



PLANNING STUDY

TRAVIS COUNTY PUBLIC DEFENDER OFFICE

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SUMMARY

Travis County has asked the Texas Indigent Defense Commission (TIDC) to determine the feasibility of a Travis County Public Defender Office. TIDC has determined that a Public Defender Office is both feasible and desirable. The Office would improve quality, accountability, data, and efficiency. This report discusses Travis County’s public defense background, explores decision points the County should consider in creating a Public Defender Office, and outlines a model for discussion purposes. The model shows the following:

- Cases: The Public Defender Office would handle 30% of misdemeanor and noncapital felony cases.
- Staffing: The Public Defender Office would be staffed by 66 employees, including 48 attorneys, 6 investigators, 8 support staff, and 4 social workers.
- Existing Offices: The Public Defender Office would incorporate the Mental Health Public Defender, Juvenile Public Defender, and Office of Parental Representation as divisions of the Office.
- Costs and Savings: The Public Defender Office would cost the County about \$106,000 more per year on average in the first four years, assuming TIDC board approval of discretionary grant funding. After TIDC funding ceases, the county would pay about \$3.5 million more per year.

Projected Travis County Indigent Defense Costs

	Year 1 (15% of cases)	Year 2 (30% of cases)	Year 3	Year 4	Yearly Avg. Over 4 Yrs.
Current System	\$13,897,070	\$13,897,070	\$13,897,070	\$13,897,070	\$13,897,070
Public Defender System (offset by TIDC grants)	\$12,483,373	\$13,093,370	\$14,510,185	\$15,926,574	\$14,003,375
Cost Difference	-\$1,413,697	-\$803,701	\$613,115	\$2,029,504	\$106,305

The model proposed on pages 18-23 is intended not as a prescription, but as a springboard for discussion. TIDC and its staff look forward to continuing this conversation with Travis County.

I. INTRODUCTION

Travis County has asked the Texas Indigent Defense Commission (TIDC) to study the creation of a Travis County Public Defender Office.¹ This report discusses Travis County’s public defense background, explores decision points the County should consider in creating a public defender office, and outlines a model for discussion purposes. TIDC has concluded that a public defender office is both feasible and desirable. TIDC stands ready to assist Travis County with technical and possibly financial assistance.

II. BACKGROUND

Travis County has approximately 1.3 million residents. The population is concentrated in and around Austin, Texas. The County has 8 criminal district courts, including a magistrate court with a felony-level specialty docket. The County also has 1 juvenile district court. The County also has 7 criminal county courts-at-law.

The County has 2 limited-scope public defender offices and 1 managed assigned counsel (MAC) system:

- (1) Founded in 2007, the Mental Health Public Defender represents indigent misdemeanor defendants with mental illness or intellectual disabilities.²
- (2) Founded in 1971, the Juvenile Public Defender represents indigent juveniles.³

¹ Texas statutes grant Texas counties the power to form a public defender by creating a governmental entity or contracting with a nonprofit corporation “to provide legal representation and services to indigent defendants accused of a crime or juvenile offense.” TEX. CODE OF CRIM. PROC. art. 26.044(a), (b).

² Mental Health Public Defender, <https://www.traviscountytexas.gov/criminal-justice/mental-health-public-defender>.

³ Juvenile Public Defender, <https://www.traviscountytexas.gov/juvenile-public-defender>.

(3) Founded in 2014, the Capital Area Private Defender Service (CAPDS), a MAC, oversees and supports assigned counsel for most felony and misdemeanor cases in Travis County.⁴

Additionally, the Office of Parental Representation provides counsel for parents in Child Protective Services (CPS) cases.⁵

Like most Texas counties, Travis County's indigent defense costs have risen in recent years—from \$8.7 million in FY13 to \$12.25 million in FY17, a 41% increase. Per capita indigent defense expenditures have risen from \$8 per Travis County resident in FY13 to \$10 per resident in FY17.⁶ Travis County's appointment rates are near the statewide average.⁷

The County's indigent defense system has faced renewed scrutiny in recent months. In April, the *Texas Tribune* highlighted the county's excessive caseloads: "the 10 private Austin-area attorneys with the most appointments handled an average of 533 cases in 2017, compared to an average of 428 in 2014, the year before the new system [CAPDS] began."⁸ One attorney was paid for 349 felonies and 434 misdemeanors in 2017. Another was paid for 650 cases last year. Criticism of high caseloads has been accompanied by questions about the quality of representation. In a recent study of state jail felony drug possession cases in Travis County, the Council of State Governments' Justice Center (CSGJC) found that defendants with appointed counsel were far more likely to be incarcerated pretrial and, ultimately, to be

⁴ Capital Area Private Defender Service, <http://www.capds.org/>.

⁵ Office of Parental Representation, <https://www.traviscountytexas.gov/criminal-justice/parental-representation>.

