

Primer on Managed Assigned Counsel Programs





TEXAS INDIGENT DEFENSE COMMIS

209 W. 14th Street, Room 202
Austin, Texas 78701
Phone: 512-936-6994; Fax: 512-463-5724
www.tidc.texas.gov

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Staff:

Jim Bethke	Executive Director	512-936-6994	Jbethke@tidc.texas.gov
Brandon Bellows	Policy Analyst	512-936-6996	Bbellows@tidc.texas.gov
Edwin Colfax	Grant Program Manager	512-463-2573	Ecolfax@tidc.texas.gov
Scott Ehlers	Policy Analyst	512-936-7551	Sehlers@tidc.texas.gov
Marissa Kubinski	Executive Assistant	512-936-6994	Mkubinski@tidc.texas.gov
Joel Lieurance	Senior Policy Monitor	512-936-7560	Jlieurance@tidc.texas.gov
Wesley Shackelford	Deputy Director	512-936-6997	Wshackelford@tidc.texas.gov
Debra Stewart	Fiscal Monitor	512-936-7561	Dstewart@tidc.texas.gov
Doriana Torres	Grants Specialist	512-463-8015	Dtorres1@tidc.texas.gov
Sharon Whitfield	Budget & Accounting Analyst	512-936-6998	Swhitfield@tidc.texas.gov

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TIDC Law Clerks

Rachel Gartman

A third-year student at the University of Texas School of Law, Rachel Gartman is bright eyed and bushy tailed about securing effective representation for those least able to secure it for themselves. She participates in Interscholastic Mock Trial, the Expunction Clinic, and the Actual Innocence Clinic. Before law school, she graduated magna cum laude from the University of Houston in 2014 with a degree in Anthropology and Linguistics. Her less academic pursuits include crafting large, colorful papier-mâché animals and Brazilian Jiu-Jitsu.

Rebecca Yung

Rebecca Yung is a second-year student at the University of Texas School of Law from Dallas. Rebecca expects to graduate with her Juris Doctor in 2019. Rebecca is the Alumni Coordinator and a staff editor at the American Journal of Criminal Law. Rebecca received her bachelor's degree in Political Science from Texas A&M University in 2016.

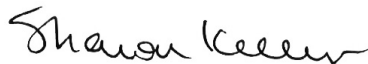
FOREWORD

The *Primer on Managed Assigned Counsel Programs* is intended to be a tool for local and state officials who seek a deeper understanding of what a “managed assigned counsel program” (MAC) is and whether creating one makes sense for their county or region. Texas jurisdictions vary widely in population, resources, and legal culture. Officials in each jurisdiction must independently weigh the advantages and disadvantages of creating a MAC for their county or region.

The statute officially authorizing managed assigned counsel programs was enacted in Texas in 2011. Today, three MAC programs are in operation. The offices manage private counsel in a variety of case types, including misdemeanors, felonies, appeals, and representing defendants with mental health issues. Summaries of these programs’ operations can be found in the Appendix. Expanded profiles of the existing offices can be found in the Supplement to this report, available at TIDC’s website.

This *Primer* is comprised of five chapters to accommodate Texas officials who are at varying stages of exploring their managed assigned counsel program options: Chapter One: Indigent Defense Overview; Chapter Two: Background and History of Attorney Appointment Systems; Chapter Three: Managed Assigned Counsel Statute and Program Models; Chapter Four: Benefits of a Managed Assigned Counsel Program; and Chapter Five: Establishing and Operating a Managed Assigned Counsel Program.

Special appreciation is extended to the people acknowledged on the previous page who provided extensive input and guidance in the creation of this *Primer*. The Commission believes that, through the collective and collaborative efforts of many, this publication should prove to be a valuable tool in determining whether a managed assigned counsel program is right for your community.



Sharon Keller
Chair, Texas Indigent Defense Commission



EXECUTIVE SUMMARY

The *Primer on Managed Assigned Counsel Programs (Primer)* is designed to be a resource for criminal justice stakeholders who want to determine if a managed assigned counsel (MAC) program should be established to provide indigent defense services in their own jurisdiction. Readers who want a more in-depth exploration of MAC operations should download the supplement to this publication, *Managed Assigned Counsel Programs in Operation*, available through the Texas Indigent Defense Commission (TIDC) website.

Chapter 1 provides a brief introduction to indigent defense law, including an overview of the constitutional right to counsel in the United States and key developments in indigent defense in Texas. The most important development of the last two decades was the passage of the Fair Defense Act in 2001 (FDA), which serves as the basic blueprint for Texas' indigent defense system today. The FDA established many of the ten key provisions of "Fair Defense Law," as well as created the Task Force on Indigent Defense (now TIDC).

Chapter 2 summarizes the five basic types of attorney appointment systems employed by Texas counties: 1) assigned counsel; 2) public defender; 3) contract defender; 4) client choice; and 5) managed assigned counsel. The assigned counsel model is the most prevalent system that counties use to appoint counsel for indigent criminal defendants in Texas. It involves the assignment of private attorneys by judges or court personnel to represent indigent defendants.

In counties that use a public defender system, defense services and representation are provided by a county agency or a non-profit organization under contract with a county. The public defender office employs attorneys, investigators, paralegals, support staff, and sometimes social service professionals, to work together to provide representation to indigent defendants.

A county with a contract defender will typically contract with one private attorney or law firm to handle all cases where there are no conflicts in a single court or a group of courts, or contract with a small number of attorneys or firms to handle a large block of cases.

The client choice model of appointing counsel allows criminal defendants to choose their attorney from a list of qualified attorneys approved by the judges. The first known jurisdiction in the United States to use this model is Comal County, Texas.

The managed assigned counsel model is fairly new to Texas, first appearing in Lubbock County in 2009 with the establishment of the Lubbock Special Needs Defender's Office. A MAC is similar to a public defender office in that a MAC typically will: employ supervising attorneys to supervise, mentor, and consult with attorneys on their cases; appoint cases to attorneys based on their experience; provide training; provide investigators, social workers, experts and support staff to assist attorneys; and approve payments to attorneys, investigators, and experts. A MAC is different than a public defender office in that attorneys who represent indigent clients are contractors rather than employees of the office.

Chapter 3, "Managed Assigned Counsel Statute and Program Models," provides a brief legislative history of Texas' MAC statute. In 2011, Governor Rick Perry signed H.B. 1754 into law, which replaced the Task Force with the Texas Indigent Defense Commission, and gave TIDC additional budgetary independence. It also provided the statutory framework for counties to establish a managed assigned counsel program.

A summary of the MAC statute (Tex. Code Crim. Proc. art. 26.047) is also provided. Three types of MAC programs can be established by a county commissioners court—a program operated by a governmental entity, nonprofit corporation, or bar association. The Lubbock Private Defender Office (LPDO) and Capital Area Private Defender Service (CAPDS) in Travis County are examples of MACs that are nonprofit corporations, though their operations are somewhat different. The LPDO contracts with Lubbock County to operate almost all components of the indigent defense system. This includes attorney appointments, approval of attorney vouchers, and payment of attorney fees. CAPDS, on the other hand, typically does not make attorney appointments, but rather establishes who is on the appointment list, which court administration uses to make most appointments. CAPDS also approves attorney vouchers, but actual payments are still made by the county.

Collin County's Mental Health Managed Counsel Program is an example of a governmental entity that operates a MAC. The MHMC coordinates defense, mental health and social services for its clients.

Two MACs outside of Texas are briefly profiled as well. The Committee for Public Counsel Services (CPCS) is an example of a governmental entity MAC that is responsible for providing legal representation for indigent persons throughout the state of Massachusetts. The San Mateo Bar Association's Private Defender Program (PDP) is an example of a bar association MAC that oversees the assignment of counsel in San Mateo, California. The PDP is one of the first documented MACs in the United States, opening its doors in February 1969.

Chapter 4, “Benefits of a Managed Assigned Counsel Model,” discusses the four major benefits that the MAC model over a traditional assigned counsel program:

- 1) **Accountability**—Compared to an assigned counsel system, a properly run MAC is much more likely to ensure that panel attorneys are providing quality representation. The MAC structure provides more opportunities to collect information on attorney performance and intervene if necessary.
- 2) **Quality**—MACs can put systems in place that ensure quality representation, such as caseload or workload controls. While no Texas county with an assigned counsel system has caseload or workload controls in place today, all of the MAC programs in Texas have imposed some level of caseload control. MACs also improve the quality of representation by providing training and mentoring. The MAC model can also increase panel attorneys’ access to investigators, social workers, case managers, and experts.
- 3) **Cost Effectiveness**—MAC programs create cost efficiencies in a variety of ways, including reduced jail costs, increased efficiency through centralized operations, decreased administrative costs, and budget predictability. Centralized operations allow MACs to have support staff perform administrative functions like obtaining discovery, medical records, and other case documents for all attorneys. The MAC model can also help judges, court personnel, and county auditors spend less time on the administrative requirements of an indigent defense system. By having a single individual making voucher payment decisions rather than multiple judges, greater uniformity of payments can be imposed, voucher submission and payment efficiencies can occur, and duplication of administrative processes can be eliminated.
- 4) **Institutional Resource**—The MAC serves as a single entity that is responsible for ensuring the quality of indigent defense services. Judges and clients have a single point-of-contact to discuss attorney performance problems. As the institutional voice for indigent defense, the MAC can: provide research and statistics; provide defense counsel’s perspective on how proposed criminal justice policies might impact indigent defense counsel and their clients; and advocate for policies that improve the criminal justice system.

Chapter 5 provides advice to county officials and stakeholders for establishing and operating a managed assigned counsel program. Conducting an assessment of the county indigent defense system early in the process is useful to avoid wasting time and money planning a MAC if it will not be cost effective. The potential savings, benefits, and costs to consider in such an assessment are discussed, as are useful sources of information for a MAC assessment.

In order to successfully start a MAC, county stakeholders are advised to:

- Build a strong coalition of stakeholders;
- Be prepared for skepticism and opposition;
- Collect data to make the case for the MAC;
- Visit other MACs;
- Establish an operational plan shaped by your jurisdiction’s needs; and
- Apply for a TIDC Discretionary Grant.

After a county receives a TIDC Discretionary Grant to establish a MAC program, much work still remains to make the program operational, including:

- Establishing a group to choose the entity to operate the MAC or hire a managing attorney;
- Hiring the right management and staff based on the MAC plan;
- Putting a flexible contract in place;
- Setting up the office and putting office systems in place;
- Establishing good relations and networks with courts, jail, mental health, and social service systems; and
- Seeking out community resources to reduce costs and improve client services.

The *Primer on Managed Assigned Counsel Programs* is the latest publication in a series developed by the Texas Indigent Defense Commission to help counties develop and maintain quality, cost-effective indigent defense systems. TIDC’s first such publication, *Blueprint for Creating a Public Defender Office in Texas*, was first published in 2004, with the latest update being released in June 2008. In the years since the 2008 publication, the number of public defender programs in Texas has expanded significantly. Hopefully this *Primer* will be as successful in spurring counties to innovate and develop managed assigned counsel programs.

CHAPTER 1: INDIGENT DEFENSE OVERVIEW

Constitutional Requirements

The U.S. Constitution's Sixth Amendment provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial ... and to have the assistance of counsel for his defense.

Texas' Constitution mirrors this language: "In all criminal prosecutions the accused ... shall have the right of being heard by himself or counsel."¹

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that a criminal defendant charged with a felony had the right to be represented by counsel paid for by the state if he was indigent.² Texas was actually ahead of the Supreme Court in that regard, with a statute on the books in 1959 requiring the appointment of counsel for indigent defendants in felony cases.³ Over time, the Supreme Court has expanded this constitutional right to guarantee indigent persons accused of a crime with an attorney at state expense in juvenile delinquency proceedings,⁴ misdemeanors that result in a defendant's loss of liberty,^{5,6} and other situations where a person is facing the loss of liberty.⁷ This constitutional mandate was left to the states to implement and finance. The state of Texas delegated its responsibility to provide and pay for these services to counties and local property taxpayers.

Until 2001, the quality of representation for indigent defendants varied widely from county to county and courtroom to courtroom in Texas. There was an absence of uniform standards and procedures along with a lack of state oversight. The accused in Texas were not uniformly assured prompt access to counsel. Furthermore, since the state did not provide funding for indigent defense, the entire financial burden was shouldered by counties.⁸

Passage of Fair Defense Act of 2001

The year 2001 brought much change to Texas indigent defense policy with the enactment of S.B. 7, the Texas Fair Defense Act (FDA), which was authored by Senator Rodney Ellis and signed by Governor Rick Perry.⁹ By changing the procedures for conducting magistrate hearings, determining indigency, and appointing counsel, the FDA addressed practices that had been under widespread scrutiny for years.¹⁰

The FDA remains the basic blueprint for Texas' indigent defense system today, but there have been numerous amendments and updates to the law in the years since its passage.

