# INDIGENT DEFENSE INNOVATION



FALL 2018



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### FOREWORD

I worked for a time as the Deputy Director for the American Bar Association's Center for Innovation. As a former public defender, what I saw was shocking: artificial intelligence, chatbots, design thinking, data analytics, blockchain—a glimpse at what the legal profession might be.

At my public defender office, we hadn't had enough phones for every attorney, we punched out briefs using outdated versions of WordPerfect, and drudged up criminal histories using MS-DOS, a technology now 30 years past its prime.

For some, the word innovation strikes fear. It smacks of risky invention or, worse, costly fads. I am neither a technophile nor a technophobe. Rather, as my father is fond of saying, I want the right tool for the right job. Each of these—AI, telephones, blockchain, word processors—is just a tool. But, as anyone who's felled a tree with both a handsaw and a chainsaw can tell you, tools matter. The right tool can make us more effective, more efficient.

Public defenders' tools are outdated. We practice much the same as we did when Gideon was decided. Indeed, it's worse than that. Some basic tools have rusted. Many attorneys no longer investigate, research, visit clients in jail, or draft motions.

With so much at stake—no less than life and liberty—our collective failure is an embarrassment.

Since my stint at the ABA Center for Innovation, I've returned to public defense. Along with my Texas Indigent Defense Commission colleagues and coauthors, Scott Ehlers, Claire Buetow, and Morgan Shell, I've tried to catalog some of the innovations in public defense. Our aim is simple: expose defenders to new tools in hopes that we might do a better job. We hope you enjoy researching these tools as much as we did.

Thanks,

Bulery

**Geoff Burkhart** Executive Director, Texas Indigent Defense Commission

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COMMUNICATION



# SEAMLESS CLIENT COMMUNICATION

Ongoing, confidential client communication is critical to effective representation. But time and distance sometimes make it difficult for attorneys and clients to connect. New technologies—including videoconferencing, automated calling, and texting—are now making it easier for lawyers to communicate with their clients.

#### TIDC funds indigent defense innovation in Texas counties.

Since 2003, TIDC has awarded discretionary grants to over 20 counties for videoconferencing technology that remotely connects attorneys, clients, and courts. Counties can apply for videoconferencing grants through a simplified "menu option."

TIDC also provides funding for software development and other technology projects that improve indigent defense.

#### VIDEOCONFERENCING

There is no substitute for in-person client communication. But, especially in rural areas, frequent in-person communication can be challenging. TIDC has worked with several counties, including Taylor County most recently, to implement videoconferencing so that attorneys and incarcerated clients can talk regularly. This supplement to in-person communication saves time and money, while ensuring that client communication remains a core part of defense representation.

#### MODEL PROGRAM: CONTRA COSTA PUBLIC DEFENDERS

Proceedings in Contra Costa County, California were routinely delayed by defendants missing court dates: nearly 57% of defendants cited and released failed to appear (FTA) at their initial court dates. To help combat this problem, Contra Costa Public Defenders partnered with Uptrust, which provides two-way texting services to connect attorneys and clients. Anecdotally, offices that have switched to text reminders have seen FTA rates drop to 2.5%. A full study of the program is underway.

In another study, the University of Chicago Crime Lab found that simple text reminders in New York City reduced FTAs by 26%. Counties in Washington, Arizona, Colorado, and Oregon have also used court reminders to lower FTA rates. Texas counties are now piloting similar programs.

#### Uptrust





Since 2003 TIDC has been awarding discretionary grants for **videoconferencing technology** that remotely connects attorneys, clients, and courts.



#### **Digital communication**

instantly connects remote attorneys to clients which cuts down travel time, and helps courts and defense attorneys meet procedural timeliness requirements.

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# ATTORNEY CHECKLISTS



# HIGH PERFORMANCE WITH A LOW-TECH TOOL

Renowned surgeon Dr. Atul Gawande studied why people often die from surgery. He found that basic tasks, like washing with soap, were the cause of death in more than half of the cases. As procedures become more complex, people forget small but important details. He argues that there is a low-cost, low-tech solution to this modern problem: checklists. In his book, *The Checklist Manifesto*, Dr. Gawande illustrates how major industries have used concise, step-by-step instructions to save lives and money.