⁶ The statewide per capita expenditure rate was \$9.45 in FY2017.

⁷ In FY17, the statewide felony appointment rate was 76%; in Travis County it was 73%. The statewide misdemeanor appointment rate was 46%; in Travis County it was 52%. Statewide appointment rates are lower than average national appointment rates, which are normally above 80%.

⁸ Neena Satija, "Travis County overhauled legal representation for the poor, but lawyers are still overwhelmed," *Texas Tribune* (April 26, 2018), <https://www.texastribune.org/2018/04/26/travis-county-overhauled-legal-representation-poor-lawyers-are-still-o/>.

convicted than their counterparts with retained counsel.⁹ The study also questioned the County’s flat-fee payments to assigned counsel. Judge Eckhardt has echoed this concern: “I think there are perverse economic incentives to plea,” Eckhardt told the *Austin American-Statesman*. And, according to Travis County judges and defense lawyers, assigned counsel compensation is too low: over 71% of judges and 88% of CAPDS panel attorneys said that they do not believe the current rates of compensation for court-appointed counsel are sufficient to attract qualified private counsel for court-appointed cases.¹⁰

III. DECISION POINTS

Creating a public defender office requires several key decisions. This section explains (1) key decision points, and (2) the assumptions built into the model below. Wherever possible, TIDC cites applicable laws, standards, or studies.

A. GOVERNANCE AND LEADERSHIP

Should the public defender have an oversight board?

Model Assumption: Yes. The public defender should have an oversight board charged with selecting a chief defender, setting policy, and developing a budget.

Travis County should decide whether to form an oversight board.¹¹ If it chooses to create a board, the county should determine the board’s composition and responsibilities. An oversight board helps ensure a public defender office’s

⁹ *Summary of Findings and Recommendations-Travis County District Attorney: Review of Drug Possession Case Dispositions 2016-2017 and Recidivism Analysis 2014-2015*, Council of State Governments, Justice Center 3-4 (February 23, 2018), at <https://tinyurl.com/CSG-Travis>.

¹⁰ *An Evaluation of the Capital Area Private Defender Service of Travis County* 30, 40 (April 2018), Meg Ledyard, PhD.

¹¹ Article 26.045 states that the “commissioners court of a county . . . may establish an oversight board for a public defender’s office created or designated in accordance with this chapter.”

independence from undue judicial or political interference—a prerequisite for creating a public defender office according to national standards.¹² An oversight board also prevents the concentration of power in the hands of a single individual and may incorporate diverse perspectives that help guide the office. For these reasons, every public defender office created since passage of the Fair Defense Act has included an oversight board.

The board’s composition should include an odd number of board members appointed from a variety of sources.¹³ Members should be knowledgeable in criminal law, but free from interests that would pose a conflict with the public defender office.¹⁴

Board responsibilities vary, but most include (1) recommending the chief defender; (2) setting policy; and (3) developing a budget. Public defender offices must be overseen by an experienced chief public defender.¹⁵ Boards are ideally suited to select that chief defender.¹⁶ While a chief defender usually leads and manages the office’s daily operations, boards are well-suited to setting policy for the office, as well as making budget requests.

The model on pages 18-23 assumes that the office will be governed by an oversight board with the power to recommend the selection and removal of the chief public defender. The model does not include direct costs for a board, which are normally minimal.

¹² See Principle 1, American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002) (hereinafter “ABA Ten Principles”). The *Ten Principles* are the leading national standards for designing an indigent defense system that delivers competent, effective representation. The Texas Fair Defense Laws, which detail the basic requirements for every indigent defense system in Texas, track the *Ten Principles* in many respects. See TIDC, *Fair Defense Laws 2017-2019*, <http://www.tidc.texas.gov/media/57918/tidc-fairdefenselaws-fy17-19.pdf>.

¹³ Article 26.045 states that members may include attorneys, judges, county commissioners, county judges, community representatives, or former clients or family members.

¹⁴ In a related context, about half of the states with indigent defense commissions prohibit prosecutors from serving on their commission’s board. Andrew Davies, Memorandum: How to Make a Politically Independent Public Defender Commission (2006), on file with TIDC.

¹⁵ The public defender office must be directed by a chief defender who meets minimum qualifications set by statute. See TEX. CODE CRIM. PROC. art. 26.044(f).

¹⁶ Boards are also well-suited to removing chief defenders, where necessary.

B. GOVERNMENT OR PRIVATE ENTITY

Should the public defender office be a government entity or nonprofit corporation?

Model Assumption: The office will be a government entity.

The county should consider whether its public defender office will be a county agency or a nonprofit.¹⁷ A government agency may better coordinate with other county agencies and provide an institutional counterweight to the district and county attorney's office. A nonprofit may more readily embrace innovative practices. In most urban centers across the United States, public defender offices are government agencies. The model below assumes the office will be a government agency.