Key Provisions of Fair Defense Act

There are ten key provisions of "Fair Defense Law" that policymakers and the public should be aware of:

1. **Magistrate Responsibilities.** An arresting officer must ensure that the accused is brought before a magistrate no later than 48 hours after arrest.¹¹ Among various other requirements, the magistrate must admonish the accused of his/her constitutional rights, set bail, and, if the person cannot afford counsel, inform the accused of the right to appointed counsel and the procedures for requesting appointment of counsel.¹²
2. **Indigence Determination.** County indigent defense plans must include procedures and financial standards for determining whether a defendant is indigent and is eligible for appointed counsel. These procedures and standards must apply to all defendants equally, regardless of whether they are in custody or released on bail.¹³ When making an indigency determination, the court may consider such things as the defendant's income, source of income, assets, property owned, dependents, obligations, expenses, and spousal income.¹⁴ The defendant's posting of bail or ability to do so may not be considered except to the extent that it reflects the defendant's financial circumstances as measured by the above considerations.¹⁵ A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.¹⁶
3. **Waiver of Counsel Provisions.** In 2007, the Texas Legislature established procedures for obtaining waivers of the right to counsel from defendants.¹⁷ It also imposed limits on when prosecutors may speak with unrepresented defendants and when judges may direct such defendants to speak with prosecutors.¹⁸ A judge or magistrate may not order a defendant to be rearrested or require a higher bond because a defendant withdraws a waiver of the right to counsel or requests the assistance of counsel.¹⁹
4. **Time Frames for Appointment of Counsel.** The judge (or the judge's designee) must rule on requests for counsel and appoint counsel to indigent defendants within one working day of receiving requests in counties with populations of 250,000 or more, or within three working days in counties with populations of less than 250,000.²⁰ For persons out of custody, counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated (Art. 15.17 hearing), whichever comes first.²¹

5. **Attorney Selection Methodology.** The local indigent defense plan must include the method by which attorneys on the county's appointment lists are assigned to cases.²² For example, in many counties the plan provides that judges will make appointments in rotation order from the appointment lists.²³
6. **Attorney Fees.** All court-appointed attorney fees must be paid in accordance with a schedule of fees adopted by formal action of the local judges.²⁴ If a judge or MAC director disapproves an attorney's fee request, the judge or MAC director must make written findings stating the amount approved and the reason for disapproving the requested amount.²⁵ The attorney may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region.²⁶ The Third Administrative Judicial Region—which includes Travis County and its MAC, the Capital Area Private Defender Service—has adopted rules pertaining to appeals of a MAC director's disapproval of appointed attorney fees.²⁷
7. **Experts and Investigators.** The law requires reimbursement of expert and investigative expenses with or without prior court approval if they are reasonably necessary and reasonably incurred.²⁸
8. **Indigent Defense Expenditure Report (IDER).** Texas Government Code sec. 79.036(e) requires that all Texas counties report the amounts spent on attorney fees, licensed investigators, expert witnesses, and other direct litigation costs to the Texas Indigent Defense Commission.²⁹
9. **Attorney Caseload and Practice Time Reports.** Since 2014, the Texas Legislature has required all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement that describes the percentage of their practice time that is dedicated to work on appointed cases.³⁰ Each county must also annually report by November 1 with its IDER the number of cases handled by each attorney for the preceding fiscal year along with the amount paid.³¹
10. **Adult and Juvenile Local Indigent Defense Plan Report.** The FDA requires the criminal court judges and juvenile board in each county to adopt and publish countywide indigent defense plans.³² Government Code sec. 79.036(a) requires that each county submit to TIDC its countywide indigent defense plans, procedures, and forms on how it will provide court-appointed counsel to eligible persons.³³ These reports must be submitted by November 1 of odd-numbered years.³⁴ Plans for all counties are online at <http://tidc.tamu.edu/public.net>.

The Texas Indigent Defense Commission

The Texas Fair Defense Act also established the Task Force on Indigent Defense (Task Force) as a permanent standing committee of the Texas Judicial Council, staffed through the Office of Court Administration (OCA). The Task Force was directed to develop policies and standards for providing indigent defense services, develop county reporting requirements, and provide technical support and grants to counties.³⁵ In 2011, Governor Rick Perry signed H.B. 1754 into law, establishing the Texas Indigent Defense Commission (TIDC), the permanent organization that replaced the Task Force.³⁶ The 2011 legislation also directed TIDC to submit its Legislative Appropriations Request (LAR) separate from the LAR request for OCA and to maintain a budget structure separately from OCA.³⁷ Additionally, H.B. 1754 provided the statutory framework for establishing a managed assigned counsel program.³⁸

CHAPTER 2: BACKGROUND AND HISTORY OF ATTORNEY APPOINTMENT SYSTEMS IN TEXAS

There are five basic types of attorney appointment systems employed by Texas counties: 1) assigned counsel; 2) public defender; 3) contract defender; 4) client choice; and 5) managed assigned counsel. A county may also use a combination of these methods of appointing counsel in what is called an “alternative system.” Each of these systems has advantages and risks, and can work well or poorly depending on how it is operated.

Figure 1 below describes each system of appointment, including statutory authorization and statistics on the prevalence of the appointment system across Texas counties.

Figure 1. Indigent Defense Attorney Appointment Systems in Texas

MODEL	GENERAL DESCRIPTION	RELEVANT STATUTES	PREVALENCE ⁴⁰
Assigned Counsel	A system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed from a public appointment list of qualified attorneys using a system of rotation to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.	Government Code, Section 79.001(1) Code of Criminal Procedure, Article 26.04	<ul style="list-style-type: none"> • 209 Counties in one or more District Courts • 214 Counties in one or more County Courts • 220 County Juvenile Boards
Public Defender Office	A governmental entity or nonprofit corporation that: 1) operates under written agreement with a county rather than an individual judge or court; 2) uses public funds; and 3) provides legal representation and services to indigent defendants accused of a crime or juvenile offense.	Code of Criminal Procedure, Article 26.044	<ul style="list-style-type: none"> • 20 offices serving 186 counties, including 3 regional offices (Bee Co. Regional PDO; Caprock Regional PDO; and the Regional Public Defender for Capital Cases) that serve 176 counties overall.
Contract Defender	A system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.	Government Code, Section 79.001(4) Texas Administrative Code, Section 174.10(2)	<ul style="list-style-type: none"> • 19 Counties in one or more District Court • 15 Counties in one or more County Court • 14 County Juvenile Boards
Client Choice	A system under which private attorneys, acting as independent contractors and compensated with public funds, are appointed to represent a defendant after the defendant chooses that attorney from a list of qualified attorneys approved by the judges.	Code of Criminal Procedure, Article 26.04 (not specifically referenced in statute but implemented pursuant to this provision of code)	1 program: Comal County
Managed Assigned Counsel	A governmental entity, nonprofit corporation, or bar association operating under a written agreement with a county for the purpose of appointing counsel to indigent defendants. The program must be directed by a licensed attorney who has substantial experience in the practice of criminal law and the ability to provide supervision and leadership for participating attorneys.	Code of Criminal Procedure, Article 26.047	3 programs as of 2017: <ul style="list-style-type: none"> • Collin County • Lubbock County • Travis County

Assigned Counsel⁴¹

The assigned counsel model is the most prevalent system that counties use to appoint counsel for indigent criminal defendants in Texas. In fact, it is the default appointment process under state law unless the court appoints counsel in another legally permissible manner.

Courts that use an assigned counsel system appoint private attorneys from an appointment list that has been approved by the district or county court judges. Attorneys are appointed using a rotating “wheel” to select the name of an attorney from the next five names on the appointment list. Attorneys are compensated as independent contractors rather than employees of the county.

Public Defenders⁴²

Under a public defender system, defense services and representation are provided by a county or state agency, or a non-profit organization under contract with a county. The public defender office is analogous to a prosecutor's office, but for the defense side. Attorneys are salaried employees who are criminal defense specialists. A public defender system still requires a secondary system for the appointment of counsel when there is a conflict, which is usually assigned counsel but could also be a conflict public defender office. There are 20 county, regional, and statewide public defender offices operating in Texas.

Contract Defenders⁴³

Contract defender systems can take a variety of forms. A county will typically contract with one private attorney or law firm to handle all cases where there are no conflicts in a single court or a group of courts, or contract with a small number of attorneys or firms to handle a large block of cases. Contract defender programs are regulated to establish basic requirements for the program, including: reporting requirements; notification and application process for members of the local bar; applicant selection process; contract requirements; and caseload limitations.

Client Choice⁴⁴

The "client choice" model of appointing counsel allows criminal defendants to choose their attorney from a list of qualified attorneys approved by the judges. If a defendant does not want to choose a lawyer, then an attorney can be appointed for that defendant by the court just as the attorney would have been appointed under an assigned counsel system (i.e. random "wheel" assignment.) Comal County, Texas, was the first jurisdiction in the United States to implement a "client choice" model of appointing counsel in criminal cases in February 2015. Attorneys remain independent contractors and bill the county for their services in the same manner as when the court appointed the attorneys under the previous assigned counsel system.

Managed Assigned Counsel⁴⁵

The managed assigned counsel (MAC) model is a fairly new indigent defense delivery system in Texas. A MAC, also known as a "private defender" or "coordinated assigned-counsel" program,⁴⁶ is similar to a public defender office except that the attorneys are private contractors rather than employees of the county office or non-profit that provides defense services. A MAC is similar to a public defender office in that a MAC typically will: employ supervising attorneys to supervise, mentor, and consult with attorneys on their cases; appoint cases to attorneys based on their experience; provide training; provide investigators, social workers, experts and support staff to assist attorneys; and approve payments to attorneys, investigators, and experts. Whereas a public defender attorney is paid a salary, MAC attorneys submit vouchers to the MAC director, who reviews and approves vouchers for payment.

The following chapters provide a brief history of the MAC statute and an overview of the different MAC program models; describe the advantages of a MAC over other types of attorney appointment systems; and explain how county officials, policymakers, and judicial personnel can establish and operate a MAC program. Readers seeking an in-depth description of MAC operations in Texas and San Mateo, California should see the *Supplement* to this report, available at TIDC's website.

CHAPTER 3: MANAGED ASSIGNED COUNSEL STATUTE AND PROGRAM MODELS

History of the Texas MAC Statute

In 2009, Senator Robert Duncan (R-Lubbock) introduced the first piece of legislation to codify the MAC concept into Texas law. S.B. 1710—which used the term “independent assigned counsel”—enjoyed unanimous support in the Senate and the House Criminal Jurisprudence Committee, but failed to pass the full House for reasons unrelated to the bill.⁴⁷

In 2011, three bills were introduced in the 82nd Legislature to codify the MAC concept into Texas law. One of those bills, S.B. 1682, solely pertained to MAC programs, while two others, S.B. 170 and H.B. 1754, were omnibus indigent defense bills that incorporated the text of S.B. 1682.

As the bill analysis of S.B. 1682 noted,⁴⁸ the MAC concept was adopted from San Mateo County, California (discussed in more detail below and in the *Supplement* to this report). At the time of the legislation’s consideration, Lubbock County had established a pilot managed assigned counsel program to represent mentally ill defendants and was seeking to expand the program to handle all indigent criminal cases.⁴⁹ Montgomery County was also seeking to establish a MAC, but because the MAC concept was not codified into law, both programs could not be fully implemented until legislation passed.⁵⁰

While S.B. 1682 did not ultimately pass, H.B. 1754 (which included S.B. 1682’s MAC provisions) was signed into law by Governor Rick Perry on June 17, 2011 and became effective on September 1.⁵¹

Summary of Texas MAC Statute

Texas’ MAC statute is codified at Code of Criminal Procedure art. 26.047. A managed assigned counsel program is legally defined as

a program operated with public funds by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity other than an individual judge or court; and for the purpose of appointing counsel under Article 26.04 of the Texas Code of Criminal procedure or Section 51.10 of the Family Code.⁵²

There are certain basic requirements that a MAC must incorporate:

Organization

As noted above, the Commissioners Court of any county may appoint any of the following entities to operate a MAC program: (1) governmental entity, (2) nonprofit corporation, or (3) bar association.

In order to establish a MAC program, state law requires the written approval of a judge of the juvenile court of a county, a county court, statutory county court, or district court trying criminal cases in the county.⁵³

Program Operation

The county must specify: the types of cases in which the program may appoint attorneys; the courts in which attorneys who are appointed by the program may be required to appear; the term of any agreement establishing the program; and how the agreement may be terminated or renewed.⁵⁴ These provisions may be included in the statutorily required Managed Assigned Counsel Plan of Operation,⁵⁵ which must also include the following:

- Program budget and salaries;
- Job descriptions for each personnel position;
- Maximum caseload for each attorney;
- Provisions for training personnel and attorneys;
- A description of anticipated overhead costs;
- A policy regarding licensed investigators and expert witnesses used by MAC attorneys;
- A policy to ensure appointments are reasonably and impartially allocated among qualified attorneys; and
- A policy related to ‘conflict’ situations.