#### STAYING ORGANIZED

In law, checklists have helped attorneys interview clients, research issues, and draft arguments. In fast-paced, highstakes environments, like emergency rooms or courtrooms, checklists prevent critical mistakes. They're also useful to supervisors, who can review checklists to see gaps in performance at a glance.

#### TIDC funds indigent defense innovation in Texas counties.

TIDC provides funding for improving indigent defense processes and technology.

Programs that measure and ensure the quality of representation are priority areas for funding.

#### **MODEL PROGRAM:** SAN FRANCISCO PUBLIC DEFENDER



Public defenders often represent many clients and manage dozens of complex cases at a time. Some have developed checklists to ensure that each person accused of a crime receives a thorough defense.

The San Francisco Public Defender pioneered defender checklists. It has created over 100 of them, including checklists for conducting the initial client meeting, drafting a motion to suppress, and preparing the client for testimony.

In 2013, they received funding from the U.S. Department of Justice to partner with the Center for Court Innovation on a pilot study of checklist implementation. They developed a toolkit to assist other defender organizations to create checklists for their own jurisdictions.

Which Cases: Every case where your client is in custody or being held on bail that he/she is having trouble affording.	
When to Use: Fill out the checklist while (1) talking to your client about his/her background, (2) reviewing your client's RAP sheet, (3) writing the bail motion, and (4) at the bail hearing.	
(1) Ask your client the following questions:	
Are you currently employed?	TIDC INNOVATION SERIES
□ Yes □ No	
If yes, please describe:	
How long have you lived in the community?	For more information
Who are your primary contacts in the community?	on attorney checklists
What are the names and addresses of your family members?	and other innovative practices, go to:
Are any community or family members willing to come to court on your behalf?	tidc.texas.gov/
Yes No	innovation
If yes, who?	
Have you ever been accepted into any drug treatment and/or rehabilitation programs?	
□ Yes □ No	
If yes, when and which ones?	Or call us—you may qualify for grant
How would your incarceration affect your dependents?	funding:
	512.936.6994
Discuss with your client the following release options:	
Electronic monitoring	
Home detention	
□ Treatment program and/or counseling	





# INCREASING ACCESS THROUGH TECHNOLOGY

Court processes are often technical and obscure. That's why legal counsel is so important. Yet some legal work remains consistent from case to case. By automating certain tasks, defendants can more easily get the guidance they need, and attorneys can do more with less.

Attorneys of all kinds now use document automation to generate routine legal filings instead of redrafting documents for every case. Pro se litigants also use online tools to fill out basic legal documents and administrative forms. Automated advice connects people to courts, saving time and money for attorneys, clerks, and the public.

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#### MODEL PROGRAM: MASSACHUSETTS COMMITTEE FOR PUBLIC COUNSEL SERVICES

One way the public can get information about their criminal cases is through online chatbots. David Collarusso, Director of Suffolk University Law School's Legal Innovation and Tech Lab, created QnA Markup. QnA Markup is a program that guides users to helpful resources through a simple question and answer format. Massachusetts's CPCS website uses QnA to help its clients find an attorney or direct them to additional information.

#### MODEL PROGRAM: COMMUNITY LEGAL SERVICES OF PHILADELPHIA

The ExpungementGenerator is a web app created by Michael Hollander, an attorney at Community Legal Services of Philadelphia and a software engineer. The program reads court records to determine which cases can be expunged, and then generates a petition. Using the app, attorneys and law clerks save over an hour per expungement petition. The year after the app launched, expungement petition filings doubled, and 92% of the petitions generated by the app were granted.



Automating **routine tasks** saves attorneys time and resources.



Online **chat tools** expand access to information about the criminal justice system.



Some **legal documents** can be quickly generated using information pulled from databases.

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# FAMILY & FRIENDS CAN HELP

Participatory defense invites family and friends of those accused of a crime to help with their defense. Family members are often the best historians and are dedicated to recounting personal history to help mitigate a loved one's sentence.



