff:** 9 total; Jim Bethke, Executive Director; Philip Wischkaemper, Director of Professional Development; 1 Executive Assistant; 1 Assignments Coordinator; 1 Mental Health Program Manager; 5 Mental Health Caseworkers.
- **Services Provided:** contracts with Lubbock County to operate all components of the indigent defense system, with the exception of indigency determinations; manages approximately 80 attorneys on their appointment lists; organizes about 18 one-hour CLE's at the courthouse every year, including eight hours of CLE on mental health issues for the mental health panel attorneys; conducts bio-psycho-social interviews of clients; and develops transition plans for clients.
- **TIDC Investment:** \$15.7 million overall for the office from FY2009-2016; \$662,622 in the Mental Health Private Defender Office from FY2009-2013.

Program Description

The LPDO is an independent non-profit corporation that contracts with Lubbock County to operate all components of the indigent defense system, with the exception of indigency determinations, which are made by the courts. It has an overall budget of \$4.1 million for administration, personnel, and for all indigent defense expenditures, including attorney fees and other litigation expenditures.



LPDO staff (L-R): Jaime Vallarta, Senior Caseworker; Calvin Vitela, Mental Health Caseworker; Jane Lindsey, Mental Health Caseworker; Tina Patrick, Mental Health Caseworker; Jim Bethke, Executive Director; Shannon Cavazos, Executive Assistant; Cynthia Chavez, Mental Health Program Manager; Susan Pinson, Assignments Coordinator; and Philip Wischkaemper, Director of Professional Development.

Typically a special needs client will come to the attention of LPDO after she is booked into jail and the mental health screener at the jail determines that the defendant has a qualifying diagnosis. The LPDO will assign a specially trained attorney on the mental health wheel and a caseworker to represent and assist that client.



Yamilex Peña is an Americorps VISTA member who is completing a year of service with LPDO, building capacity in the office to develop a stronger network of community partners in Lubbock.

After a caseworker is assigned to a client, she will visit the client in jail for a bio-psycho-social interview. If it is determined that competency may be an issue, the social worker will alert the attorney that they should request a competency evaluation. At the initial interview, clients also sign consent forms so caseworkers can obtain records helpful for their defense.

LPDO caseworkers help attorneys secure good outcomes for their clients and save the county money. One way is by developing transition plans for clients, which includes finding community services, developing a housing and treatment plan, and having the client sign an agreement to take medications if released. Such transition plans will be taken by the defense attorney to the District Attorney's office to try to get a personal bond to get the client out of jail and into treatment.

Once the client is out of jail, the caseworker helps ensure that the client is linked to services, abiding by the terms of the personal bond, taking medications, and getting treatment. By building a rapport with the client, the caseworker makes the client feel comfortable in coming to meet with them if they are having difficulties, which keeps clients engaged in treatment, coming to court, and resolving their case.

Caseworkers can help attorneys manage difficult clients and can provide them with insight they would otherwise not have if the attorney was handling the case alone. The rapport that the caseworker builds with the client can contribute to a more trusting relationship between the client and attorney.

After a special needs case is closed, LPDO caseworkers continue to provide up to 30 days of services to clients to help them succeed. Some clients return even later in certain circumstances—for instance, if they become homeless and have nowhere else to go for help. In such cases, LPDO caseworkers help their former clients get the services they need.

3. Capital Area Private Defender Service

- **Established:** 2014; Holistic Defense Program began 2016.
- **Case Types Represented:** Non-Capital Felonies; Misdemeanors; Mental Health; Post-Conviction (DNA mixtures).
- **Staff:** Ira Davis, Executive Director; Bradley Hargis, Deputy Director; Richard Segura, Mentoring Attorney; Administrative Assistant; CAPDS Holistic Defense Program has a director and its mental health component is staffed by two full-time, licensed social workers. The Program also utilizes social work interns.
- **Services Provided:** CAPDS’s social workers engage in defense-based social work, a “team-based approach where social workers collaborate with attorneys with a goal to produce better legal outcomes by addressing the psychosocial needs of their clients.”⁸² The services provided by the social workers include:
 - o Assessing clients for appropriate treatment options;
 - o Connecting clients to services to address mental health, substance abuse, and dual diagnosis issues;
 - o Screening for competency to determine if a competency evaluation is necessary; and
 - o Providing mitigation in bond and plea negotiation.⁸³
 - o Attending clients’ court settings unless otherwise instructed by the attorney. They check in with clients if they are out of custody. If the client is in custody, the social worker will meet with them with or without their attorney. The social workers will strategize and consult with defense counsel about the case. They will also speak to the prosecutor with defense counsel and go before the judge to provide appropriate client updates or when the client enters a plea.⁸⁴
- **TIDC Investment:** \$1.9 million for the office overall from FY2015-2018; \$269,812 for the Holistic Defense Division from FY2018-2019.