C. EXISTING PUBLIC AND PRIVATE DEFENDER PROGRAMS

1. Should the Travis County Juvenile Public Defender, Mental Health Public Defender, and Office of Parental Representation be incorporated into the new office?

Model Assumption: Yes. All 3 offices should be incorporated as divisions of the new public defender office.

2. Should CAPDS continue to operate as an independent nonprofit?

Model Assumption: Yes. Travis County should continue contracting with CAPDS to manage assigned counsel.

¹⁷ The *Ten Principles* note that either a governmental agency or a nonprofit corporation under contract with a jurisdiction can serve as a public defender office. ABA Principle 2, note 7. State law allows for either structure, but requires a county to follow certain procedures for soliciting and selecting proposals from nonprofits, to account for both quality and cost. TEX. CODE CRIM. PROC. art. 26.044(c – e).

The volume of criminal cases in Travis County warrants the formation of a public defender office and a complementary managed assigned counsel system.¹⁸ If the County decides to create a new public defense agency, it may choose to combine it with the existing public defender offices. A single entity could provide an overarching structure and a single point of contact for budget and policy matters. There may be upfront costs to combining agencies, but also long-term savings from shared resources.

The model on pages 18-23 assumes that the Juvenile Public Defender, Mental Health Public Defender, and Office of Parental Representation will be incorporated into the new public defender office. Although parental representation cases are civil, public defender offices in Dallas, El Paso, and many other offices nationwide handle similar cases. The model below accounts for the costs of a new public defender office but does not consider any costs or savings from restructuring the Juvenile, Mental Health, or Parental Representation programs.

The County should consider operationalizing the new public defender office before incorporating existing public defender offices. The County should consider a 2-phase approach: Phase 1 (years 1 and 2): Establishing a new office; Phase 2 (years 3 and 4): Incorporating existing offices.

The County may choose to combine a new public defender office with the MAC services provided by CAPDS. A single office could have units for both full-time defenders and for assigned counsel administration and could provide training and facilities for both groups.¹⁹ Since CAPDS is a nonprofit and handles a greater caseload than either of the existing public defender offices, this would be a more significant restructuring of Travis County's indigent defense system, with greater upfront costs. To isolate the costs of a new public defender office, the model below assumes CAPDS will, for the time being, continue to operate as an independent program.

¹⁸ ABA Principle 2.

¹⁹ The Committee for Public Counsel Services, Massachusetts' statewide indigent defense provider, is structured this way, and is a national leader in managed assigned counsel representation. Committee for Public Counsel Services, *Who We Are and How We Are Structured*, <https://www.publiccounsel.net/hr/divisions/>.

D. CASELOADS

What should the maximum attorney caseload be?

Model Assumption: Attorneys will handle no more than 138 felony cases or 239 misdemeanor cases per year.

When attorneys represent too many clients, they must often jettison core legal tasks, including research, investigation, client communication, and filing pertinent motions.²⁰ An assigned counsel system with a flat-fee payment structure incentivizes attorneys to accept too many cases, often resulting in substandard quality.²¹ Given a salary and benefits, public defenders do not face the same economic incentives—assuming that caseloads are controlled. Texas public defender offices are required to identify maximum allowable caseload limits for each attorney in the office²² and to refuse appointments that would violate these limits.²³

TIDC has published evidence-based *Guidelines for Indigent Defense Caseloads*.²⁴ The model below adjusts the Guidelines for public defender offices to account for in-house investigators, whose support allows attorneys to spend less time on that aspect of representation and provide representation in more cases. Based on the adjusted Guidelines, the model below assumes that each attorney in a new public defender office will handle no more than 138 felony cases or 239 misdemeanor cases per year.

²⁰ ABA Principle 5.

²¹ Low fees exacerbate this problem, making it difficult for an attorney to earn a living while providing quality representation in appointed cases. See Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* at 4 (2011).

²² TEX. CODE CRIM. PROC. art. 26.044(c-1)(3). To receive grant funding from TIDC, a public defender office “must have defined caseload/workload standards.” Competitive Discretionary Grant Program Request for Applications at 15, <http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf> (hereinafter “FY19 Discretionary Grant RFA”).

²³ TEX. CODE CRIM. PROC. art. 26.044(j).

²⁴ Carmichael et al., Public Policy Research Institute at Texas A&M University, *Guidelines for Indigent Defense Caseloads* (2015), http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf.

The model also assumes that managers—the Chief Defender, Deputy Chief Defender, and Division Directors—will carry a 10% caseload, dedicating most of their time to supervision, administration, training, and leadership.

E. CASE COMPOSITION

What proportion of Travis County criminal cases should the office handle?