Raj Jayadev, creator of the participatory defense model, trains local and national organizations to run participatory defense and community outreach programs. These programs offer a support system for families and friends and train them to aid defense attorneys. Workshops include lessons on delivering testimony and soliciting letters of support from key witnesses, as well as creating social biography videos.

Participatory defense can help supplement an overwhelmed criminal justice system. As the Chief Public Defender of Montgomery County, Pennsylvania noted, "Public defenders are overworked already. We have to show them that it helps the client, but it also helps the lawyer." Nationally, the program has cut over 3,350 years from prison sentences.

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TIDC provides funding for improving indigent defense processes and technology.

Programs that measure and ensure the quality of representation are priority areas for funding.

#### MODEL PROGRAM: CHARACTER LETTER 2.0: USING SOCIAL BIOGRAPHY VIDEOS TO HUMANIZE CLIENTS

"I just wish they knew him like we know him." A defendant's personal history is sometimes sidelined from the decision-making process. Social biography videos allow judges and juries to walk in defendants' shoes—seeing their home and work, learning how they grew up, and meeting who will be waiting for them when they get out.

Jayadev's Albert Cobarrubias Justice Project (ACJP) trains public defenders on storytelling and teaches them how to produce and integrate social biographies into mitigation. The videos have proved useful in reducing charges and lowering sentences. As one Alabama federal defender noted, "I am absolutely amazed at how effective and powerful the video can be in such a short amount of time. I'm also convinced that this is the future of sentencing." ACJP has conducted training with the Texas Criminal Defense Lawyers Association and anticipates training the Harris County Public Defender's Office.

# BENEFITS

#### **OF PARTICIPARTORY DEFENSE**

- Family and friends give emotional support and learn how to navigate the court system
- Taxpayers save money on unnecessary years of imprisonment
- ✓ Defense attorneys more effectively humanize their clients
- Communities gain a voice in their justice systems

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# SAVING MONEY, PROTECTING RIGHTS

Lack of early representation puts defendants at a disadvantage that is often difficult and costly to correct later. Providing immediate representation to arrestees benefits not only individuals, but counties and communities as well.

#### TIDC funds indigent defense innovation in Texas counties.

TIDC has funded representation at magistration in Bexar County.

Programs that measure and ensure the quality of representation are priority areas for funding.

#### MODEL PROGRAM: BEXAR COUNTY REPRESENTATION AT MAGISTRATION

The Bexar County Public Defender Office's (BCPDO) representation of arrestees with mental illness at magistration is one of the first of its kind in Texas. Representing this vulnerable population early in the process is critical to facilitating treatment and release. Prompt diversion reduces jail costs and recidivism, improving outcomes for persons will mental illness.

Within its first year, BCPDO saw a 150% increase in defendants released on personal bonds. BCPDO clients were released on mental health personal bonds 20% more often than unrepresented defendants. As County Judge Nelson Wolff noted, "This is one more positive step toward properly caring for the mentally ill population who all too often end up in the criminal justice system."



In Bexar County, defendants represented by public defenders at magistration were more likely to be released on mental health bonds and were more likely to comply with conditions of release (appearing for court, participating in treatment, and not committing new crime).

#### MODEL PROGRAM: FIRST DEFENSE LEGAL AID

First Defense Legal Aid (FDLA) provides arrestees in the Chicago Police Department with a "free

lawyer, 24 hours a day, 365 days a year." Through a 24-hour hotline, arrestees can reach an FDLA volunteer attorney or law student who will meet them at the police station. Attorneys can help protect against self-incrimination and prevent unnecessary detention of those unable to post bail. Since its inception, arrestees' requests for stationhouse representation have increased 15%. FDLA's success led to Cook County incorporating early representation into its public defender office. Cook County Chief Judge Timothy Evans helped institutionalize stationhouse representation to "ensure that constitutional rights are protected from the earliest point of contact with the criminal justice system."

1%

of arrestees had a lawyer present while in Chicago police custody in 2013.

# 80%

of arrestees waive their *Miranda* rights after being arrested.



potential savings if everyone in Cook County Jail had access to an attorney within 24 hours of arrest.