Outcomes

- 505 consultations between social workers and attorneys in its first fiscal year of operation (FY2017). In the first six months of FY2018, the Program provided 356 consultations.
- For the first quarter of 2018, monthly mental health referrals ranged from 7 to 13; “successful contacts” with clients by social workers ranged from 13-15 per month.
- *Competency:* In the first quarter of FY2018, holistic defense staff conducted 6 initial competency screenings before seeking a formal evaluation. Social workers assisted with 2 competency restoration commitments in each of January and February 2018. In one case, a social worker conducted a competency screening and determined—with attorney agreement—that the client was competent. The social worker assisted in getting the felony charges reduced to misdemeanors under a deferred prosecution agreement that included a mental health evaluation, classes, and continued care through Bluebonnet Trails (the Local Mental Health Authority for many Central Texas counties surrounding Travis).
- *Mitigation:* In the first quarter of FY2018, CAPDS reported completing 30 attorney requests for mitigation assistance.
- *Trainings:* CAPDS has provided a number of mental health CLEs and trainings for its panel attorneys, investigators, and mentees. Topics have included Identifying Signs of Mental Illness and Working with Clients with Mental Health Issues and IDD, Accessing Travis County Mental Health Resources, and Forensic Assertive Community Treatment, among others. The social workers also host the annual CAPDS Resource Fair in the Courthouse to expose defense attorneys, defendants, prosecutors, judges, and the community about available social services as part of diversion, pretrial services, probation, and reentry.

V. CONCLUSION

Mental health defender programs play a critically important role in providing holistic indigent defense services to defendants with a mental illness or intellectual disability in many Texas counties. They offer many advantages over traditional assigned counsel programs, including:

- Coordinating legal, treatment, and social services;
- Getting defendants out of jail and linked with treatment and social services quickly;
- Saving counties money due to reduced jail days, competency evaluations, and recidivism;
- Improving the quality of representation and securing better case outcomes; and
- Improving case processing, expediting dispositions, and making the court system more efficient.

Many more counties could benefit from a mental health defender. TIDC hopes this publication encourages more counties to establish a mental health defender program to realize all of the benefits these programs offer. TIDC staff is available to assist counties with planning a mental health defender program and securing discretionary grant funding to offset implementation costs.

VI. RESOURCES

Publications

Course Corrections: National Public Defenders Summit on Mental Health & Criminal Justice

(March 28-29, 2018), The Equitas Project,

<https://www.equitasproject.org/course-corrections-national-public-defenders-summit-compendium/>.

Texas Criminal Procedure & the Offender with Mental Illness: An Analysis & Guide NAMI Texas (5th ed. 2016),

<http://namitexas.org/wp-content/uploads/sites/12/2014/12/2016-NAMI-Texas-Shannon-book-with-cover.pdf>.

Mental Illness, Your Client and the Criminal Law: A Handbook for Attorneys Who Represent Persons with Mental Illness (Feb. 2015), Texas Appleseed, Texas Tech Univ. School of Law & Hogg Fndn. For Mental Health, https://www.texasappleseed.org/sites/default/files/Mental_Health_Handbook_Printed2015.pdf.

Representing the Mentally Ill Offender: An Evaluation of Advocacy Alternatives

(Apr. 2010), Texas Task Force on Indigent Defense, Office of Court Administration,

https://ppri.tamu.edu/files/Representing_the_Mentally_Ill_Offender.pdf.