The Managed Assigned Counsel Plan of Operation is included in the requirements for the countywide indigent defense plan(s) and procedures in section 79.036 of the Texas Government Code.⁵⁶

Leadership

Counties that establish a MAC program must have a director.⁵⁷ Typically the program director:

- is a member of the State Bar of Texas;
- has practiced law for at least three years; and
- has substantial experience in the practice of criminal law.⁵⁸

If a MAC uses a Review Committee (discussed below), then the director does not have to meet the above criteria. However, a non-lawyer director would likely raise ethical concerns because the director's duties involve the supervision of—and provision of legal advice to—other attorneys.⁵⁹ The MAC program director may report to the Commissioners Court if the MAC is a government department, or may report to a board of directors or oversight committee with stakeholders, depending on the structure of the program. There are no requirements in the MAC statute pertaining to whom the director reports.

Review Committee

A MAC may utilize a Review Committee of three or more attorneys to approve attorneys to be on the program's public appointment list. Each member of the review committee must meet the MAC program director criteria (listed above), may not be employed as a prosecutor, and may not be on or apply to be on the public appointment list.⁶⁰

Attorneys Appointed by the MAC Program

The MAC is required to have a public appointment list containing the names of attorneys qualified to represent indigent defendants. The attorneys on the appointment list may be approved by the Review Committee or by the MAC program director.⁶¹

Attorney Compensation

Attorneys who are appointed by the program to provide indigent defense services shall be paid a reasonable attorney's fee based on the time and labor required for the services, the complexity of the case, and the experience and ability of the appointed counsel.⁶² While this is consistent with the requirements for compensating attorneys in the Assigned Counsel Model, counties may maximize the potential of the MAC program by authorizing the program director to receive, review, and approve itemized fee vouchers or invoices submitted by appointed attorneys.⁶³

Non-Profit Organization Models

One of the three MAC models authorized under Texas law is the non-profit model. Two of the three MACs in the state follow this model, but the scope of their operations differs significantly.

Lubbock Private Defender Office (Lubbock County, Texas)



LPDO staff (L-R, seated): Tina Patrick, Mental Health Caseworker; Jaime Villarta, Mental Health Program Manager. (L-R, standing): Lori Amin, Mental Health Caseworker; Jane Lindsay, Mental Health Caseworker; Lori Martinez, Office Manager; Philip Wischkaemper, Director of Professional Development; David Young, Assignment Coordinator.

In 2009, Lubbock County became the first jurisdiction to establish a MAC in Texas, even though the concept was not formally recognized in state law until 2011. The county received a TIDC grant for the establishment of the Lubbock Special Needs Defender's Office (LSNDO), a MAC dedicated to defending mentally ill and intellectually disabled defendants. In 2011 the County received additional TIDC grant funding to expand the office to represent all non-capital defendants, and it was renamed the Lubbock Private Defender Office (LPDO).⁶⁴

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.⁶⁵ The Chief Defender/Executive Director and the Professional Development Director report directly to the Board of Directors.⁶⁶ The LPDO decides which attorneys are on the appointment list, appoints counsel to eligible indigent defendants, manages appointed counsel, provides services or approves contracted services (mental health caseworkers, investigators, and experts) to assist counsel, approves payment amounts, and pays the attorneys and contracted service providers.

In FY 2017, the LPDO had eight staff and an overall budget of \$3.8 million for administration, personnel, and for all indigent defense expenditures, including attorney fees and other litigation expenditures.⁶⁷ As of 2017, the LPDO manages approximately 80 attorneys on their appointment lists.

Capital Area Private Defender Service (Travis County, Texas)



The CAPDS main office is located in the Brizendine House, a historic landmark built around 1870. It is adjacent to the Blackwell-Thurman Criminal Justice Center.

The Capital Area Private Defender Service (CAPDS) is a joint-venture non-profit that was formed by the Austin Criminal Defense Lawyers Association and the Austin Bar Association to operate Travis County's managed assigned counsel program.⁶⁸ Management and staff run the organization with the input of an Oversight Committee from the county, a Board of Directors, and a Review Committee.⁶⁹

CAPDS, like the LPDO, is a non-profit organization that contracts with the county to provide indigent defense services. CAPDS approves attorneys for appointment lists, approves attorney requests for investigators and experts, provides attorneys and their clients with immigration consultations and social worker assistance, provides trainings and mentorship opportunities, responds to client complaints, and approves payment requests by attorneys and investigators. The organization also oversees the review of DNA cases as a result of the mixed DNA calculation errors and problems discovered at the Austin Police Department's DNA lab.

While CAPDS and the LPDO provide many similar services, CAPDS's role is more limited than that of the LPDO. While CAPDS decides which attorneys can receive court appointments, the office typically does not make the appointment itself like LPDO. Rather, CAPDS provides its appointment lists to court administration, which then makes appointments on a rotating basis depending on the defendants' charges. Unlike the LPDO, CAPDS does not make payments to its contract attorneys or investigators. Instead, CAPDS approves voucher payments and submits them to the county auditor for payment.

In FY 2017, CAPDS had 11 staff positions with an annual budget of approximately \$1.3 million for administration and personnel,⁷⁰ and approved approximately \$6.9 million in attorney fees and other litigation expenditures in FY 2016.⁷¹ As of 2017, CAPDS manages approximately 225 attorneys on their felony, misdemeanor, and mental health appointment lists.⁷²

Governmental Entity Models



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.

A second MAC model authorized by state law is the governmental entity model. The Collin County Mental Health Managed Counsel Program (MHMC) is currently the only MAC in Texas that is a governmental entity. This model is used in other states as well, such as Massachusetts, where the Committee for Public Counsel Services (CPCS) is a government agency charged with overseeing hundreds of private attorneys across the state representing indigent defendants.

Mental Health Managed Counsel Program (Collin County, Texas)

The MHMC initially started out as a governmental entity MAC⁷³ that contracted with the director, Alyse Ferguson, and staff, to coordinate defense, mental health and social services for defendants identified as having a mental illness or intellectual or developmental disability. Since then, the MHMC has been merged with the county's indigent defense operations

(indigency determinations and attorney appointments) that previously was part of the Indigent Defense and Collections Division, and made into a single county department. Alyse Ferguson now manages all of the indigent defense operations for Collin County under the Indigent Defense/Managed Counsel Department.⁷⁴

For FY 2017, the Indigent Defense/Managed Counsel Department had six staff and an operations budget of \$460,008 for central office operations and personnel.⁷⁵

The MHMC coordinates defense, mental health and social services for its clients. The department oversees a list of 25 attorneys who are appointed to represent mentally ill defendants charged with non-capital felonies and misdemeanors. These attorneys have special expertise in handling cases involving a mental health personal bond (Art. 17.032, Code of Criminal Procedure), competency, and sanity determinations. The 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.

The MHMC director also 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.

Committee for Public Counsel Services (Massachusetts)

The Committee for Public Counsel Services (CPCS) is responsible for providing legal representation for indigents throughout the state of Massachusetts. “This includes representation in criminal, delinquency, youthful offender, child welfare, mental health, sexually dangerous person and sex offender registry cases, as well as related appeals and post-conviction matters.”⁷⁶

Legal representation is provided by approximately 500 attorneys employed by CPCS as well as 3,000 private attorneys who are trained and certified by CPCS to accept appointments.⁷⁷ The division that is charged with assigning private attorneys to represent clients in criminal cases is the Private Counsel Division. Private attorneys represent indigent misdemeanor and felony defendants at the trial level, in post-conviction proceedings, and for sex offender commitment and registration cases.⁷⁸

CPCS contracts with non-profit bar advocate programs in each of Massachusetts’ twelve counties to administer the appointment of counsel in non-murder cases, provide supervision of assigned counsel, and provide training and mentorship.⁷⁹ Private attorneys seeking court appointments must “apply for and gain admission into a county bar advocate program” and “complete a required training program.”⁸⁰

CPCS also certifies and assigns private counsel in the child welfare and mental health practice areas for which it is responsible.⁸¹

Bar Association Model

As of this writing, there are no counties in Texas utilizing the third MAC model authorized by statute – the bar association model. However, the MAC that has had the biggest impact on MAC program developers in Texas follows such a model.

San Mateo Bar Association’s Private Defender Program (San Mateo, California)

The San Mateo Private Defender Program (PDP) is one of the first documented MACs in the United States, opening its doors in February 1969.⁸² The San Mateo (California) Bar Association has operated the program since its inception. The PDP had 14 salaried employees and an overall budget of over \$18.9 million for the 2016-2017 fiscal year.⁸³

The PDP’s 107 lawyers assigned to represent indigent defendants are in private practice.⁸⁴ PDP attorneys represent clients in misdemeanor, felony (including capital offenses), and juvenile delinquency cases. The office also represents persons in certain civil matters where counsel must be appointed, including conservatorships, terminations of parental rights, and minor guardianships.⁸⁵

The PDP determines what attorneys are eligible to receive appointed cases; assigns appointed attorneys to cases based on their level of experience; assigns attorneys and forensic experts to assist attorneys; enforces caseload limits; supervises and evaluates PDP lawyers; provides training and mentoring; and responds to client complaints. The office also serves as an institutional voice for the defense in formulating criminal justice policy in the county.

Additional details about the operations of the PDP and the other previously discussed MAC programs are available in the Supplement to this report, available online at TIDC’s website.

CHAPTER 4: BENEFITS OF A MANAGED ASSIGNED COUNSEL MODEL

Criminal justice stakeholders and county commissioners in the three Texas counties with managed assigned counsel (MAC) programs – Lubbock, Travis, and Collin – were interviewed to learn about their experiences with the formation and operation of their MACs. Based on these interviews and research on MAC programs in other jurisdictions, we have identified five major benefits that the MAC model provides compared to a traditional assigned counsel program, as outlined below.⁸⁶

Accountability

The one word most frequently used by stakeholders to describe the advantages of a MAC is “accountability.” Compared to an assigned counsel system, a properly run MAC is much more likely to ensure that panel attorneys are providing quality representation; attorneys who aren’t can receive additional training, be disciplined, or removed from the appointment list.

One of the basic roles of the MAC is to take client complaints about panel attorneys, inquire about the complaint, and attempt to mediate a solution. If that isn’t possible, then the MAC can appoint another lawyer. Because MAC managers know their panel attorneys well, they are more likely to appoint a new lawyer compatible with the client than a judge would be.

At CAPDS in Travis County, a Review Committee made up of seasoned attorneys reviews complaints about panel attorneys and recommends corrective action. At the LPDO in Lubbock, the Chief will take complaints from judges and clients, speak with the attorney involved and come up with a resolution. The Chief can also impose a sanction by moving an attorney down to a lower panel, putting an attorney “on hold” and not giving them additional appointments for a period of time like 60 days, or removing the attorney from an appointment list. Attorneys can appeal these decisions to the Appeals Panel, which is made up of highly experienced attorneys who typically do not take court-appointments. The Collin County MHMC also receives complaints from clients and the courts, discusses the complaints with the attorney, and attempts to resolve to problem. The MHMC’s Chief Attorney will make recommendations for sanctions and removals from the appointment list to the Board of Judges.

While it is difficult for both judges and MAC management to gauge attorney performance outside the courtroom, the MAC structure provides more opportunities to glean information on attorney performance. In Lubbock, LPDO Professional Development Director and Interim Executive Director Philip Wischkaemper will “wander the halls” of the courthouse and let panel attorneys stop and ask him questions.⁸⁷ Just based on the questioning and conversation, Wischkaemper says that he can gauge their level of experience and whether they might need to come by the office to further discuss the case. He also conducts court observations, watches voir dices, and sits with panel attorneys as a second chair. From that experience he can provide feedback to the attorney to improve performance and do follow-up observations to determine if improvements have been made.

MACs also collect information on attorney performance and can use that information to assess attorney performance and intervene if necessary. From the case management software, one can see how quickly and often an attorney visits his or her clients, how often motions are filed, how often an attorney goes to trial, and case outcomes. One can look at the motions filed and assess their quality. Because one organization with one chief is collecting information – including complaints – across all of the courts, the MAC model allows for a much more robust view of attorney performance throughout the courthouse and can help ensure a level of accountability that doesn’t exist in an assigned counsel system.

Quality

Accountability is important in ensuring the quality of indigent defense services. MACs can put systems in place that ensure both accountability and quality. One such system is caseload or workload controls, to ensure that panel attorneys are not taking on excessive numbers of cases. In fact, Principle 5 of the ABA’s *Ten Principles of a Public Defense Delivery System* requires it: “Defense counsel’s workload is controlled to permit the rendering of quality representation.”⁸⁸ While no Texas counties with assigned counsel systems have caseload or workload controls in place today, in part because it would be difficult or impossible to effectively monitor, all of the MAC programs in Texas have imposed some level of caseload control. Under a MAC, caseload monitoring is possible because one entity is appointing counsel and can monitor the number of cases panel attorneys have open or have closed.