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# ACCOUNTABILITY THROUGH DIALOGUE

Restorative justice focuses on repairing injuries caused by criminal offenses and addressing the underlying reasons for defendants' actions. By creating a platform for defendants and victims of crime to speak to each other and determine tangible ways to repair harm done, restorative-justice-based programs increase victim satisfaction, encourage accountability, and reduce recidivism, creating safer communities.

#### MODEL PROGRAM: COLORADO RESTORATIVE JUSTICE PILOT PROGRAM

In 2013, Colorado State Representative Pete Lee spearheaded a successful bipartisan restorative justice bill establishing four prefiling diversionary pilot programs for juveniles charged with certain low-level offenses. During the program, kids speak faceto-face with their victims, working out a plan of action to repair the harm done to the victim and the community.

Participants in the pilot program were overwhelmingly satisfied. A 2017 report indicated a statistically significant increase in youth accountability after completing the program, and preliminary data showed low rates of recidivism for juveniles more than one year out of the program.

#### TIDC funds indigent defense innovation in Texas counties.

TIDC provides funding for improving indigent defense processes and technology.

Programs that measure and ensure the quality of representation are priority areas for funding.

#### MODEL PROGRAM: TRAVIS COUNTY NEIGHBORHOOD CONFERENCE COMMITTEE

Travis County's Neighborhood Conference Committee (NCC) program diverts first-time juvenile misdemeanants to educational classes and support resources to address the social factors that put the child on a path to delinquency. In a conference setting, NCC staff, trained in restorative justice principles by University of Texas's Institute for Restorative Justice and Restorative Dialogue, meet with juveniles, their parents, and a trained volunteer representing the community to develop a plan to restore justice.

Resolutions are specific to each case and consist of a combination of the following items:

- Anger Management Classes
- Community Service
- Book Reports
- Apology Letters
- Food Bank & Clothing Access
- Homework Assistance
- Tutoring Sessions

150+

Transportation to Classes
 & Community Service

juveniles per year pass through this program.

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# BETTER DEFENSE, STRONGER COMMUNITIES

Comprehensive defense looks beyond a criminal case to the root causes of criminal behavior. Too often, mental illness, substance abuse, or poverty drive recidivism. A comprehensive defense team, led by an attorney, brings together specialists like caseworkers and civil legal aid attorneys to identify and address these underlying issues. With the support of team members' investigation and case planning, defense attorneys can focus on their area of expertise: legal advocacy.

#### **IDENTIFYING ALTERNATIVES**

Communities increasingly provide alternatives to incarceration through support services like counseling and treatment. Comprehensive defense directs people to these resources and serves as a critical link between these programs and the populations they are designed to serve.

In a comprehensive model, the client is an active participant in the defense team. The unique relationship between defenders and their clients—voluntary, confidential, and trust-based—is what makes defense teams especially effective in motivating defendants and helping them succeed in rehabilitative programs in their communities.

#### TIDC funds indigent defense innovation in Texas counties.

Specialized defense services are priority areas for TIDC funding.

Over 15 counties have used TIDC funding to support comprehensive defense teams.

#### MODEL PROGRAM: KENTUCKY DEPARTMENT OF PUBLIC ADVOCACY

In Kentucky, alternative sentencing workers assist attorneys in developing plans for clients' rehabilitation. Attorneys present the plans to judges as alternatives to incarceration. The program reduced incarceration length by 80% and yielded a \$3.76 return for every dollar invested. Kentucky has demonstrated how comprehensive defense teams keep clients and communities whole, while efficiently directing criminal justice resources.



**\$8,415** Average cost of incarceration saved per ASW clients \$2,239 Average program cost per client



1:3.76 Ratio of program investment to saved incarceration costs

#### MODEL PROGRAM: STILL SHE RISES, TULSA, OK

Women are the fastest-growing prison population in the U.S., with Oklahoma leading the trend. When women are incarcerated, whole families are at risk. Still She Rises is a new

public defender office in Tulsa dedicated to defending women, especially mothers, in the criminal justice system. Their comprehensive defense practice helps to keep families together while mothers are incarcerated and addresses factors—like abusive relationships—that commonly cause women to be arrested.