Model Assumption: The office will provide representation in adult felony and misdemeanor cases, juvenile cases, mental health felony and misdemeanor cases, and parental representation cases. An immigration attorney and research attorney will assist trial attorneys. The model further assumes the office will not provide representation in appeals, capital cases, or at magistration, but the County should explore adding these divisions to the office later. The expanded office will handle 30% of all adult felony and misdemeanor cases in Travis County.

The County should determine the office’s scope, including the types of cases that will be covered, as well as the percentage of cases covered. The model below assumes that, during its first 4 years, the office will handle 30% of adult felony and misdemeanor trial-level cases—approximately 4,700 misdemeanors and 2,700 felonies per year—allowing for the possibility of gradual expansion according to the county’s future needs.²⁵ The model further assumes that, in its first 4 years, the office will not provide appellate or capital representation, nor will it provide representation at magistration, though the office could later expand its scope.

²⁵ When Harris County established a public defender office in 2011, the office provided high-quality representation in only about 6% of all cases, and was able to demonstrate the effectiveness of its model: better results for its clients than those of private assigned counsel. Fabelo et al., Council of State Governments Justice Center, *Improving Indigent Defense: Evaluation of the Harris County Public Defender* at 32 (2013), <http://tidc.texas.gov/resources/publications/reports/program-evaluations/harris-county-public-defender-evaluation.aspx> (hereinafter “HCPD Evaluation”).

Based on TIDC caseload guidelines, to provide competent representation in 30% of adult felony and misdemeanor cases in Travis County, a new public defender office will need to hire the full-time equivalent of 20 misdemeanor-level attorneys and 20 felony-level attorneys, as well as support staff and managers. This staffing level is achievable within the first year, but the County may choose to take multiple years to ramp up.²⁶ TIDC’s model assumes CAPDS will continue to provide representation in 70% of appointed adult felony and misdemeanor cases.²⁷

²⁶ In its first year, the Harris County Public Defender hired 4 attorneys to handle 1,400 misdemeanor mental health cases and 11 attorneys to handle about 1,700 felony trial cases per year, as well as 10 appellate attorneys, 7 juvenile attorneys, support staff, and managers. See HCPD Evaluation, note 25 at 14-15.

²⁷ Although the model does not include staff for appellate, capital, or pretrial divisions, the County should consider how defenders in each specialty area would contribute to the justice system. Appellate defenders could not only improve representation on appeal, but would also assist trial attorneys with motions, jury instructions, and legal research before and during trial (and after trial with motions for new trial). Representation in capital cases is not currently overseen by CAPDS, but a defender office could include a dedicated team for these cases (including full-time investigators). Finally, defenders providing early representation, beginning at or before magistration, would help to safely reduce jail populations and ensure there is probable cause to detain arrestees. Currently, three counties in Texas – Bexar, Cameron, and Harris – provide representation at magistration. Bexar County has found that, as compared to presentations by pretrial services alone, this representation increases rates of release and compliance with bond conditions (that is, reduces failures to appear in court). *First Annual Review of Public Defender Representation at Central Magistration* (2016), https://www.equitasproject.org/wp-content/uploads/2018/05/Bexar_MHPD_Report-FINAL-10-19-16.pdf. These findings are consistent with national studies and constitutional law. The Constitution Project, *Don’t I Need a Lawyer? Pretrial Justice and the Right to Counsel at First Judicial Bail Hearing* (2015), https://constitutionproject.org/wp-content/uploads/2015/03/RTC-DINAL_3.18.15.pdf.

F. STAFFING AND SALARIES

1. What should new staff be paid?

Model Assumption: Public defender employees will have pay parity with their prosecutorial counterparts. The pay schedule used in the model is based on the County Attorney's Office pay schedule as provided by the Travis County Planning and Budget Office.

2. What should be the staffing levels for investigators, caseworkers, support staff, immigration attorneys, research attorneys, and managers?

Model Assumption: Staffing ratios will be:

- 1 investigator per 7 trial attorneys (6 total)
- 1 alternative disposition specialist per 10 trial attorneys (4 total)
- 1 support staff per 5 trial attorneys (8 total)
- 1 immigration attorney per 20 trial attorneys (2 total)
- 1 research attorney per 40 trial attorneys (1 total)
- 1 division director per division (2 total)
- 1 chief, 1 deputy chief, and 1 training director

The County should decide (a) what it should pay staff at a new public defender office, and (b) what kind of staff the office will employ. As to pay, the County may look to the Travis County District and County Attorney's Offices as guides. National standards require pay and resource parity between the prosecution and defense functions.²⁸ The model below assumes that public defender staff will be paid roughly

²⁸ ABA Principle 8.

the same as their counterparts in the County Attorney’s Office, as captured in Table 1, below.²⁹

Resource parity should extend to support staff, including investigators, caseworkers, and administrative assistants.³⁰ Investigators are essential to examining the prosecution’s case and establishing defenses. Defense team alternative disposition specialists provide specialized services critical to effective representation and beyond, such as creating plans for mental health and substance abuse treatment, housing and other services in the community.³¹ Support staff dedicated to tasks like filing, scheduling, finance, and information technology are necessities for any office.