MACs can improve the quality of representation by providing training and mentoring. All of the MAC programs in Texas have put in place regular training for their panel attorneys. CAPDS in Travis County collaborates with the Austin Criminal Defense Lawyers Association on trainings throughout the year, both for attorneys and its investigators. CAPDS also has a formalized mentoring program in place where less experienced attorneys who are interested in representing indigent defendants are trained and matched with more experienced mentors and then allowed to receive court appointments. LPDO collaborates with the Lubbock Criminal Defense Lawyers Association to provide trainings. It also has informal mentoring where newer attorneys are appointed second chair to cases or more experienced attorneys will brainstorm the newer attorneys’ cases and sit second chair at trial. The MHMC program in Collin County provides training related to mental health to its attorneys and coordinates an annual conference on mental health issues with other criminal justice and mental health stakeholders. All of these training and mentoring programs improve representation in the short and long term.

The MAC model can also increase panel attorneys' access to investigators, social workers, case managers, and experts. Utilizing these professionals as part of the defense team can have a dramatic impact on client outcomes. In contrast, in a traditional appointed counsel system, defendants are typically represented by solo practitioners without the means or access to these services. Additionally, MAC programs can track how often attorneys use these professional services, as well as the impact on case outcomes.

Cost Effectiveness

MAC programs have been shown to reduce county costs, particularly jail costs. A jurisdiction with lax oversight of attorney voucher payments may be especially well situated to reduce indigent defense expenditures through a MAC program. Reducing a jurisdiction's indigent defense expenditures may be an important goal for policy makers, but simply implementing a MAC program will not guarantee that outcome. Even if a MAC program is limited to hiring the Managing Attorney, the contract amount or annual salary for the Managing Attorney would be an additional indigent defense expense. Cost efficiencies fit into five categories: reduced jail populations, increased efficiency, institutionalization, decreased administrative costs, and budget predictability.

Reduced Jail Populations

Reducing jail populations can save a tremendous amount of money through reduced costs of detention, medical care, and liability. By quickly appointing counsel to get defendants out of jail on a personal bond, a MAC can help clients stay employed, support their families, access medication to treat mental illness, and improve the chances that the client has a favorable case outcome. By making it possible for mentally ill defendants to receive medical and social services outside of a jail setting, a MAC can immediately reduce jail costs as well as reduce future jail costs by breaking the cycle of mentally ill defendants repeatedly going in-and-out of the jail and state hospital.

Collin County's Mental Health Managed Counsel Program (MHMC) provides an excellent example of how a MAC can save a county money by reducing the number of mentally ill defendants in jail. In fact, Collin County's conservative Commissioner's Court was so impressed with the MHMC's cost savings for the county that it converted the MHMC from a contract-based system to a county department. 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 who need to be restored to competency. It was estimated that the MHMC saved Collin County over \$176,000 in 2013—and in 2014, over \$630,000.

Figure 2. Cost Savings of Collin Co. MHMC (2013-2014)⁸⁹

	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 3. Operations Costs⁹⁰

	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.⁹¹

One other area of savings that was 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 while waiting to be evaluated, reductions in competency evaluations can save money both through reduced evaluation costs and reduced jail costs.⁹²

In Lubbock, county commissioners and an assistant chief in the sheriff's department relayed the story of a jail inmate who was incompetent, restored to competency, and then became incompetent in jail again.⁹³ Over two-and-a-half years, she made no court appearances. She was in jail ten years pre-trial before being released. During her incarceration the Special Needs Defender Office (now the Lubbock Private Defender Office) opened, and this woman's case was its first. Within four-to-five months the office got her a treatment placement and she has now lived successfully in the community for seven years.⁹⁴

In Travis County, judges agreed to increase fees for panel attorneys' personal bond work because those fee increases will be more than offset by decreases in jail costs. At CAPDS, social workers help attorneys identify housing and other community services in order to make the case that a mentally ill client can be safely released on a personal bond, resulting in reduced jail costs.

As the previous examples show, a MAC program that serves mentally ill defendants can save the county significant sums of money. Even for non-mentally ill defendants, a MAC can reduce jail costs by ensuring the prompt appointment of counsel and encouraging its attorneys to seek personal bonds or reductions in bonds, and getting defendants released from jail.

Increased Efficiency

Like public defender offices, MACs create efficiency by centralizing operations. MACs can provide standardized forms; create a motions bank; and have support staff to perform administrative functions like obtaining discovery, medical records, and other case documents for all attorneys. MACs typically have a case management system in place, which saves attorneys time, allow management to efficiently collect case-related data, and process vouchers. MACs have computers that attorneys can access to view video discovery, print documents, and access legal research, all of which saves appointed counsel time and precious resources. The saved time ultimately results in lower voucher bills submitted to the county for payment.

In addition, MACs foster efficiency by utilizing attorneys with mental health expertise and through specialized mental health-related training. The MHMC and the LPDO have proven that a panel of attorneys specializing in defending mentally ill defendants can save time, money, and improve representation. These attorneys are thoroughly knowledgeable in very specialized areas of law like obtaining mental health personal bonds and outpatient competency restoration (OCR) bonds, competency restoration procedures and hearings, and sanity. By ensuring that attorneys with specialized knowledge are handling these cases, requests for competency evaluations can be reduced, clients can be released from jail sooner, and cases disposed more quickly.

For example, Alyse Ferguson at the MHMC tracked competency evaluation requests from MHMC attorneys and attorneys who were not on the mental health wheel between July 2016 and July 2017. She found that MHMC attorneys were much more accurate in terms of properly evaluating when a client might be incompetent. MHMC attorneys requested 59 competency evaluations, and of those, 20 defendants (34 percent) actually turned out to be competent. Attorneys not on the mental health wheel requested 32 competency evaluations during the same time, and 23 defendants (72 percent) were determined to be competent. Non-MHMC attorneys effectively had an "error rate" that was more than twice as high as MHMC attorneys in terms of identifying incompetent defendants.

Institutionalization

One of the Managing Attorney's roles is to identify ideas for procedural improvements and other efficiencies that can be implemented throughout the criminal justice system, which can yield cost savings. As an institutional entity, the MAC can also attract law school students who are often willing to work as volunteer clerks for panel attorneys in exchange for real-world experience. Finally, a MAC program can also seek state and federal grants to enhance the indigent defense system. Such opportunities don't exist for individual appointed attorneys and are unlikely for a typical appointed counsel system.

Decreased Administrative Costs

The MAC model can help judges, court personnel, and county auditors spend less time on the administrative requirements of an indigent defense system. By having a single individual making voucher payment decisions rather than multiple judges, greater uniformity of payments can be imposed, voucher submission and payment efficiencies can occur, and duplication of administrative processes can be eliminated.

In Lubbock, all administrative tasks related to appointing counsel and paying vouchers have been given to the LPDO. The multiple layers of approval and processing have been eliminated and streamlined. Panel attorneys reported being extremely happy with the LPDO's improvements to the voucher-payment process. Whereas vouchers used to take weeks to be processed by the county, the LPDO processes and pays the attorney in a matter of days, sometimes the same day as voucher submission.

Budget Predictability

Improving the dependability and efficiency of indigent defense budgeting is an advantage of the MAC model that county commissioners and judges appreciate. By putting case payment decisions into the hands of a single entity, more uniform payments result. Clear policies can be put in place to guide billing decisions. For example, in Lubbock the LPDO has put in place an hourly billing schedule to advise attorneys as to what they should expect to be paid for particular tasks, to standardize the process to make processing easier, and to ensure payment fairness.

As the MAC builds a cost history, budget predictability becomes easier. By having an entity constantly keeping an eye on the indigent defense budget in real time, county commissioners should be able to sleep easier knowing that budget increases and overruns are less likely.

Institutional Resource

The MAC director is a single point-of-contact who is responsible for ensuring the quality of indigent defense services. Judges who want to discuss attorney performance or more systemic issues have a single point-of-contact in the MAC office. A MAC program can be an institutional resource for other stakeholders involved in the operation of a jurisdiction's criminal justice system as well.

Panel attorneys in Collin County appreciated the fact that the MAC receives and distributes information to the defense bar about criminal justice system issues that impact the defense bar and clients. CAPDS does the same thing in Travis County. In both counties, the MAC program maintains a separate listserv where panel attorneys can receive announcements.

Another way in which the MAC program can serve as an institutional resource is through the development of model forms and motions. The development of a forms and motions bank can help attorneys save time by not having to "reinvent the wheel," and assist new attorneys participating in the mentoring process.

As previously noted, the MAC program can also be a training and mentoring resource for the private bar. By coordinating the resources of the jurisdiction, MAC programs provide a level of training often out of reach for solo practitioners. Related to training is mentoring, which is difficult to effectively implement without an institutional entity that has paid staff to plan, organize, and operate the mentoring program.

Finally, the MAC program can also be a respected institutional voice for indigent defense analogous to the District Attorney's voice for the prosecution. As the institutional voice for indigent defense, the MAC can provide research and statistics; provide defense counsel's perspective on how proposed criminal justice policies might impact indigent defense counsel and their clients; and advocate for policies that improve bonding practices, reduce the jail population, improve court processes, and improve services available to defendants. In Travis County, CAPDS was instrumental in getting the county to increase pay rates overall by ten percent for appointed counsel, and implement a pilot project to pay attorneys an hourly rate for bonding work in misdemeanor cases.⁹⁵ That likely would not have occurred if CAPDS, as the institutional voice for the appointed bar, did not exist.

Independence

The MAC model also satisfies Principle 1 of the ABA's *Ten Principles of a Public Defense Delivery System*: "The public defense function, including the selection, funding, and payment of defense counsel, is independent." Both Lubbock and Travis County explicitly cited ABA Principle 1 and the need for additional independence of the defense function in their TIDC Discretionary Grant applications as a reason why they wanted to establish a MAC.

Under the MAC model, a managing attorney rather than a judge assigns attorneys to particular cases and reviews and approves attorney fee vouchers. As a result, the MAC model also removes the appearance that judges may be showing favoritism toward certain attorneys in terms of the number of appointments or amount of money paid. It also lessens the likelihood of disputes between judges and defense counsel over hours worked on a case, voucher payments, or whether a request for an investigator or expert should be approved.

During interviews for this report, we heard from both judges and defense attorneys about how important it is that the MAC model removes judges from the investigator and expert approval process. Judges expressed their uneasiness with having to go into the defense's theory of the case in order to approve investigators and experts, and they felt like it was much more appropriate for someone like the MAC director to review and approve such requests. Defense attorneys were equally apprehensive about getting judicial approval for experts and investigators. One defense attorney noted that prior to the establishment of the MAC, judges would not allow the appointment of an investigator until the case was set on the jury docket, leaving inadequate time to perform a proper investigation. Under the MAC, however, investigators were approved much earlier, which could result in the discovery of information that is helpful in obtaining a dismissal or reduced charge much earlier in the case. These are just a few examples of why the independence of defense counsel from the judiciary is important and how a MAC improves that independence.

CHAPTER 5: ESTABLISHING AND OPERATING A MANAGED ASSIGNED COUNSEL PROGRAM

Stakeholders and MAC staff were interviewed to see what advice they have for county officials and others seeking to establish a MAC in their jurisdiction. Every county was slightly different in terms of who initiated the process of establishing a MAC, who was involved in the planning process, and how long the planning process took. Also, every MAC in Texas has a different operational structure. Nonetheless, stakeholders across jurisdictions had similar advice for other counties considering establishing a MAC program.

Contact TIDC Early in the Process

If you would like your county to establish a MAC, you should contact TIDC early in the process. TIDC has staff who will advise you on the law, MAC program operations, helpful contacts in other counties with a MAC, performing a cost-benefit assessment, and grant opportunities. TIDC can also provide assistance in educating local officials and stakeholders about the advantages and opportunities a MAC will provide to your jurisdiction.

Assessment of Current System

Conducting an assessment early in the process is useful because you don't want to waste time and money planning a MAC if it isn't cost effective. Following are some potential savings, benefits, and costs that should be considered when conducting a MAC assessment:

Figure 4. Potential Savings, Benefits, and Costs of a MAC

Potential Savings	Other Potential Benefits	Potential Costs
Reduced incarceration costs – calculation: jail days saved in a year x [times] avg. cost per jail day.	Higher quality representation due to improved training, mentoring, and supervision of appointed counsel; better utilization of investigators and experts.	Salary and benefits for MAC management and staff.
Reduced jail mental health costs – calculation: avg. medication cost per day for mental health defendant x reduced jail days in a year for mental health defendants.	Better access to client services such as mental health case management; mental health treatment; substance abuse treatment; social services; immigration consultations; etc.	Office space, furniture, and equipment for MAC.
Reduced court or other staffing due to efficiencies in the appointment process and voucher processing.	Better case outcomes , i.e. more dismissals, not guilty verdicts, probationary sentences, and shorter terms of incarceration.	Technology systems (case management; networking between MAC and county justice information systems; etc.) for MAC.
Reduced competency evaluations due to better screening, more knowledgeable, specialized MH attorneys. Calculation: avg. cost per competency evaluation x est. reduced # of competency evaluations.	Improved court system efficiency due to appointment of counsel improvements; removal of judges from voucher approval process; fewer bond forfeitures; etc.	Potentially increased investigator expenditures .
Reduced attorney fees due to better, centralized voucher review process.		Potentially increased expenditures for client services .
Any increased costs of establishing and operating a MAC can be offset by a TIDC Discretionary Grant that will cover 50% of the cost of MAC operations over the first four years.		