Organizations

Judicial Commission on Mental Health—<http://www.txcourts.gov/jcmh/>

Meadows Mental Health Policy Institute—<http://texasstateofmind.org/>

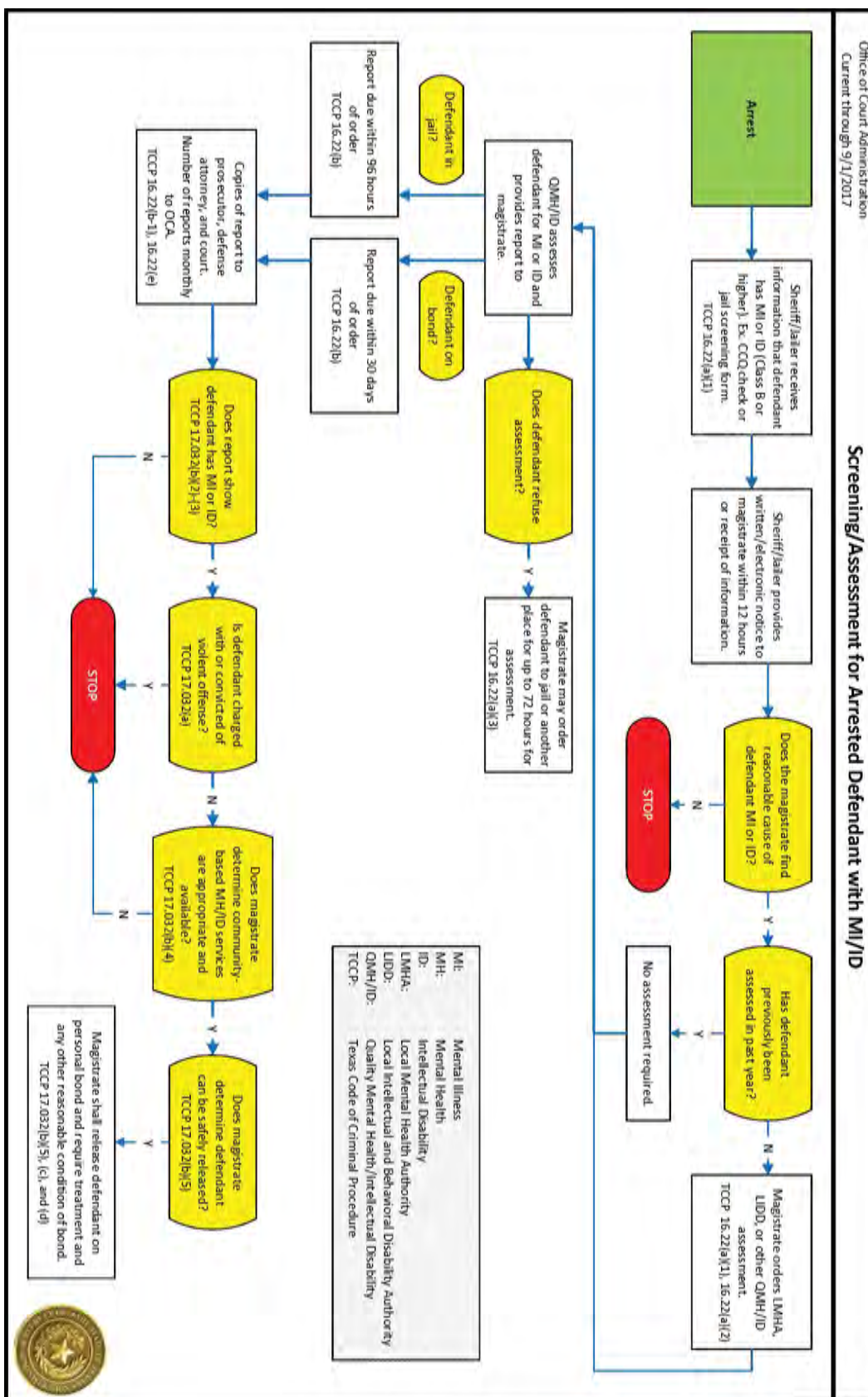
MentalHealthTX.org—<https://mentalhealthtx.org/>