Resource attorneys and managers also offer critical support to trial attorneys. Under *Padilla v. Kentucky*,³² defense attorneys have a constitutional obligation to inform their clients of the immigration consequences of criminal convictions; a dedicated immigration attorney can help fulfill this duty by assisting trial attorneys with complex immigration matters and consulting with clients directly. A research attorney assists with motions drafting and other legal research. Division directors supervise all staff and monitor their performance and workloads.³³

²⁹ The County Attorney prosecutes misdemeanor cases, while the District Attorney prosecutes felonies; pay by attorney level, however, is about the same for both offices. See <https://salaries.texastribune.org/travis-county/departments/county-attorney/>; <https://salaries.texastribune.org/travis-county/departments/district-attorney/>. Pay for prosecutors is also about the same, by attorney level, as that for Travis County public defenders. See <https://salaries.texastribune.org/travis-county/departments/juvenile-public-defender/>; <https://salaries.texastribune.org/travis-county/departments/justice-planning/>.

³⁰ ABA Principle 8.

³¹ The Travis County Mental Health Public Defender utilizes this team-based model to achieve its successful outcomes. Travis County Justice Planning, *Travis County Mental Health Public Defender Office* at 4 (2016), <https://www.equitasproject.org/wp-content/uploads/2018/05/Travis-County-MHPD-Evaluation-2016.pdf>. This model is nationally recognized as a cost-effective strategy for pretrial diversion. Kentucky, for example, uses defense-team alternative sentencing workers to create diversion plans; for every \$1.00 spent on this program, Kentucky has received a \$3.76 return on investment from avoided incarceration costs. Cape & Walker, *SFY 2015 Evaluation Report: Department of Public Advocacy Alternative Sentencing Worker Program* (2017).

³² 559 U.S. 356 (2010).

³³ The *Ten Principles* cite the NSC Guidelines’ recommended ratio of 1:10 supervisors to attorneys.

The county should identify an appropriate ratio of support staff, resource attorneys, and managers to trial attorneys.³⁴ The model below assumes the following ratios:

- 1 investigator per 7 trial attorneys (6 total)
- 1 caseworker per 10 trial attorneys (4 total)
- 1 support staff per 5 trial attorneys (8 total)
- 1 immigration attorney per 20 trial attorneys (2 total)
- 1 research attorney per 40 trial attorneys (1 total)
- 1 division director per new division (2 total)

In addition to the above staff, the office also includes a chief, a deputy chief, and a training director.

³⁴ TIDC's 2008 *Blueprint for Creating a Public Defender Office in Texas* offers a ratio of 1:5 investigators to attorneys and 1:5 staff assistants to attorneys. The *Ten Principles* cite the 1976 National Study Commission on Defense Services' recommended minimum ratio of 1:3 investigators to attorneys. For a regional and contemporary comparison, the Harris County Public Defender began its office in 2011 with a ratio of roughly 1:4 for investigators and 1:5 for social workers across its misdemeanor mental health and felony divisions, and about 1:3 for administrative support staff across all divisions. HCPD Evaluation, note 25 at 15.

Table 1. Staffing and Pay Comparison Between the County Attorney and Public Defender Model

County Attorney		Title	[Public Defender]	
Salary	#		#	Salary
\$173,918	1	County Attorney [Chief Defender]	1	\$155,000
\$174,325	2	Deputy Chief	1	\$134,000
\$135,514	8	Division Director	2	\$118,000
		[Training Director] (Division Director Pay Schedule)	1	\$118,000
\$109,976	32	Attorney VII	0	--
\$97,912	4	Attorney VI [Felony Defender]	20	\$96,000
\$91,497	9	Attorney V	0	--
\$79,905	7	Attorney IV [Immigration Attorney] [Research Attorney]	3	\$78,000
\$72,862	6	Attorney III/ [Misdemeanor Defender]	10	\$73,000
\$65,385	2	Attorney II/[Misdemeanor Defender]	5	\$64,000
\$60,953	7	Attorney I/[Misdemeanor Defender]	5	\$60,000
\$74,877	7	Investigator	6	\$60,000
--	0	[Alternative Disposition Specialist] (Social Worker)	4	\$49,000
\$42,576	27	Legal Secretary [Support Staff]	8	\$40,000
\$9,568,672	112		66	\$5,023,000

Note: Salary levels for public defender employees are based on the salary schedule for the County Attorney's Office. Some County Attorney salaries higher due to longevity pay. Totals for the County Attorney are totals only for the positions listed and do not include all County Attorney staff. Disparate staffing totals for each agency reflect different workloads. Salaries at the District Attorney's Office appear to be the same based on a review of salaries through the Texas Tribune's Government Salaries Explorer, <https://salaries.texastribune.org/>.