Sources of Information Useful for a MAC Assessment

When conducting an assessment, consider a review of the following sources of information:

- **Indigent Defense Expenditure Report (IDER):** The IDER captures the amount of money spent by counties for indigent defense, as well as the number of cases that are associated with the spending. All Texas counties are required to report amounts spent on attorney fees, licensed investigators, expert witnesses, and other direct litigation costs to TIDC on an annual basis.
- **TIDC Indigent Defense Self-Assessment:** Self-assessments can establish familiarity with county policies, procedures, and operational practices (e.g. local plan, rules and procedures, attorneys' applications, and attorneys' CLE hours). Conducting internal reviews of documents and processes may clarify possible challenges that can be addressed by

implementing a Managed Assigned Counsel program. Counties interested in conducting an indigent defense self-assessment should review the “Summary of a Methodology for Conducting an Initial Indigent Defense Self-Assessment” at: <http://tidc.texas.gov/media/13595/131011PolicyMonitorSelfAssessment.pdf>.

- **TIDC Policy Monitoring Report:** The Commission’s Policy Monitor works with local jurisdictions to verify whether procedures and operational practices meet statutory requirements, and writes a report documenting the findings. Although not all counties have received a Policy Monitoring Report, any county that is considering establishing a MAC should review the report if one has been issued.
- **TIDC Fiscal Monitoring Report:** TIDC’s Fiscal Monitor works with local jurisdictions to review indigent defense expenditures and verify that proper accounting procedures are being followed. The Fiscal Monitor then documents the findings in a report. Not all counties have received a Fiscal Monitoring Report, but any county that is considering establishing a MAC should review the report if one has been issued.
- **Estimated Program Budget:** Texas statute requires a MAC program’s plan of operation to include “a budget for the program, including salaries.”⁹⁶ A useful budget will include all costs necessary to implement the program, including a narrative to detail and justify all budgeted expenses. Start-up costs (or non-reoccurring costs) should be indicated in the budget and budget narrative. Consider creating more than one budget for different implementation scenarios.
- **Cost-per-Case Comparison:** This comparison is calculated by subtracting the current cost-per-case from the cost-per-case of a system that includes a MAC program. It may be helpful to modify the calculation for a few different scenarios:
 - MAC for most Felony, Misdemeanor, and Juvenile Cases
 - MAC for either Felony or Misdemeanor Cases
 - Specialty MAC Program (Mental Health, Juvenile)
- **Jail Data:** Much of the cost-savings shown from MACs (and public defender offices) in Texas has been due to reduced incarceration and related jail savings, particularly in regard to mentally ill defendants. Any assessment of costs and savings from a MAC must include the potential impact on jail costs.

If a county (or counties) lack the resources to complete a comprehensive assessment, the Commission is also able to conduct individual components of the assessment on behalf of the jurisdiction. Local officials who decide they would like more guidance can also consult directly with the Commission staff. In some cases, counties seeking support for system-wide indigent defense assessments have been awarded grant funding from the Commission to contract with independent consultants.

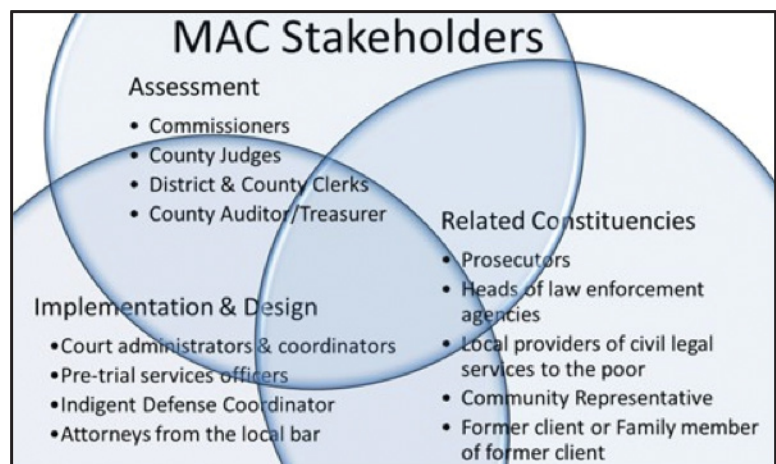
Implementation

MAC operators and stakeholders provided the following advice on what steps need to be taken to successfully get a MAC off the ground:

Build a Strong Coalition of Stakeholders

Establishing a MAC will be a “big deal” for most counties because it significantly changes the role of judges in appointing and paying counsel to represent indigent defendants. In effect, it creates a new boss for assigned counsel. If a MAC is going to be successfully established, judges and the defense bar must be at the earliest planning meetings and “on board” when Commissioners Court is approached for support. Other stakeholders should also be invited to take part in the planning process, including court administrators and coordinators, indigent defense coordinators, district and county clerks, pre-trial services officers, the county auditor, the county treasurer, heads of law enforcement agencies, magistrates, prosecutors, and local providers of civil legal services to the poor. The stakeholders can not only provide the information and data needed to complete any assessment activities described above, but also may provide constructive suggestions and observations that can improve the implementation process.

Some persons interviewed for this project suggested that criminal justice stakeholder support be shored up and solidified before the Commissioners Court is approached. In Lubbock County, select Commissioners were involved early in the process of discussing and planning the MAC. How early Commissioners are brought into the process is a strategic decision that proponents must consider and decide for themselves based on the conditions in the county.



In addition to relying on stakeholders to fulfill certain roles in the assessment process, providing stakeholders with a forum to engage in a dialogue about the potential impact of a MAC program may help the entire jurisdiction develop a better understanding of indigent defense. The specific role each stakeholder fulfills may evolve along with the various stages of the process. The following image uses overlapping circles to illustrate the multiple roles each stakeholder may need to fulfill. For example, the District & County Clerks are vital to the assessment process, but they may also provide useful input for implementation and program design.

An initial meeting is a good opportunity to present whatever initial information that has been gathered about the MAC model and to establish the forum to hear from stakeholders. From this initial meeting, a core group of interested individuals usually emerges. Ideally, one or two “champions” from each stakeholder group will be identified to develop the MAC plan. Depending on the assessment activities that have already been completed, the core group may be tasked with a number of short-term projects that will take the jurisdiction to the next step in the process. TIDC staff should be contacted for assistance at this point if they have not been already.

Be Prepared for Skepticism and Opposition

Most people by their nature don't like change. It takes a lot of time and energy to change the criminal justice system, which involves many strong-willed individuals. Some judges will want to retain control of appointing attorneys and deciding how much they should be paid. Some attorneys make a good living on the existing assigned counsel system and have a vested interest in the status quo. Other lawyers who receive court appointments will view MAC management as an unnecessary and unwelcome authority figure who will want to micromanage them. There are county commissioners who care about little more than “the bottom line,” and will view a MAC as nothing more than another government program that will cost more money.

MAC proponents must be prepared for these voices of opposition and show them how the system will improve overall if the MAC is established.

Collect Data to Make the Case for the MAC

As previously noted in the assessment section, data is critically important to showing the potential value of establishing a MAC. In particular, jail data that shows the cost of incarcerating, medicating, and caring for mentally ill offenders in a criminal justice setting can help show how a MAC can achieve cost-savings.

Extensive information related to counties' indigent defense systems is available on TIDC's website at: <http://tidc.tamu.edu/public.net>.

Visit Other MACs

Officials in both Lubbock and Travis County visited the San Mateo Private Defender Program (PDP) during the MAC planning process. Numerous people interviewed for this project said that their visit to San Mateo was very instructive in understanding what is needed to operate a MAC and the advantages that such a program can provide to a county. Travis County stakeholders also visited the Lubbock Private Defender Office to see its program in operation. If your county is considering a MAC, it is highly recommended that key decision makers visit one and speak with the local stakeholders that have seen it in operation.

Establish an Operational Plan Shaped by Your Jurisdiction's Needs

Creating a good MAC plan that incorporates the input of all stakeholders can take a lot of time—Travis County took two years to develop its MAC plan before submitting an application for a TIDC Discretionary Grant. Through proper planning, stakeholders can instill confidence in the planning process, trust in the planners, and a sincerely held belief that the desired outcome—a better, more cost-effective indigent defense system—will become reality.

A county's MAC plan will be made up of mandatory elements as required by Tex. Code Crim. Proc. art. 26.047(c), as well as elements specific to the jurisdiction's needs. The following chart describes the different elements stakeholders should consider when developing their plan of operation.

Figure 5. Elements of a MAC Plan

Mandatory Elements of a MAC Plan (Tex. Code Crim. Proc. art. 26.047(c); TIDC Grant Requirements)	Variable Elements of a MAC Plan
1) Budget, including salaries	Organizational structure: County department? Nonprofit? Bar Association? Hybrid?
2) A description of each personnel position, including the program director	Appointment process: Will the MAC appoint counsel or will court administration appoint counsel with MAC maintaining control over attorneys on the appointment list?
3) Maximum caseload for attorneys	Oversight Committee: Will there be an Oversight Committee to provide guidance to the MAC? Who will be members?
4) Provisions for training MAC personnel and panel attorneys	Review Committee: Will there be a Review Committee to approve and remove attorneys from the appointment list? If so, who will be the three or more members? See Tex. Code Crim. Proc. art. 26.047(e).
5) Overhead costs	Support Services: What ancillary services (case management, immigration, mental health, substance abuse) will the MAC provide or already exist that can network with the MAC?
6) Policy regarding licensed investigators and expert witnesses used by panel attorneys	Technology: What case management system will be used? How will the MAC's case management system interact – if at all – with the existing court data systems and network?
7) Policy to ensure appointments are reasonably and impartially allocated	Research: Beyond the data collection and reporting requirements of TIDC, what additional research capacity should be built into the MAC's operations?
8) Conflict of interest policy	Timeline: How long will it realistically take to hire staff; set up office and office systems; integrate with court system; pick new attorney panels; etc.?
9) Description of how required data will be collected and reported to TIDC	

Apply for a TIDC Discretionary Grant

Any county that is seeking to establish a MAC is encouraged to apply for a TIDC Discretionary Grant. This grant program provides counties with funds to develop new, innovative programs to improve the delivery of indigent defense services. All counties that have established a MAC in Texas were provided implementation assistance through a TIDC Discretionary Grant. Applications for MAC programs are given funding priority.

Typically, Discretionary Grants pay 80 percent of the total project costs for the first year; 60 percent for the second year; 40 percent for the third year; and 20 percent for the fourth year. This averages out to TIDC covering 50 percent of the MAC program costs over the first four years of the program.

Applicants must submit a brief Intent to Submit Application (ISA) letter in March. The ISA must include a letter of support from at least one judge who will be affected by or participate in the proposed program. If the applicant receives a Notice to Proceed with Full Application letter, then a full application must be submitted by the deadline in May. The full application must be accompanied by a resolution adopted by the Commissioners Court authorizing the grant request. The first year of funding will pay for operations from October 1 to September 30 of the following year. Each year the county seeks to continue funding for the MAC, it must submit a Continued Multi-Year Grant application.⁹⁷

Operation

After a county applies for and receives a TIDC Discretionary Grant to establish a MAC program, much work still remains to make the program operational. Following are a number of recommendations that county officials should consider in operating their MAC:

Establish a Group to Choose Entity to Operate MAC or Hire Managing Attorney

Depending on how your MAC is structured, you should consider establishing an independent group with various perspectives to select a Managing Attorney or choose the entity that will run the MAC. If a separate non-profit or bar association will be running the MAC, it should have a Board of Directors in place to choose an executive director or Managing Attorney. If the MAC will be a government department, then the county should consider putting together a committee to choose the director in the interest of establishing a higher level of independence for the office and to create trust among the various stakeholders.

Hire the Right Managing Attorney, Other Management, and Staff Based on the MAC Plan

All of the MAC management and stakeholders we interviewed for this project emphasized how important it is to put good leadership in place for the MAC. The Managing Attorney and other members of the management team can make or break the program, so choose these people carefully. Keep in mind, the Managing Attorney is effectively running a large law firm, and the person in charge needs to have the skills and to handle such a monumental task. Following are some characteristics of the Managing Attorney and management staff that were suggested by interviewees:

- The Managing Attorney should be respected locally by the defense bar and judiciary.
- The Managing Attorney needs to be politically savvy.
- If a MAC is going to be completely independent like the Lubbock Private Defender Office, consider hiring an Executive Director with finance experience and business savvy.
- If your MAC is going to be a specialized mental health MAC, hire a Managing Attorney with significant experience working on mental health cases.
- When building a management team, consider hiring someone from outside the jurisdiction, even outside of Texas, to round out the team and provide a new perspective as to how indigent defense services can be improved.

TIDC can provide counties and MAC board of director members with job descriptions that have been used in other jurisdictions.

Put a Flexible Contract in Place

Flexibility needs to be built in to the contract to give the MAC discretion in operations and dealing with unanticipated contingencies that will inevitably arise. Remember that one of the goals of the MAC is to create an independent defense function. To the extent possible, independence should be maximized.