National Alliance on Mental Illness, Texas—<https://namitexas.org/>

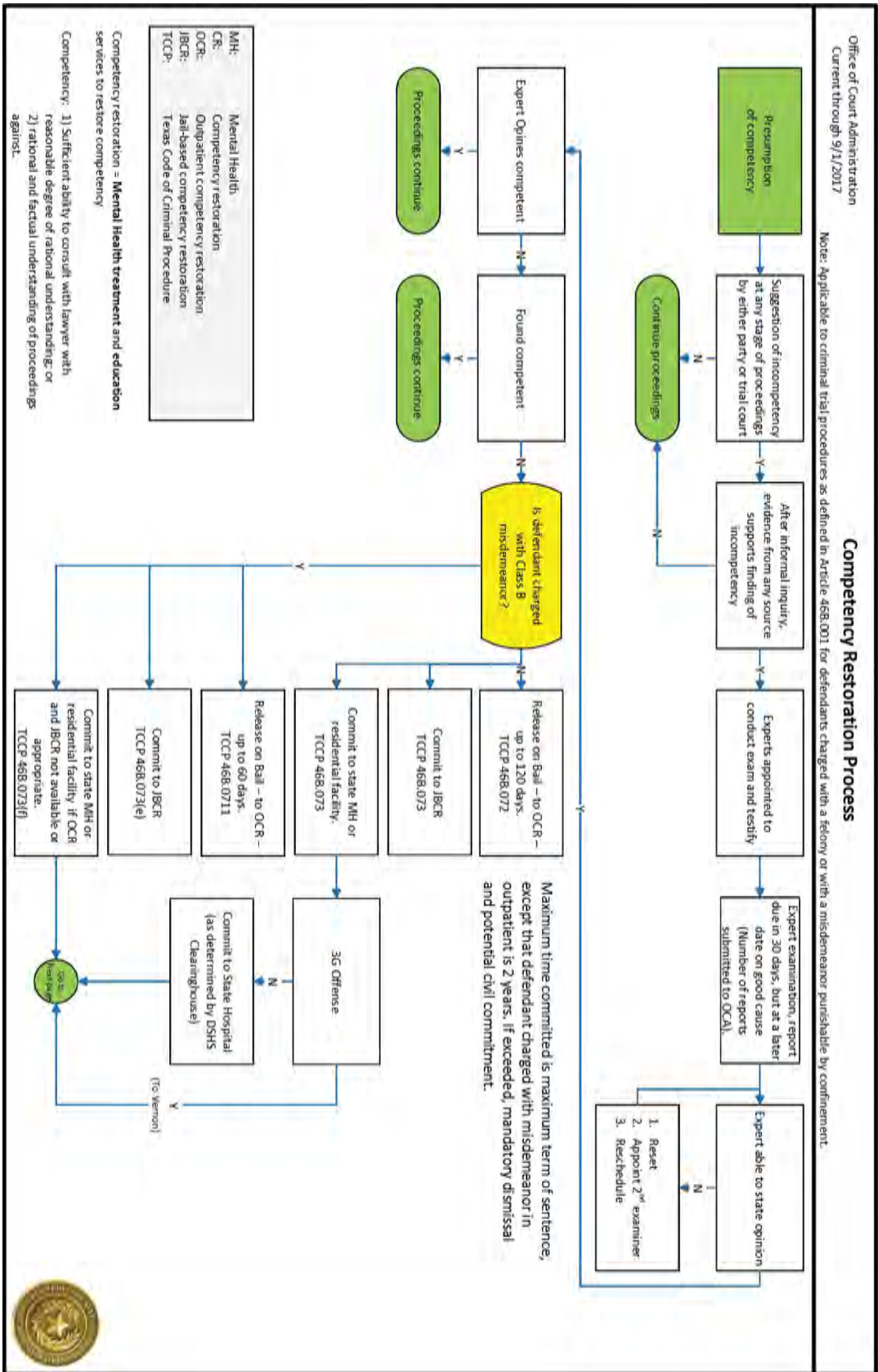