G. OPERATIONS

1. What should be the budget for operating expenses, including office space, equipment, expert witnesses, training, travel, and technology?

Model Assumption: The model is based on cost estimates provided by the Travis County Planning and Budget Office, including (1) annual fringe benefits ranging from \$21,000 to \$49,000 per employee; (2) ongoing annual operating expenses ranging from \$2,110 to \$4,960 per employee; (3) one-time expenses for office furniture, computers, phones, and vehicles (for investigators) ranging from \$7,464 to \$50,078; and (4) office space will be determined.

There should also be parity between the defense and prosecution in facilities, technology, and other resources.³⁵ Overhead expenses are another area where a public defender office creates economies of scale. The following operating expenses are based on estimates provided to TIDC by the Travis County Planning and Budget Office.

Fringe benefits: The annual fringe benefits range from \$21,000 to \$49,000 per employee.³⁶

Operating Costs: Ongoing annual operating expenses will range from \$2,110 to \$4,960 per employee. One-time expenditures in the first year include office furniture, computers, and phones, for all employees.

Training and Travel: Public defender offices can use their staff and facilities to provide in-house continuing legal education to their attorneys and to the wider legal community.³⁷ A public defender can be an institutional resource and hub for

³⁵ ABA Principle 8.

³⁶ Higher paid employees have a higher amount per year in fringe benefits, but fringe benefits make up a smaller percentage of their salary compared to lower paid employees.

³⁷ The Harris County Public Defender presented 63 CLE programs attended by 1,868 attorneys in its first two years of operation. In the same period, HCPD staff presented at other organizations' programs more than 60 times. HCPD has used federal and foundation funding to develop the Future Assigned

learning that improves the quality of representation for all appointed counsel.³⁸ Defenders working together in an office benefit from informal mentoring, case consultation, and day-to-day observation. A close professional network helps newer attorneys, especially, improve their skills and avoid costly mistakes. The model below assumes directors will carry only modest caseloads so that most their time is dedicated to supervising and training other staff. TIDC’s model includes from \$1,000 to \$3,000 in dedicated funding for training or travel, which varies based on the employees’ needs. A full-time training director would be appropriate for an office of the proposed size and is included in the model.

Technology: The structure of a public defender office lends itself to ongoing, standardized performance reviews of all staff. An office that uses an up-to-date case management system can make more rigorous, data-driven assessments of quality and costs,³⁹ which allow the oversight board and the county to scrutinize performance and funding requests thoroughly.⁴⁰ Investment in technology can also create savings by automating tasks and saving valuable staff time.

Expert Witnesses: An expert witness budget is not currently built into the model but may be included in later models.

Office Space: It is not clear where the PDO would be housed. If the office is housed in existing county office space, remodeling may be necessary. If housed in private office space, additional expenses may be required.⁴¹

Counsel Training (FACT) program, which provides intensive training and 75 hours of mentorship for new private assigned attorneys. See HCPD Evaluation, note 25at 38-39.

³⁸ ABA Principle 9.

³⁹ Mark Erwin and Meg Ledyard for the National Legal Aid & Defender Association, *Increasing Analytics Capacity A Toolkit for Public Defender Organizations* (2016), http://www.nlada.org/sites/default/files/NLADA%20Increasing%20Analytics%20Capacity%20Toolkit%202016_0.pdf.

⁴⁰ To receive grant funding from TIDC, a public defender office “must have internal case management/tracking controls sufficient to monitor attorney caseload/workload and “must have ability to produce other reports that enable the office to evaluate its own performance and demonstrate its cost-effectiveness to other local defense systems.” TIDC, FY19 Discretionary Grant RFA, <http://tidc.texas.gov/media/57909/fy19-discretionary-grant-rfa.pdf>.

⁴¹ Reimbursement for rent and costs related to office build-outs are considered on a case-by-case basis for TIDC’s Discretionary Grant Program.