Set Up Office and Put Office Systems in Place

Numerous members of MAC management emphasized the fact that no matter how much planning took place before the MAC was operational, there were many unanticipated details that arose and had to be addressed during the start-up phase.

Following are some of the issues that county officials and MAC board members need to consider when setting up the office and office systems:

- **Financial Systems:** Unless the MAC is established as a county agency, financial systems need to be put in place so that purchases can be made and employees paid. MAC management needs to open a bank account, order checks, and establish a payroll system.
- **Office Space:** Where will the office be located? How much room is needed for staff, while also giving the office room to grow? How much time will it take for office space to be designed and built out? How much will build-out cost and who will pay? Is temporary office space needed? What happens if the office space doesn't work out as planned? Where will employees work before the office location is finalized?
- **Furniture:** How will it be purchased? How long will purchase and delivery take? What will employees do for work space before office furniture is in place?
- **Information Systems:** MAC program managers and county officials need to understand the data collection and reporting requirements of the TIDC Discretionary Grant program and TIDC's Indigent Defense Expenditure Reporting (IDER) program, and make sure that any data systems that are put in place can collect the correct information and report it in a manner that complies with TIDC's requirements. The MAC and court administration also need to collaborate on data sharing and networking issues. A case management system needs to be put in place. If a MAC is going to use Defender Data for case management system, management needs to ensure that the software can be modified to handle the MAC's needs, including voucher processing and reporting requirements. MAC management should seriously consider examining Travis County's Attorney Management Portal (AMP) to see if a similar system would work for their case management and voucher processing needs.
- **Office Policies and Procedures:** Office policies and procedures need to be established. A policies and procedures manual should be written, as should an employee manual.
- **Establish an Effective Review Committee:** A Review Committee can be established pursuant to Tex. Code Crim. Proc. art. 26.047(e) to review applications and approve attorneys to be on the MAC's appointment list.
- **Consult with Judges on Appointment List Needs, Voucher Payments:** MAC management should consider consulting with judges who will be participating in the MAC program on their views of how many attorneys should be on the panels and voucher payment practices. Management would be wise to avoid implementing widely different voucher payment practices in the beginning of the program to avoid creating unnecessary opposition and controversy.

- **Require Attorneys to Apply to Be on New Appointment Lists and Cut Lists as Warranted:** All MAC programs in Texas required attorneys to apply to be on the new panels established by the MAC when the MAC began operations. All program managers would recommend that it be done; some judges we heard from thought the appointment lists should have been cut more in the beginning of the program. However, cutting more attorneys from the list results in more backlash. Objective criteria for panel admission should be developed and followed so that the process is not viewed as unfair and arbitrary.
- **Remember the Importance of Panel Attorneys:** The criminal justice system cannot operate without assigned counsel. They do the day-to-day criminal defense work and their labor should be valued, respected, and compensated accordingly. MAC management must avoid coming across as micromanagers. Remember: perception is reality.

Establish Good Relations and Networks with Courts, Jail, Mental Health, Social Service Systems

One thing that a good MAC can do that is difficult to achieve in a disjointed assigned counsel system is foster healthy relations between the indigent defense bar, courts, jail, mental health services, and social services. These networks can result in better outcomes for the MAC's clients, create good will and trust with other stakeholders, and save precious tax dollars through efficiencies.

Seek Out Community Resources to Reduce Costs, Improve Client Services

MAC programs have proven to be creative in keeping costs down and increasing client services. The LPDO has received surplus furniture from Texas Tech University. CAPDS has accepted donations of used furniture from neighboring businesses. Both programs use interns from universities, including social work interns and legal interns. Identify the needs of your clients and create networks with social service providers who can assist in addressing those needs.

Remember TIDC is Available to Help

Don't forget that TIDC is available to help MAC programs be as effective as possible. If we can't answer your questions then we can put you in touch with someone who can.

APPENDIX

Summary of MAC Programs in Texas			
County	Collin	Lubbock	Travis
Start-up Year	2013	2009 as LSNDO; 2012 for LPDO	2014
Managing Attorney	Alyse Ferguson	Phil Wischkaemper; Jim Bethke (beginning 11/1/2017)	Ira Davis
Appointment List Numbers	25 Attorneys	80 Attorneys	225 Attorneys
Program Staff	6	8 (plans for 9)	9 full-time; 2 part-time DNA mixture review attorneys
Structure	County Department	Contract	Hybrid-Contract managed counsel services; county voucher payments
Term of Contract, if Applicable	N/A	1 Year	1 Year
FY2017 Budget	\$460,008	\$3,800,000	\$1,202,191
Types of Cases	Misdemeanor and Felony Mental Health	Felonies (non-capital), Misdemeanors and Mental Health	Felonies (non-capital), Misdemeanors; Mental Health; and Post-conviction (DNA mixture review cases)
New Cases Each Month	161 average per month	743 average per month	1,973 average per month
Maximum Allowable Caseload	Annually: <ul style="list-style-type: none"> • 452 misdemeanors • 174 state jail felonies • 144 third degree felonies • 105 second degree felonies • 77 first degree felonies 	65 clients max. at a time	90 felony cases or 100 misdemeanor cases at a time; includes cases in Travis and surrounding counties

	Collin County – Mental Health Managed Counsel Program
Start-up Year	2013
Managing Attorney	Alyse Ferguson
Number of Attorneys on Appointment List	25 Attorneys
Program Staff	Total-6 Managing Attorney (1) Case managers (1) Administrative Assistant (1) Indigent Defense Appointment Clerks (3)
Structure	County Department Initially started with contracted staff.
Oversight	Initial Oversight Board: judges, defense attorney, commissioner, community member with mental health experience. Once established as a county department, the office began reporting to the District and County Judges.
FY2017 Budget	\$460,008 (including \$16,010 in construction)
Types of cases	Misdemeanor and felony defendants with mental illness or an intellectual disability
New Cases Each Month – FY 2016	161 average per month (1,954 for the fiscal year)
Maximum Annual Allowable Caseload per Attorney	<ul style="list-style-type: none"> • 452 Misdemeanors • 174 State Jail Felonies • 144 Third Degree Felonies • 105 Second Degree Felonies • 77 First Degree Felonies
Attorney Qualification Requirements	<p>Requirements for participation are published in the Attorney Manual.</p> <ul style="list-style-type: none"> • Applicant must be in good standing with the State Bar of Texas. • Membership in a Collin Co. Bar organization. • Reside in and principle office must be in Collin County. • Board Certification in Criminal Law, trial experience, or other demonstrated competence in criminal law to different degree depending on felony or misdemeanor list. • Applicant must be approved for the general wheel in the same category as applying for on the MHMC wheel and meet obligations required. <p>MHMC applicants must meet additional requirements:</p> <ul style="list-style-type: none"> • Six (6) hours per year of CLE in mental health. • Six jury trials as lead counsel for misdemeanor appointments; eight jury trials for felony appointments.
Procedure for review and approval of applicant attorneys for appointment list, including any appellate process	<p>Attorneys seeking to be on the MHMC appointment list can submit an application year round. Applications are reviewed to fill open vacancies as they occur. Factors weighed in admission:</p> <ul style="list-style-type: none"> • The need for additional lawyers based on analysis of caseloads • Skill level of applicant, special skills, language ability, board certifications • Work experience • Grievance/complaint history • Program needs • Experience in representing those with mental illness • Proposed list of attorneys to fill vacancies are submitted to the Board of District Judges (felonies) or Collin Co. Court at Law Judges (misdemeanors) for approval by majority vote.

Collin County – Mental Health Managed Counsel Program	
Process for referral of cases to program	Inmates booked into the Collin County Jail are screened using the jail book-in screening. Inmate information and CCQ database info are included on the screening form. The medical screening is accomplished at book-in. All inmates, whose screening reflects a mental health history, are routed for a mental health assessment conducted by jail medical MH staff and simultaneously routed for attorney appointment from the MH wheel.
Process to appoint attorneys for individual cases	Appointments are done in Odyssey and the attorney is selected from an appointment wheel based on his or her qualifications that correspond with the offense level of the defendant's charge(s). The Indigent Defense Coordinator makes the appointments once the person has been identified and approved for MAC.
Policy to avoid conflicts of interest	Defense attorneys are required to report any conflict to the MHMC office for case reassignment.
Process to access expert witnesses and investigators	Defense attorneys submit requests for experts to the MHMC office. Attorneys are reimbursed for approved expert services after providing invoice or proof of payment or payment may be made directly to experts for particular services.
Case Management and Social Work Services	Case management services are provided to program clients with a qualifying diagnosis. The case manager assists client in setting up appointments, referrals, and arrangements to facilitate release and connection with local providers. The case manager communicates with the attorneys on client progress and needs and facilitates the collection of information to assist the attorney in qualifying clients for pretrial release. Clients meeting the requirements of CCP 17.032 are assisted during pre-trial release

Lubbock County – Lubbock Private Defender Office	
Start-up Year	2009 as LSND; 2012 as LPDO
Managing Attorney	Phil Wischkaemper, Professional Development Director and Interim Executive Director. Nov. 1, 2017, Jim Bethke will become Chief Defender/Executive Director and Phil Wischkaemper will retain the role of Professional Development Director.
Number of Attorneys on Appointment List	80
Program Staff	Total: 9 1 Chief Defender/Executive Director (beginning Nov. 2017) 1 Professional Development Director 1 Mental Health Program Manager 3 Mental Health Caseworkers 1 Office Manager 1 Case Assignment Coordinator 1 Bookkeeper (temp; full-time in late 2017)
Structure	Contract between LPDO and Lubbock County
Term of contract	1 Year with renewal provisions
Program Oversight	<p>The Board of Directors of the Lubbock Private Defenders Office (LPDO) is comprised of five attorneys who oversee the policies and management of the LPDO, a non-profit corporation. There are two additional non-voting members: the current president of Lubbock Criminal Defense Lawyers Association (LCDLA) and a designee from the LPDO Mental Health Panel.</p> <p>The contract with Lubbock County provides that the county creates a Managed Assigned Counsel Oversight Committee that includes the following appointed members: the Local Administrative Judge, a Lubbock County Commissioner, the Director of Court Administration, the Chief Public Defender for the Regional Capital Public Defender's Office, and the LCDLA Court Liaison (who cannot accept appointments from LPDO; currently held by Phil Wischkaemper, LPDO Professional Development Director).</p>
FY 2017 Budget	\$3,800,000 (includes LPDO office and personnel expenditures, attorney expenditures, and other costs related to appointed counsel cases).
Types of Cases	Felonies (non-capital), Misdemeanors, and Mental Health
New Cases Each Month	<ul style="list-style-type: none"> • Approximate average of 743 cases per month. • Each criminal "charge" is considered a separate case. As such, one defendant may have multiple charges or "cases."
Maximum Allowable Caseload per Attorney	Attorneys may have up to 65 appointed clients at a time. There is no annual limit as to the number of cases that an attorney may handle.
Attorney Standards for Inclusion on Appointment List	<ul style="list-style-type: none"> • Requirements adopted by Board of Directors and published. • Applicant must be in good standing with State Bar of Texas. • Applicant must be a member of Lubbock County Criminal Defense Lawyers Association. • Applicant must maintain his or her primary office in Lubbock County. • Applicant must complete 12 hours of CLE in criminal defense annually. • Mental Health Eligible Attorneys must complete 9 hours of mental health CLE annually in addition to the 12 hours. • Abide by State Bar's <i>Performance Guidelines for Non-Capital Criminal Defense Representation</i>. • Higher levels of experience (2nd chair and 1st chair trial experience; years licensed) are required as offense level goes higher.