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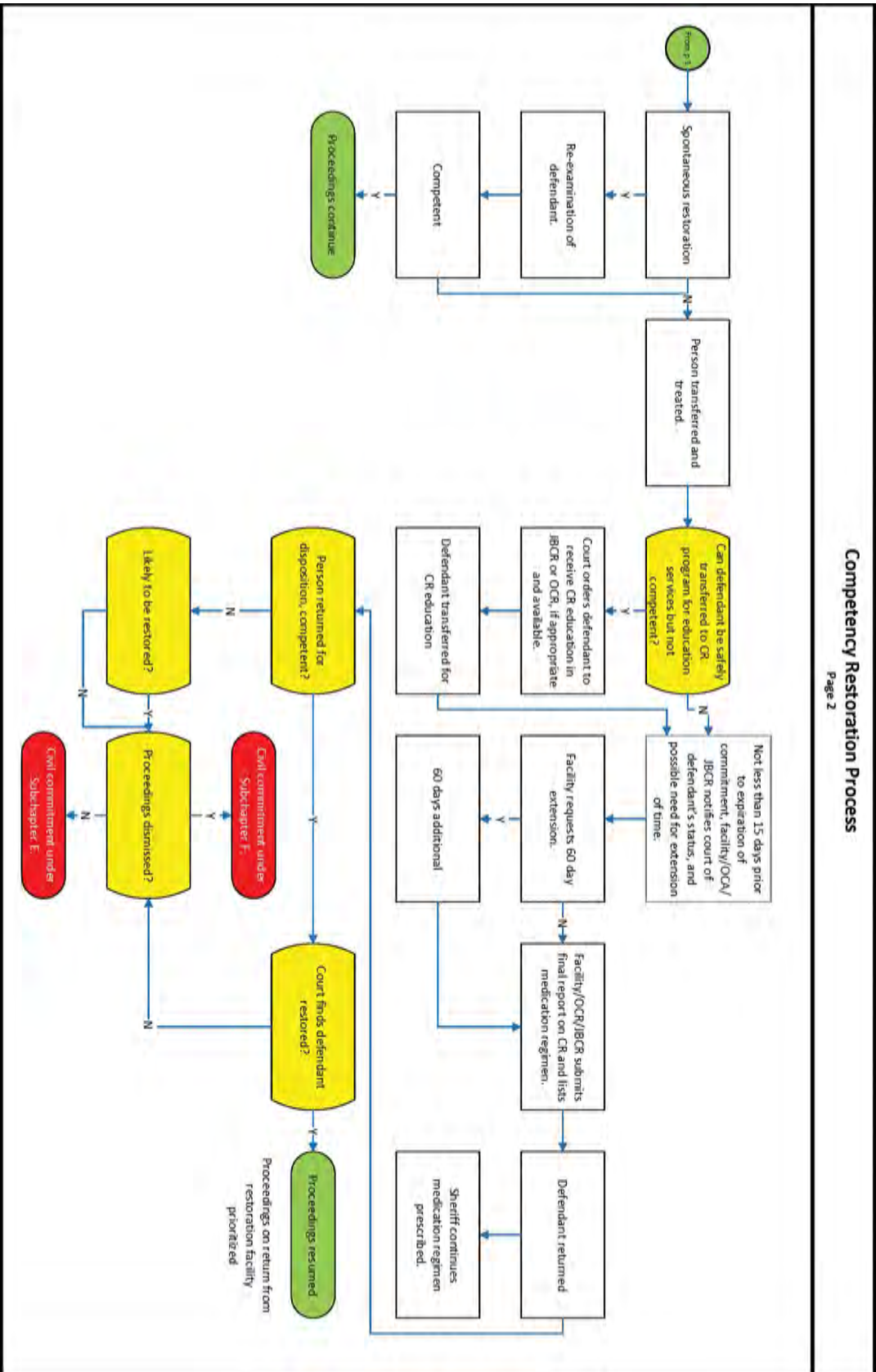
VII. APPENDIX