# 15+

have used TIDC funding to support comprehensive defense teams In Collin County, mental health case managers assist attorneys with developing defense strategies and connecting clients to community services. Also, an immigration specialist at the Dallas County Public Defender's Office advises attorneys and clients on the immigration consequences of guilty pleas, as required by the Supreme Court's Padilla decision.

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# RESOLVING LEGAL MATTERS WITH TECHNOLOGY

In one year, eBay resolved over 60 million civil disputes through an online dispute resolution (ODR) platform. Criminal courts are now adopting similar technology. As Colin Rule, founder of online dispute resolution software Modria, explained, "There will always be cases that require the attention of skilled individuals. But we know we have a crisis of access to justice. Technology may be a way we help solve that problem."

MODEL PROGRAM:

#### TEXAS OFFICE OF COURT ADMINISTRATION

Heavy dockets backlog court systems across the country. Defendants wait hours for judges to call their case, eating into an entire day's work. For those without transportation or childcare, appearing in court can be extremely difficult. The Office of Court Administration is working with the Pew Charitable Trusts and the National Center for State Courts to pilot ODR in Texas. While the OCA project initially focuses on civil cases, ODR enables courts to adjudicate minor infractions and misdemeanors entirely online.

#### TIDC funds indigent defense innovation in Texas counties.

TIDC provides funding for improving indigent defense processes and technology.

Programs that measure and ensure the quality of representation are priority areas for funding. One ODR program, Matterhorn, has resolved over 46,000 minor infractions and misdemeanors, and in one District Court in Michigan, prevented 550 failure to appear warrants in one year.



#### **MODEL PROGRAM: ONLINE CASE REVIEW IN FARMERS BRANCH MUNICIPAL COURT**

The City of Farmers Branch is the first jurisdiction in Texas to offer online dispute resolution of traffic tickets, code infractions, and Class C misdemeanor warrants. From the convenience of a computer or smart phone, individuals and their defense attorneys can interact with a prosecutor and judge to resolve their cases. In the first year, failure to appear rates in the municipal court decreased 31%.



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# GAINING EXPERIENCE, BUILDING RELATIONSHIPS

Traditional law school training fails to equip attorneys with the skills needed to provide effective representation. Most new lawyers start their own practice, learning through trial and error. This approach doesn't guarantee attorneys learn how to provide competent representation. Mentoring programs can help.

#### MENTORING PROGRAMS BUILD

- ✓ Substantive Knowledge
- ✓ Trial Experience
- ✓ Support Network

The relationship is symbiotic—mentees gain knowledge and experience, while mentors further solidify their skills and give back to the profession. Mentoring programs increase the number of attorneys eligible for appointment without sacrificing quality in the process. The National Legal Aid & Defender Association has studied TIDC-funded mentoring programs and found that they "offer an accelerated path to becoming an indigent defense attorney for those who wish to take criminal defense appointments but struggle to gain the requisite trial experience."

#### TIDC funds indigent defense innovation in Texas counties.

TIDC has funded indigent defense mentoring programs in Bell, Comal, Lubbock, Travis, and Harris Counties, and is now helping launch a statewide mentoring program. Experienced lawyers can share both knowledge and wisdom with new lawyers, assuring that justice will be well served in criminal cases.

"

Texas Supreme Court Chief Justice Nathan Hecht

#### MODEL PROGRAM: FUTURE APPOINTED COUNSEL TRAINING

The Harris County Public Defender's Office (HPDO) hosts the Future Appointed Counsel Training (FACT) program that mentors new, private attorneys interested in qualifying for appointment lists. Experienced attorneys instruct mentees in 75 hours of training activities. Unique to HPDO's mentoring program is its collaboration with Gideon's Promise, which mentees credited for building their confidence and increasing their criminal defense knowledge.



"

"If we believe in equal justice, we have to believe that poor people should have the same kind of lawyers that you and I would pay for."

Jonathan Rapping Founder Gideon's promise is a threeyear, elite national program that is transforming public defense by strengthening "NextGen Defenders." Participants attend intensive boot camps and semiannual follow-up trainings. Key to the program is students' collaboration with mentors, who provide continual guidance and support as students raise the standard of representation in their own jurisdictions.