Lubbock County – Lubbock Private Defender Office	
Procedure for Review and Approval of Applicant Attorneys for Appointment List, Including Any Appellate Process	<ul style="list-style-type: none"> • Admission procedures are published. • Applicants furnish an application to be given appointments. • Applicants must be in good standing with State Bar of Texas. • Applicant must be a member of Lubbock County Criminal Defense Association. <ul style="list-style-type: none"> • Applicant must maintain primary office in Lubbock County. • Applicant must agree to use case computer case management system (Defender Data) employed by Lubbock Private Defenders Office. • Applicant must attend required amount of annual CLE to maintain eligibility for appointments and an additional annual hours of mental health CLE if on mental health appointment list. • Appellate process is published and is available to anyone whose application to be placed on the appointment list is denied or if an attorney is removed from the appointment list. • There is a published procedure adopted by the Board of Directors to enable attorneys to be rated to represent clients on certain levels of criminal offenses and an appeal process for those attorneys who disagree with the ratings they receive.
Process to Appoint Attorneys	Referrals for appointment of counsel come to LPDO from the courts. The level of offense is determined and an attorney is appointed on a rotating basis within that level of offenses.
Process for Identifying and Appointing Mental Health Clients to Program	Qualified mental health defendants are coded at the jail and that designation is on the referral sent to LPDO requesting the appointment of an attorney by LPDO. Those referrals are then furnished to the Assignment Coordinator at LPDO, who makes the appointment of a qualified mental health attorney to represent that mental health defendant on a rotating basis (to the extent possible) among the attorneys on the appointment list who have qualified to handle mental health cases.
Policy to Avoid Conflicts of Interest	Each defense attorney on the appointment list is charged with determining any conflict of interest, and if one is discovered, the attorney is immediately replaced on the case by LPDO with another attorney.
Process to Access Needed Investigative and Expert Witnesses	Defense attorneys submit requests to the Managing Attorney for appointment of investigators and expert witnesses, providing a sufficient basis for such appointment and an estimate of the anticipated cost. The Managing Attorney for LPDO approves the appointments with limits on the cost of such services. In some cases money is paid to a trust account of the attorney and a detailed accounting is rendered by the attorney. If a balance is not used, it is returned to LPDO. If more money is needed, a detailed invoice is presented to show how the money has been used and also the detailed reasons for more funds being requested. In other cases the investigator or expert witness is paid on the presentation of a detailed invoice which is shown to have been approved by the attorney in the case. There is an appeal process provided if a request for such funds is denied by the Managing Attorney.
Case Management and Social Work Services	Case workers provide case management services to clients who qualify for the mental health program. They assess clients' needs, develop a service plan, link to appropriate services, monitor progress, educate clients about mental health and resources in community and advocate as needed. Case workers assist defense attorneys on the mental health panel by providing mitigation. They continue to provide services for their clients up to one month after disposition of the criminal case to ensure clients remain connected to needed resources in the community.
Supervision	Attorneys on the appointment list are constantly monitored and re-assessed as to their capabilities and expertise in order to provide the most competent representation possible to the indigent defendants they are appointed to represent.

Lubbock County – Lubbock Private Defender Office	
Opportunities for Career Advancement for New Attorneys	LPDO has a system of placing young inexperienced attorneys on the appointment list at a beginning level of misdemeanors (not including DWI 2nd cases or assault with domestic violence cases). The program then prescribes what steps have to be taken by that attorney to advance and be qualified for appointments on cases in higher categories of misdemeanors, state jail felonies, 3rd, 2nd and 1st degree felonies.
Second Chair Program	<p>Younger, less experienced attorneys are routinely assigned as a second chair to more experienced attorneys who are going to trial to obtain the required trial experience to move up the list to higher level offenses.</p> <p>Some second chair appointments are made to provide in-court assistance only, while others can specify that the second-chair attorney will provide supportive services like briefing, witness interviews, or client preparation.</p>

Travis County – Capital Area Private Defender Service	
Start-up Year	2014
Managing Attorney	Ira Davis
Number of Attorneys on Appointment List	Approx. 225
Program Staff	Total: 9 full-time; 2 part-time Executive Director 2 Deputy Directors Project Administrator Mentoring Attorney Holistic Defense Supervisor 2 Social Workers Immigration Attorney 2 Part-Time DNA Review Attorneys
Structure	Contract between CAPDS and Travis County for managed counsel services. Travis County retains responsibility of making indigency determinations, appointing counsel off the wheel, and paying vouchers approved by CAPDS.
Term of contract	1 year with renewal provisions.
Program Oversight	<p>Oversight Committee: 7 members including Presiding Dist. Ct. Judge; Presiding Co. Ct. Judge, Court Administrator, Criminal Justice Planning Chair, Commissioner, Director of MH Public Defender, and Director of Juvenile Public Defender.</p> <p>Duties of Oversight Committee: annual contract review; quarterly meetings with Board of Directors on state of CAPDS; monthly reports on status of funds spent; annual report presented for review and comment before publication.</p> <p>Board of Directors (BOD): 7 voting members including 2 appointed by ACDLA (1 elected by membership; 1 elected by ACDLA Board); 2 appointed by Austin Bar Assoc. (1 must be active in criminal defense); 1 selected by Oversight Committee; and 2 non-practicing attorneys with fiduciary/business experience. Also 3 ex-officio members from the court appointment list who are non-voting but provide guidance and expertise on the functioning of the appointment list.</p> <p>BOD Duties: fiduciary responsibilities; financial disclosures; hires/fires director; approves budget; approves recommendations of Review Committee; and meets with Oversight Committee.</p> <p>Review Committee: 3-to-11 members; 10 years min. criminal law experience; recruited/nominated by Director and approved by BOD; serve 1-yr. renewable terms. Three members sit on any case review and full panel convened for annual appointment list review.</p> <p>Review Committee Duties: final determinations on attorneys qualified for appointment lists; final determinations on which list level attorney qualified for; hear appeals of CAPDS Director's determinations on voucher payments; hears specific allegations on unsatisfactory performance; and hears matters referred by CAPDS Director for adverse action against a panel member.</p>
FY 2017 Budget	\$1,202,191
Types of Cases	Felonies (non-capital); Misdemeanors; Mental Health; Post-Conviction (DNA mixture review)
New Cases Each Month	Approximate average of 2,000 cases per month. Each criminal "charge" is considered a separate case. As such, one defendant may have multiple charges or "cases."
Maximum Allowable Caseload per Attorney	Attorneys may have up to 90 felony cases or 100 misdemeanor cases at a time. CAPDS receives caseload statistics from counties surrounding Travis County and includes those cases when determining if an attorney needs to be temporarily removed from the appointment list due to excessive cases. There is no annual limit as to the number of cases that an attorney may handle.

Travis County – Capital Area Private Defender Service	
Attorney Standards for Inclusion on Appointment List	<p>General Minimum Qualifications for All Court-Appointed Attorneys:</p> <ul style="list-style-type: none"> • Licensed attorney in good standing with State Bar • Reside in Travis Co. or adjoining county and maintain an office within Travis Co. • Attend any CLE required by CAPDS. Attend at least 10 hrs. CLE plus one hour ethics related to criminal law. • Phone with texting capabilities or a receptionist or answering service. Must register phone number with sheriff to receive calls from incarcerated clients. • After approval by Review Committee, attend a general orientation conference regarding the operation of the appointment process and first setting procedures. • Per TCCP art. 26.04(j)(4), submit to TIDC by Oct. 15 the required attorney practice time report for the preceding year. <p>Additional experience required for different panels based on seriousness of offense or special needs of defendant.</p>
Procedure for Review and Approval of Applicant Attorneys for Appointment List, Including Any Appellate Process	<ul style="list-style-type: none"> • The Review Committee approves the appropriate panel placement for each attorney. • Applications to be placed on a panel are accepted by CAPDS on an annual basis in December. • At other times during the year, CAPDS may accept applications to be accepted into the Misdemeanor or Felony Mentorship Program for those attorneys who otherwise do not meet the minimum qualifications for the misdemeanor or felony panel. • Every year, attorneys must reapply to be placed on a panel.
Process to Appoint Attorneys	<ul style="list-style-type: none"> • Pretrial Services will generally make an indigency determination in cases where appointed counsel is requested. If the defendant qualifies for counsel, the court will issue an order finding the defendant qualifies and that counsel be appointed. • Court Administration then randomly selects counsel from the appropriate panel “wheel” depending on the highest level charge against the defendant. • Attorneys receiving an appointment are sent an email with contact information for the defendant; information on whether the defendant is incarcerated; date of court setting; and order appointing counsel to the case. • If an attorney’s client is charged on another case while being represented, the attorney can inform CAPDS and CAPDS can appoint the attorney to the new case, assuming the attorney is qualified to handle the new case.
Process for Identifying and Appointing Mental Health Clients to Specialized Counsel	<p>Pretrial services or jail personnel identify a defendant as being a mental health case. If identified before counsel appointed and the case is a misdemeanor, then a CAPDS mental health panel attorney will only be appointed if there is a conflict with the Travis County Mental Health Public Defender. In felony cases where the defendant is flagged as a mental health case, a mental health panel attorney will always be appointed.</p>
Policy to Avoid Conflicts of Interest	<p>Each defense attorney on the appointment list is charged with determining any conflict of interest, and if one is discovered, the attorney is immediately replaced on the case by CAPDS with another attorney.</p>
Process to Access Needed Investigative, Immigration and Expert Witness Assistance	<p>Defense attorneys submit requests to the Holistic Defense Supervisor for appointment of an investigator, immigration attorney assistance, or social worker through the Attorney Assistance section of the CAPDS website. Investigator requests may also be submitted through the Attorney Management Portal (AMP), the case management and vouchering system used by CAPDS attorneys. Requests for expert witnesses are submitted through the CAPDS website as well and are reviewed and approved by the Executive Director. The online forms ask for basic information about the client and his case, what the attorney is requesting the investigator to do (for investigator requests), or what type of services are needed by the client or what the attorney is hoping the social worker can accomplish with the client. If an investigator is approved, the base budget is \$500 for 10 hours of work but investigators can ask for additional funds if needed. The attorney will be informed which contract investigator has been appointed to the case, along with their contact information. Investigators will be given the information submitted by the attorney. After the investigator completes the job, they submit a voucher to CAPDS for payment.</p>

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Social Worker Assistance	CAPDS attorneys can request the assistance of a social worker through the CAPDS website. Social workers can provide such services as finding mental health or substance abuse services for the client; collecting medical records; mitigation assistance; or obtaining a competency screening.
Supervision	<p>In its early years of operation, CAPDS did not have the capacity to proactively observe attorneys in the courtroom or actively review attorney performance to the degree that management would have liked. Nonetheless, CAPDS management did respond to client or judge complaints about attorneys by bringing in attorneys to talk about the complaint; documented complaints in the attorney’s file; and, if necessary, informed the Review Committee about an attorney’s poor performance.</p> <p>In August 2017, CAPDS added a Mentoring Attorney, Richard Segura Jr. Mr. Segura’s job, in part, will be to observe panel attorneys in court and evaluate their performance together with CAPDS directors. He will also be charged with investigating and responding to complaints from clients, the public, and judiciary about panel attorneys, and provide information to the Review Committee relevant to the conduct of panel attorneys.</p>
Mentorship Program	CAPDS has organized a misdemeanor mentorship program and a felony mentorship program. Both programs last for six months and during that time mentees are placed on the respective appointment list. Mentees who successfully complete the program remain on the appointment list. The misdemeanor program included 14 mentees and nine paid mentors; the felony program included 11 attorneys assigned to five mentors. Mentees participated in trainings on the Travis County criminal justice system’s operations; substantive law; trial skills; and client-centered representation. Mentors provided guidance to mentees in terms of case strategy, substantive law, negotiations, and local court practices. Mentees are also provided with second chair opportunities, resources, weekly CLE, and a dedicated listserv to ask questions of mentors.
Second Chair Program	CAPDS does not have a formal second chair program, but it does regularly advertise second chair opportunities through its email distribution list for panel attorneys.