Screening/Assessment Process for Arrested Defendants with Mental Illness or an Intellectual Disability



Competency Restoration Process in Texas

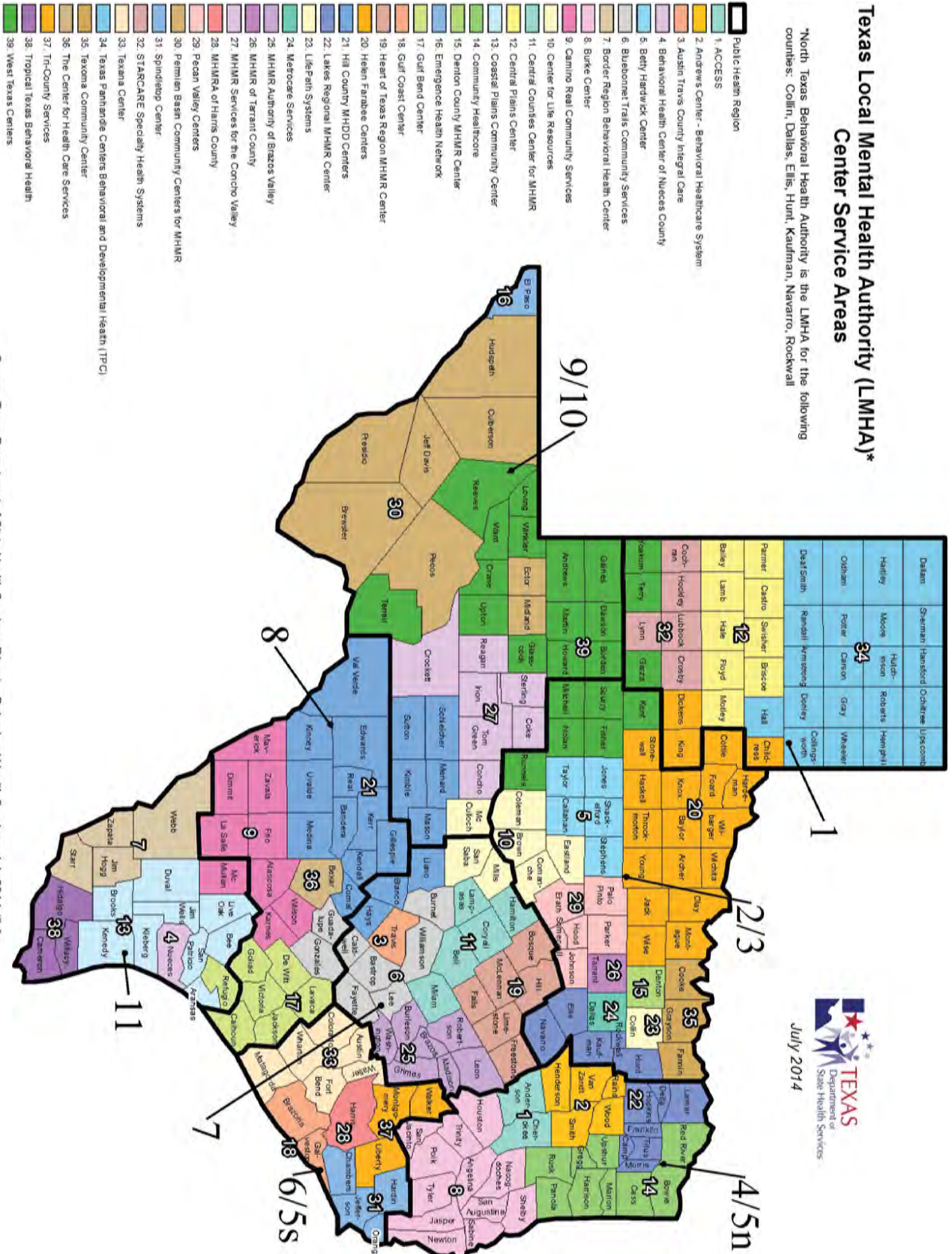




Local Mental Health Authority Center Service Areas

Texas Local Mental Health Authority (LMHA)* Center Service Areas

*North Texas Behavioral Health Authority is the LMHA for the following counties: Collin, Dallas, Ellis, Hunt, Kaufman, Navarro, Rockwall



Source: Texas Department of State Health Services, Disaster Behavioral Health Services, July 2014. tth/jc