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TEXAS INDIGENT DEFENSE COMMISSION





# TAKING THE GUESSWORK OUT OF CASELOADS

Excessive caseloads prevent even the most highly qualified lawyers from delivering effective legal representation. Attorneys saddled with too many cases must jettison core legal tasks—client communication, investigation, legal research—in violation of constitutional and ethical duties.

In its evaluation of the Harris County Public Defender, the Council of State Governments found that "the key to sustaining quality defense work is to ensure that caseloads remain manageable." Workload standards do just that.

#### WORKLOAD STUDIES AS A SOLUTION

Workload studies have risen as a forceful tool in fighting excessive workloads. As Dean Norman Lefstein writes in his seminal book, *Securing Reasonable Caseloads*, "The goal of a weighted caseload study is to determine the amount of time, on average, that defense lawyers need to provide effective and competent representation to their clients." Workload studies in Missouri, Louisiana, Rhode Island, and Texas have been used to improve indigent defense through education, legislation, and case refusal.

#### TIDC funds indigent defense innovation in Texas counties.

TIDC provides funding for improving indigent defense processes and technology.

Programs that measure and ensure the quality of representation are priority areas for funding.

#### **TEXAS WORKLOAD STUDIES**



The State of Texas has completed workload studies in three areas: appeals, juvenile, and felonies and misdemeanors. Using the Delphi Method, Texas A&M's Public Policy Research Institute (PPRI) first tracked attorney time to gain an accurate picture of current practice. Next, PPRI engaged panels of criminal defense experts to determine how much time attorneys should spend on case tasks in a given case type to provide competent and effective representation. Differences between current practice and expert recommendations are compelling.

#### **TEXAS CASELOAD RECOMMENDATIONS**

The Delphi Panel found that attorneys should spend 66% more time on cases at every offense level. PPRI's final report recommends a maximum caseload of 226 misdemeanors or 128 felonies to deliver reasonably effective assistance of counsel.

Suggested maximum misdemeanor cases Suggested maximum felony cases

MORE TIME is recommended on cases at every offense level.

Whether they're used for education, legislation, or even case refusal, workload studies are a powerful tool for preventing excessive workloads.

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# BETTER MANAGEMENT, BETTER COORDINATION

Errors and delays in criminal justice information sharing can cause cases to drag on and costs to spiral. When agencies go paperless, they can improve the accuracy of their information and the speed with which they collect and transmit it. When multiple agencies share this information electronically using integrated systems, these benefits multiply.

**MODEL PROGRAM: TECHSHARE** 



The Texas Conference of Urban Counties developed its nonprofit TechShare program to streamline criminal justice processes. Through TechShare, counties pool the cost of switching to modern justice data systems. TechShare's indigent defense application, developed in partnership with TIDC, automates and standardizes attorney appointment and payment processes, and seamlessly connects county offices. It not only improves local oversight, but greatly simplifies state reporting duties.

#### TIDC funds indigent defense innovation in Texas counties.

Online indigent defense management systems are a priority program area for TIDC funding.

18 Texas counties have received TIDC grants to implement Tech Share Indigent Defense. TechShare is just one example of online case management. Public and private defender offices around the country, including in Lubbock, Harris, and Collin Counties, use defenderData<sup>™</sup> for case tracking, billing, and document storage. Some indigent defense programs, like that in Travis County, have created custom systems tailored to their local standards and needs, but adaptable to other jurisdictions. No matter the model, data systems often increase accountability and efficiency.



#### MODEL PROGRAM: WISCONSIN STATE PUBLIC DEFENDER

In 2015, Wisconsin State Public Defender (SPD) partnered with the University of Wisconsin Population Health Institute to overhaul its case management system. Through its Reporting, Analysis and Mining Project (RAMP), it created an automatic data feed from courts to public defenders.

SPD assigns private attorneys to around 40% of indigent defense cases in Wisconsin. Now that it has access to court data, SPD can monitor private and public attorneys' caseloads, assess their performance, and quickly make assignments and payments.

# BENEFITS OF INTEGRATED DATA SYSTEMS Automate attorney appointments Track attorney jail visits and CLEs Improve reporting capabilities

 Increase transparency and accountability

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