ENDNOTES

1. Tex. Const. Art. § 10.
2. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
3. Acts of June 1, 1959, 56th Leg., R.S., Ch. 484, § 1.
4. *In re Gault*, 387 U.S. 1 (1967).
5. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).
6. Texas's statute requiring appointment of counsel for indigent misdemeanor defendants went into effect on January 1, 1966, six years before the right was recognized by the U.S. Supreme Court. *See* Tex. Code Crim. Proc. Ann. art. 26.04 (Vernon 1965). In November 1965, the Court of Criminal Appeals seems to have implicitly recognized a right to counsel in misdemeanor cases where imprisonment when it reversed and remanded the conviction of an indigent defendant that was not advised of her right to counsel. *See Braden v. State*, 395 S.W.2d 45, 46 (Tex. Crim. App. 1965).
7. *See Effective Assistance of Counsel*, Sixth Amendment Center, <http://sixthamendment.org/the-right-to-counsel/effective-assistance-at-critical-stages/> (last visited August 3, 2017), for situations where the Supreme Court has held that states must provide counsel.
8. *See* Catherine Greene Burnett et al., *In Pursuit of Independent, Qualified, and Effective Counsel: The Past and Future of Indigent Criminal Defense in Texas*, 42 S. Tex. L. Rev. 595 (2001). *See also* Texas Appleseed Fair Defense Project, *The Fair Defense Report: Findings and Recommendations on Indigent Defense Practices in Texas* (Dec. 2000).
9. Texas Fair Defense Act, 77th Leg., R.S., ch. 906, § 1, 2001 Tex. Gen. Laws 1800.
10. Burnett et al., and Texas Appleseed Fair Defense Project, *supra* note 8.
11. Tex. Code Crim. Proc. Ann. art. 14.06 (West 2009 & Supp. 2015).
12. Tex. Code Crim. Proc. Ann. art. 15.17 (West 2009 & Supp. 2015).
13. Tex. Code Crim. Proc. Ann. art. 26.04(l) (West 2009 & Supp. 2015).
14. Tex. Code Crim. Proc. Ann. art. 26.04(m) (West 2009 & Supp. 2015).
15. *Id.*
16. Tex. Code Crim. Proc. Ann. art. 26.04(r) (West 2009 & Supp. 2015).
17. Act of May 17, 2007, 80th Leg., R.S., ch. 463, § 1, sec. 1.051, 2007 Tex. Gen. Laws 821 (codified at Tex. Code Crim. Proc. Ann. art. 1.051(e)-(f-2) (West 2009 & Supp. 2015)).
18. Act of May 17, 2007, 80th Leg., R.S., ch. 463, § 1, sec. 1.051, 2007 Tex. Gen. Laws 821 (codified at Tex. Code Crim. Proc. Ann. art. 1.051(f-1) (West 2009 & Supp. 2015)).
19. Tex. Code Crim. Proc. Ann. art. 17.09, § 4 (West 2009 & Supp. 2015).
20. Tex. Code Crim. Proc. Ann. art. 1.051(c)(1)-(2) (West 2009 & Supp. 2015); *see also* 1 Tex. Admin. Code Ann. § 174.28(c)(4)(A)(i) (West 2017).
21. *See* Tex. Code Crim. Proc. Ann. art. 1.051(j) (West 2009 & Supp. 2015); *Rothgery v. Gillespie County*, 54 U.S. 191, 199 (2008).
22. Tex. Code Crim. Proc. Ann. art. 26.04(a) (West 2009 & Supp. 2015).
23. *See id.* (prescribing rotation through a public appointment list as the default system).
24. Tex. Code Crim. Proc. Ann. art. 26.05(b) (West 2009 & Supp. 2015).
25. Tex. Code Crim. Proc. Ann. art. 26.05(c) (West 2009 & Supp. 2015).
26. *Id.*
27. Third Administrative Judicial Region of Texas, *Rules for the Appeal of an Approval of or Failure to Act on a Request for Payment of Appointed Attorney's Fees*, http://www.txcourts.gov/media/1437117/attorney-fee-appeal-proc_3rdreg.pdf
28. Tex. Code Crim. Proc. Ann. art. 26.05(d), 26.052(f)-(h) (West 2009 & Supp. 2015).
29. Tex. Gov't Code Ann. § 79.036(e) (West 2013).
30. Tex. Code Crim. Proc. Ann. art. 26.04(j)(4) (West 2009 & Supp. 2015).
31. Tex. Gov't Code Ann. § 79.036(a-1) (West 2013).
32. Tex. Code Crim. Proc. Ann. art. 26.04(a) (West 2009 & Supp. 2015).
33. Tex. Gov't Code Ann. § 79.036(a) (West 2013).
34. *Id.*
35. Texas Fair Defense Act, 77th Leg., R.S., ch. 906, § 14, sec. 71.060-71.062, 2001 Tex. Gen. Laws 1800, 1813-1815.
36. Act of May 24, 2011, 82nd Leg., R.S., ch. 984, § 1, 2011 Tex. Gen. Laws 2461 (codified at Tex. Gov't Code Ann. § 79.002 (West 2013)).
37. *See* Tex. Gov't Code Ann. § 79.033 (West 2013).
38. Act of May 24, 2011, 82nd Leg., R.S., ch. 984, *supra* note 36, § 11 (codified at Tex. Code Crim. Proc. art. 26.047).
39. *See* Tex. Code Crim. Proc. Ann. art. 26.04(g)-(h) (West 2009 & Supp. 2015).
40. Statistics on the prevalence of assigned counsel programs, contract defender programs, and managed assigned counsel programs available at <https://tfdc.tamu.edu/IDPlans/AttorneySelectionMethod.asp> (last visited July 17, 2017). Statistics summarizing prevalence of public defender offices available through TIDC's internal database available upon request at: <https://tfdc.tamu.edu/DCSP/Statistics.asp>.
41. *See generally* Tex. Code Crim. Proc. Ann. art. 26.04(a)-(e) (West 2009 & Supp. 2015) (procedures and requirements for appointing counsel in assigned counsel systems).
42. *See* Tex. Code Crim. Proc. Ann. art. 26.044 (West 2009 & Supp. 2015) (statutory authorization and requirements of a public defender's office). *See also* Tex. Code Crim. Proc. Ann. art. 26.04(f) (West 2009 & Supp. 2015) (“[T]he court or the courts’ designee shall give priority in appointing that [public defender’s] office to represent the defendant.”).
43. *See* 1 Tex. Admin. Code Ann. § 174.10-174.25 (West 2017).
44. *See* M. Elaine Nugent-Borakove et al., Justice Mgmt. Inst., *The Power of Choice: The Implications of a System Where Indigent Defendants Choose Their Own Counsel* (2017), http://www.jmjustice.org/wp-content/uploads/2017/04/The-Power-of-Choice_29-MAR-2017.pdf.
45. *See* Tex. Code Crim. Proc. Ann. art. 26.047 (West 2009 & Supp. 2015) (statutory authorization and requirements of a managed assigned counsel program (MAC)); *see also* Tex. Code Crim. Proc. Ann. art. 26.04(f-1) (West 2009 & Supp. 2015) (statutory language pertaining to the MAC appointing counsel in accordance with guidelines for the program).
46. *See* Norman Lefstein, ABA Standing Comm. on Legal Aid and Indigent Defendants, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* 218 n.108 (2011), https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf (citing *ABA Standards for Criminal Justice: Providing Defense Services*, Introduction, at 5-1.2 (b) (3d ed., 1992)).
47. Tex. S.B. 1710, 81st Leg., R.S. (2009). Bill text and legislative history available at <http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=SB1710>.
48. Available at <http://www.capitol.state.tx.us/tlodocs/82R/analysis/pdf/S.B.01682H.pdf>.
49. *Id.*
50. *Id.*
51. Act of May 24, 2011, 82nd Leg., R.S., ch. 984, 2011 Tex. Gen. Laws 2461.
52. Tex. Code Crim. Proc. Ann. art. 26.047(a)(2) (West 2009 & Supp. 2015).

53. Tex. Code Crim. Proc. Ann. art. 26.047(b) (West 2009 & Supp. 2015).
54. Tex. Code Crim. Proc. Ann. art. 26.047(b)(1)-(2) (West 2009 & Supp. 2015).
55. Texas Gov't Code Ann. § 79.036(a)(3) (West 2013).
56. Not later than November 1 of each odd-numbered year, every county is mandated by the Texas Legislature to submit to the Commission: (1) a copy of its countywide indigent plan(s) and procedures and any revisions to the plan or forms previously submitted; or (2) a verification that the plan and forms previously submitted still remain in effect. Tex. Gov't Code Ann. § 79.036(a) (West 2013).
57. Tex. Code Crim. Proc. Ann. art. 26.047(d) (West 2009 & Supp. 2015).
58. *Id.*
59. See Tex. Disciplinary Rules Prof'l Conduct R. 5.04 cmt. 5 (1989) (reprinted in Tex. Gov't Code Ann., tit. 2, subtit. G, app., State Bar Rules art. X, §9 (West 2016)) (“[A] lawyer employed by an organization is required by Rule 5.04(c) to decline to accept direction of the lawyer’s professional judgment from any nonlawyer in the organization.”).
60. Tex. Code Crim. Proc. art. Ann. 26.047(e) (West 2009 & Supp. 2015).
61. Tex. Code Crim. Proc. art. Ann. 26.047(f) (West 2009 & Supp. 2015).
62. Tex. Code Crim. Proc. art. Ann. 26.05(a) (West 2009 & Supp. 2015).
63. Tex. Code Crim. Proc. art. Ann. 26.05(c) (West 2009 & Supp. 2015).
64. Documents related to grants for the establishment of the LSND and LPDO available from TIDC.
65. See generally, *2016-2017 Agreement Between Lubbock County and the Lubbock Private Defender* (Dec. 2016). On file with TIDC.
66. Lubbock Private Defenders Office, *Written Plan of Operation—Fiscal Year 2014-2015*, at 3, 6. On file with TIDC.
67. *2016-2017 Agreement*, *supra* note 65 at 8.
68. Bradley Hargis, *Capital Area Private Defender Service: A Managed Assigned Counsel Office*, Powerpoint presentation at CAPDS 2017 Mentoring Training, slide 14 (Apr. 17, 2017).
69. *Id.* at slide 16, “Three Pillars of Leadership.”
70. Budgetary figures based on the “Total Proposed Costs” contained in TIDC’s “Statement of Grant Award” to Travis County for the FY2017 Discretionary Grant Award for the Managed Assigned Counsel program; the “Statement of Grant Award” for the FY2016 Technical Support Grant for the DNA Mixture Case Review program; and the “Statement of Grant Award” for the FY2017 Discretionary Grant for the Travis County Holistic Defense Program. Available from TIDC upon request.
71. Calculation of attorney fee and other litigation expenditures approved by CAPDS based on addition of all expenditures reported for the “Managed Assigned Counsel” line item on the “Combined County Report” at <http://tidc.tamu.edu/public.net/Reports/CountyFinancialReport.aspx?cid=227&fy=2016>.
72. Interview with Bradley Hargis, Deputy Director, Capital Area Private Defender Service, in Austin, Tex. (Aug. 22, 2017).
73. TIDC, Corrected Statement of Grant Award, FY2013 Multi-year Discretionary Grant (signed by County Judge Keith Self on Aug. 14, 2012). Available upon request from TIDC Grant and Plan Management Website.
74. Interview with Pam DeVault, Collin County Court Administrator, in McKinney, Tex. (Apr. 26, 2017).
75. E-mail from Alyse Ferguson, Managing Attorney, Collin Co. MHMC, to author (May 24, 2017, 2:28 PM CST) (on file with author).
76. *Committee for Public Counsel Services: The Public Defender Agency of Massachusetts*, <https://www.publiccounsel.net> (last visited July 24, 2017).
77. Committee for Public Counsel Services, *Our Structure | Human Resources*, <https://www.publiccounsel.net/hr/divisions/> (last visited Aug. 18, 2017).
78. Committee for Public Counsel Services, *Private Counsel Division*, <https://www.publiccounsel.net/pc/> (last visited July 24, 2017).
79. Lefstein, *supra* note 46, at 203.
80. Committee for Public Counsel Services, *Private Counsel Division*, <https://www.publiccounsel.net/pc/district-court-cases> (last visited July 24, 2017).
81. E-mail from Nancy Bennett, Deputy Chief Counsel, Private Counsel Division, Committee for Public Counsel Services, to author (Aug. 24, 2017, 3:35 PM CST) (on file with author).
82. San Mateo County Bar Association Private Defender Program, *Annual Report Fiscal Year 2014-2015 to the Board of Supervisors, San Mateo County 4* (2015), available at <http://www.smcgov.org/sites/smcgov.org/files/PDP%20Annual%20Report.pdf> [hereinafter PDP Annual Report].
83. *Private Defender Program (2800B) General Fund, FY 2015-16 and 2016-17 Budget Unit Summary*, available at <http://www.smcgov.org/sites/smcgov.org/files/Adopted%20Budget%202015-2017.pdf> (last visited July 24, 2017).
84. *PDP Annual Report*, *supra* note 82, at 13.
85. *PDP Annual Report*, *supra* note 82, at Appendix B, “Agreement Between the County of San Mateo and the San Mateo County Bar Association.” See “Type C” and “Type D” case types.
86. A MAC program also fulfills three of the ABA’s *Ten Principles of a Public Defense Delivery System* that are not fulfilled using a traditional assigned counsel system. See American Bar Association, *Ten Principles of a Public Defense System*, Principles 1, 2, 10 (2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprincipleS.B.ooklet.authcheckdam.pdf (last visited July 17, 2017) (regarding independence of the public defense function; how the appointment process should not be ad hoc, but instead “according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction”; and systemic review of defense counsel for quality and efficiency).
87. Telephone interview with Philip Wischkaemper, Professional Development Director and Interim Executive Director, Lubbock Private Defender Office (May 8, 2017).
88. American Bar Association. *Ten Principles of a Public Defense System* (2002). https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprincipleS.B.ooklet.authcheckdam.pdf.
89. Alyse Ferguson, Mental Health Managed Counsel Program, 2014 FY Project Report (2015), slide 14, available at http://www.collincountytx.gov/public_information/features/Documents/MHMCPresentationApril20_2015.pdf.
90. *Id.*
91. *Id.* at 12, “Savings Not Quantifiable.”
92. 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).
93. Interview with Patti Jones and Bill McCay, County Commissioners, Lubbock County; and Philip Wischkaemper, Professional Development Director and Interim Executive Director, LPDO, in Lubbock, Tex. (Apr. 20, 2017); interview with Kim Howell, Assistant Chief Deputy of Detention, Lubbock County Sheriff’s Office, and Philip Wischkaemper, Professional Development Director and Interim Executive Director, LPDO, in Lubbock, Tex. (Apr. 20, 2017).
94. Details of the woman’s case provided in interview with Kim Howell, Assistant Chief Deputy of Detention in Lubbock, Tex. (April 20, 2017).
95. CAPDS, *Annual Report 2016* (Draft) 9. Available from TIDC upon request.
96. Tex. Code Crim. Proc. Ann. art. 26.047(c)(1) (West 2009 & Supp. 2015).
97. Full details on TIDC’s Discretionary Grant program and procedures available at <http://www.tidc.texas.gov/grants-reporting/discretionary.aspx>.



TEXAS INDIGENT DEFENSE COMMISSION

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