ENDNOTES

1. Mary Leonard et al., *Harris County needs more funds to address scope of mental health concerns*, COMMUNITY IMPACT NEWSPAPER, June 12, 2017, <https://communityimpact.com/houston/spring-klein/at-the-capitol/2017/06/12/harris-county-needs-funds-address-scope-mental-health-concerns/>.
2. Naomi Martin, *'Badly needed': Dallas first responders laud new ways to help mentally ill in 2017*, DALLAS NEWS, Dec. 19, 2016, <https://www.dallasnews.com/news/dallas-county/2016/12/19/jail-er-first-responders-ways-handle-dallas-mentally-2017>.
3. Serious Mental Illness “refers to adults and older adults whose diagnoses are seen as more severe, such as schizophrenia, severe bipolar disorder, or severe depression.” Meadows Mental Health Policy Institute (MMHPI), *Texas Behavioral Health Landscape 1* (Dec. 2014), <http://texasstateofmind.org/wp-content/themes/texasstateofmind/assets/MediaDownloads/Texas+Behaviorial+Health+Landscape+-+December+2014.pdf>.
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5. *Id.*
6. MMHPI, *supra* note 3, at 3 (Dec. 2014).
7. Center for Public Policy Priorities, *Mental Health Screening and Intake in County Jails* (Apr. 30, 2014), <http://www.legis.state.tx.us/tlodocs/83R/handouts/C2102014050510001/719abd7c-9cd9-4092-aae9-46d5765f52cf.pdf>.
8. MMHPI, *supra* note 3, at 2.
9. Act of June 12, 2017, 85th Leg., R.S., ch. 748 (S.B. 1326), 2017 Tex. Gen. Laws 3183; Sandra Bland Act, 85th Leg., R.S., ch. 950 (S.B. 1849), 2017 Tex. Gen. Laws 3801.
10. Act of June 14, 2017, 85th Leg., R.S., ch. 770 (H.B. 13), 2017 Tex. Gen. Laws 3274; Act of June 9, 2017, 85th Leg., R.S., ch. 528 (S.B. 292), 2017 Tex. Gen. Laws 1419.
11. Sandra Bland Act, 85th Leg., R.S., ch. 950 (S.B. 1849), 2017 Tex. Gen. Laws 3801.
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15. *Id.*
16. Houston Police Department, Mental Health Division, *2016 Annual Report*, at 59, <http://www.houstoncit.org/wp-content/uploads/2017/07/MHD-2016-Annual-Report.pdf>.
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19. Tex. Code of Crim. Proc. Ann. art. 16.22(a)(1) (West 2015 & Supp. 2017).
20. Tex. Code of Crim. Proc. Ann. art. 16.22(a)(1)(A)-(B) (West 2015 & Supp. 2017).
21. *See* Tex. Code of Crim. Proc. Ann. art. 26.047 for a description and requirements of a managed assigned counsel program. *See also* Texas Indigent Defense Commission, *Primer on Managed Assigned Counsel Programs* (Sept. 2017).
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42. Emilie Attwell Becker, MD, *Mental Health Services in Texas Jails*, TEX. MED. 2016; 112(11):e1., <https://www.texmed.org/Nov16Journal/>.