Table 2. Estimated Operating Expenses Per Position

Position	Ongoing Travel/ Training	Ongoing Cellular Allowance	Ongoing Office Equipment/ Supplies	Ongoing Subscriptions	Subtotal Ongoing Costs	OT Office Furniture	OT Computer & Phone	OT Law Enforcement Equip	OT Vehicle	Subtotal One-time Costs	Total
Attorney I-VII	\$ 2,000	\$ 360	\$ 1,000	\$ 600	\$ 3,960	\$ 3,000	\$ 5,064			\$ 8,064	\$ 12,024
Division Director/ Chief	\$ 3,000	\$ 360	\$ 1,000	\$ 600	\$ 4,960	\$ 3,000	\$ 5,064			\$ 8,064	\$ 13,024
Legal Secretary-Sr	\$ 1,000		\$ 750		\$ 1,750	\$ 3,000	\$ 5,064			\$ 8,064	\$ 9,814
Social Worker (Alternative Disposition Specialist)	\$ 1,000	\$ 360	\$ 750		\$ 2,110	\$ 3,000	\$ 4,464			\$ 7,464	\$ 9,574
Investigator	\$ 1,500	\$ 360	\$ 750	\$ 1,000	\$3,610	\$ 3,000	\$ 10,878	\$ 1,200	\$ 35,000	\$ 50,078	\$ 53,688
Total	\$ 10,500	\$ 1,800	\$ 6,000	\$ 2,200	\$20,500	\$ 24,000	\$ 44,526	\$ 1,200	\$35,000	\$104,726	\$125,226

Source: Travis County Planning and Budget Office

IV. MODEL FOR DISCUSSION PURPOSES

Based on these assumptions, TIDC has developed a model for discussion purposes. TIDC offers this model only as a springboard for conversation—not as a prescription. Based on the averages from the last three years, we can expect that about 50% of the 31,000 misdemeanor cases filed each year and about 72% of the 13,000 felony cases filed each year will be found indigent. The model assumes felony and misdemeanor cases not assigned to the public defender will be assigned to CAPDS with FY2017 costs per case (\$190 per misdemeanor case and \$513 per felony case).⁴²

Fully staffed, this model includes a total of 66 staff, 48 of whom are attorneys. The model assumes two *Padilla* attorneys, one research attorney, 6 staff

⁴² As noted earlier in this study, CAPDS assigned counsel fees are very low and well below the statewide average on a per case basis. The fee schedule offered may need to be increased. This would further increase the county's total indigent defense expenditures while also lessening the cost differential with a new public defender office.

investigators, 4 alternative disposition specialists, 8 office support staff, and 2 division directors. There is also a chief defender and a training director.

The annual cost of the office is approximately \$7.3 million when the office is fully operational. An additional \$2 million is needed to pay for the existing Juvenile Public Defender (JPD), \$1 million for the Mental Health Public Defender (MHPD), and \$1.1 million for the Office of Parental Representation (OPR), based on Travis County’s adopted FY2018 budget. An additional \$6.8 million is expected to pay for cases assigned through the managed assigned counsel (MAC) program, including capital murder cases and appeals. In summary, the total annual cost of indigent defense (and Office of Parental Representation) under this model is expected to be approximately \$18.4 million, or \$4.5 million more than the existing indigent defense system.⁴³

It is reasonable to assume that the office will not be fully staffed and operational during the first year. As such, the office will not accept a full 30% of the misdemeanor and felony cases, and CAPDS will assign counsel in relatively more cases. If the public defender office only accepts 15% of cases in the first year, its first-year costs would be about \$5 million, which would include about \$840,000 in start-up expenditures.⁴⁴

⁴³ The cost of the “existing indigent defense system”—\$13.9 million—is higher than Travis County’s FY2017 IDER “Total Indigent Defense Expenditures” because the IDER does not include FY2018 budget increases for the Juvenile Public Defender and Mental Health Public Defender, and does not include the FY2018 budget for the Office of Parental Representation.

⁴⁴ These estimates assume that additional year 1 expenditures remain the same, whether the office takes 15% or 30% of cases in the first year. We assumed that the county would make all one-time purchases for such items as computers, furniture, and phones, in the first year to take advantage of TIDC’s 80% grant during the first year.

Table 3. Case and Cost Estimate for Travis County Public Defender Office

Model: 30% of Cases are Assigned to the Public Defender					
1. Caseload		Total	Msd Added	Non-Cap Fel Added	Appeals Paid
A. Total New Cases Added					
Travis County		43,839	31,151	12,689	n/a
B. Percent of Total Cases Added that are Indigent					
			50%	72%	100%
Estimated Total Indigent Defense Cases		24,833	15,679	9,094	60
% going to proposed public defender			30%	30%	0%
% going to mh public defender			n/a	n/a	
C. Public Defender Caseload					
Cases to MAC		7,432	4,704	2,728	0
		17,401	10,975	6,365	60
2. Staff					
Proposed Public Defender Cases		7,432	4,704	2,728	0
Attorney Caseloads based on the Weighted Caseload Study			239	138	31
Number of Line Attorneys Needed		40	20	20	0
Number of Immigration Attorneys		2	1.0	1.0	
Number of Research Attorneys		1			
Number of Investigators (1 per 7 attorneys)		6	3	3	0
Number of Alternative Disposition Specialists (1 per 10 attorneys)		4	2	2	0
Number of Office Support Staff (1 per 5 attorneys)		8	4	4	0
3. Draft Budget					
	Staff	Total	Misdemeanor	Felony	Appeals
Total Staff Salaries + Benefits	66	\$7,091,000	\$3,198,000	\$3,893,000	
Chief Defender (\$155K salary + \$49K benefits)	1	\$ 204,000	\$ 102,000	\$102,000.00	
Deputy Chief (\$134K salary+\$43K benefits)	1	\$ 177,000	\$88,500	\$88,500	
Div. Director (1 per division; \$118K salary+\$39,000 benefits)	2	\$314,000	\$157,000	\$157,000	
Training Director (\$118K salary+\$39K benefits)	1	\$157,000	\$ 78,500	\$78,500	
Felony Defender (Attorney VI-\$96K salary+\$34K benefits)	20	\$2,600,000		\$2,600,000	
Misdemeanor Defender (Attorney III-\$73K salary+\$29K benefits)	10	\$1,020,000	\$ 1,020,000	-	-
Misdemeanor Defender (Attorney II-\$64K salary+\$27K benefits)	5	\$455,000	\$455,000		
Misdemeanor Defender (Attorney I-\$60K salary+\$26K benefits)	5	\$430,000	\$430,000		
Appeals Defender	0				