43. Texas Dept. of Criminal Justice, *Texas Correctional Managed Health Care Committee*, <http://www.tdcj.texas.gov/divisions/cmhc/index.html> (last visited May 10, 2018).
44. *Id.*
45. Hogg Foundation for Mental Health, *Texas Dept. of Criminal Justice and Local Criminal Justice Agencies*, <http://hogg.utexas.edu/mh-guide/public-behavioral-health-services-in-texas/texas-department-of-criminal-justice-and-local-criminal-justice-agencies> (last visited May 10, 2018).
46. *Id.*
47. Texas Dept. of Criminal Justice, *Reentry and Integration Division*, <http://tdcj.state.tx.us/divisions/rid/index.html> (last visited May 10, 2018).
48. Travis County Justice Planning, *supra* note 32, at 4.
49. Dottie Carmichael et al., *Representing the Mentally Ill Offender: An Evaluation of Advocacy Alternatives* 55, Texas Task Force on Indigent Defense, Office of Court Administration (Apr. 2010).
50. “A Psychiatric Advance Directive (PAD) is a legal document written by a currently competent person who lives with a mental illness. A PAD allows a person to be prepared if a mental health crisis prevents them from being able to make decisions. A PAD describes treatment preferences, or names a person to make treatment decisions, should the person with a mental health condition be unable to make decisions.” *Psychiatric Advance Directives (PAD)*, National Alliance on Mental Illness, [https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Psychiatric-Advance-Directives-\(PAD\)](https://www.nami.org/Learn-More/Mental-Health-Public-Policy/Psychiatric-Advance-Directives-(PAD)) (last visited Oct. 4, 2018).
51. See Supported Decision-Making Agreement Act, Ch. 1357, Texas Estates Code.
52. Bexar County Public Defender’s Office, <https://www.bexar.org/1041/Public-Defenders-Office> (last visited April 3, 2018).
53. Bexar County Public Defender’s Office, *Central Magistrate Mental Health PR Bond: Year 2 Report*, at 5 (Oct. 1, 2016–Sept. 30, 2017).
54. *Id.*
55. *Id.* at 6.
56. *Id.* at 7-8.
57. Unless otherwise noted, this section is a summary or taken verbatim from Dallas County Public Defender’s Office, “Mental Health Division of the Dallas County Public Defender’s Office” (March 2018) (on file with TIDC).
58. Dallas County Public Defender’s Office, *Court Assignment Overview*, https://www.dallascounty.org/government/public_defender/court_overview.php.
59. These outcomes are taken from Dottie Carmichael et al., *supra* note 49, at xi-xii.
60. Includes actual discretionary grant disbursement amounts from FY2004-2008, and grant award amounts for FY2018 and FY2019 since disbursements for those fiscal years are not complete.
61. Mental Health Public Defenders Office, *Eligibility Requirements*, <https://www.fortbendcountytexas.gov/government/departments/administration-of-justice/mental-health-public-defenders-office/eligibility-requirements> (last visited Oct. 14, 2018).
62. Cache Steinberg, *Program Evaluation: Mental Health Public Defender Office, Fort Bend County*, at Executive Summary i (October 2013) (available from TIDC upon request).
63. *Id.*
64. *Id.* at Executive Summary ii.
65. Correspondence and attached graph, “Mental Health Average Days in Jail,” from Roderick B. Glass, Chief Public Defender, Fort Bend County Public Defender Office, to Jim Bethke (July 26, 2016) (on file with TIDC).
66. Tony Fabelo et al., Council of State Governments Justice Center, *Improving Indigent Defense: Evaluation of the Harris County Public Defender 2* (Sept. 30, 2013).
67. *Id.* at 30.
68. *Id.* at 32.
69. Kaufman County, Texas, *Public Defender*, <https://www.kaufmancounty.net/courts-and-public-safety/public-defender/> (last visited Oct. 2, 2018).
70. Travis County Justice Planning, *supra* note 32, at 3. Note that the “priority population” diagnoses served by the Travis Co. MHPD and attorneys on the mental health wheel are defined at Tex. Health & Safety Code §531.002 (17).
71. *Id.* at 5-6.
72. *Id.* The “wheel” is a public appointment list of private attorneys who have specialized training in mental health issues. Attorneys are randomly assigned from “the wheel” to represent defendants. See Tex. Code Crim. Proc. Ann. art. 26.04(a), for a description of how this system of rotation is to operate.
73. *Id.* at 4.
74. Scott Ehlers, *Wichita County Serves as Model for Indigent Defense Practices*, COUNTY PROGRESS 44, 46 (Apr. 2017).
75. *Id.* at 46.
76. *Wichita County Public Defender Mental Health Case Manager*, factsheet submitted for TIDC’s Mental Health Roundtable (Dec. 2, 2016). Cost-saving statistics prepared in mid-2016 for a Commissioner’s Court hearing. Available from TIDC upon request.
77. E-mail from Alyse Ferguson, Managing Attorney, Collin Co. MHMC, to author (May 24, 2017, 2:28 PM CST) (on file with TIDC).
78. Alyse Ferguson, Mental Health Managed Counsel Program, *2014 FY Project Report* (2015), slide 14, available at http://www.collincountytexas.gov/public_information/features/Documents/MHMCPresentationApril20_2015.pdf.
79. *Id.*
80. *Id.* at 12, “Savings Not Quantifiable.”
81. Interview with Alyse Ferguson, Managing Attorney, MHMC; John Cooper, Danny McDaniel, Kristen O’Brien, Matt Goheen, and Vanita Parker, panel attorneys, MHMC; and Davis Goodwin, Jail Diversion Coordinator, Lifepath Systems, in McKinney, Tex. (Apr. 28, 2017).
82. Megan Hunter and Katy Dyer, Capital Area Private Defender Service, *Defense-based Social Work: Who We Are & What We Do*, Powerpoint presentation for TIDC’s 2nd Annual Texas Roundtable on Representation of Defendants with Mental Illness (Nov. 17, 2017), slide 3, http://tidc.texas.gov/media/57880/2_tidc-defense-based-social-work.pdf.
83. *Id.* at slide 4.
84. *Id.* at slide 5.



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