Juvenile Defender (keep staffing same as today)	0	n/a			n/a
Immigration Attorney (Attorney IV-\$78K salary+\$30K benefits)	2	\$216,000	\$108,000	\$108,000.00	-
Research Attorney (Attorney IV-\$78K salary+\$30K benefits)	1	\$108,000	\$ 54,000	\$54,000.00	
Investigator (\$71K salary+\$30K benefits)	6	\$606,000	\$303,000	\$303,000.00	
Alternative Disposition Specialist (\$49K salary+\$30K benefits; Social Worker)	4	\$316,000	\$ 158,000	\$158,000.00	
Support Staff (\$40K salary+\$21K benefits; Legal Secretary Sr.)	8	\$ 488,000	\$ 244,000	\$244,000.00	
Operating Expenses (based on "Operating Expenses" sheet)		\$ 239,180	\$ 119,590	\$119,590.00	
Office Space (TBD)			-		
Estimated Total PD		\$7,330,180	\$ 3,317,590	\$ 4,012,590	
Estimated cost per case with PD		\$ 986.32	\$705.31	\$ 1,470.86	n/a

POTENTIAL TIDC GRANT FUNDING

TIDC’s Discretionary Grant Program helps counties establish public defender offices. Discretionary grants normally last for four years. Grant funding typically pays for 80% of the public defender office costs in the first year, and goes down 20% each year for years two, three, and four. Over those four years, TIDC pays for approximately 50% of the public defender office costs.

Following is an estimate of the costs that TIDC could cover based on a public defender office with a \$7.3 million annual budget with no “ramp up” phase, i.e. the office would accept 30% of the cases every year, including the first year:

Table 3. Estimated Discretionary Grant Awards for Public Defender Office Accepting 30% of Cases Every Year

Grant Year	State Discretionary Grants
Year 1 (80%)	\$ 6,365,600
Year 2 (60%)	\$ 4,398,108
Year 3 (40%)	\$ 2,932,072
Year 4 (20%)	\$ 1,466,036
Total over 4 Years	\$ 15,161,816

Grant funding is contingent on approval by a grant review committee and a vote of the full TIDC Board. In addition to Discretionary Grant funding from TIDC, Travis County will continue to receive Formula Grant funding to reimburse the county for its other indigent defense expenditures, which typically amount to 12-to-15% of expenses.

In year one, the added costs of the office, including start-up costs—\$5.4 million—would be more than offset by a TIDC grant. Almost all of the costs in year two would be offset by TIDC as well. Over the life of the grant, TIDC could award approximately \$15.2 million in Discretionary Grants, assuming these cost estimates bear out and TIDC awards the grant. While added costs over four years would be about \$19 million, much of that would be offset by TIDC Discretionary and Formula Grants.

If the office accepted a lower caseload in year 1 during the “ramp up” phase, costs (and grants) would be reduced in year 1, but remain the same for years 2

through 4. In such a scenario, the estimated total costs for year one would be just over \$5 million. The grant would be approximately \$4 million, with the county responsible for approximately \$1 million.⁴⁵

Table 4. Estimated Discretionary Grant Awards for Public Defender Office Accepting 15% of Cases in Year One; 30% of Cases in Years Two-to-Four

Grant Year	State Discretionary Grants
Year 1 (80%)	\$ 3,836,912
Year 2 (60%)	\$ 4,398,108
Year 3 (40%)	\$ 2,932,072
Year 4 (20%)	\$ 1,466,036
Total over 4 Years	\$ 12,633,128

Under this scenario, the added cost to the indigent defense system in year one from establishing the public defender office would be approximately \$3.4 million, which would be more than offset by the \$3.8 million grant. Over the life of the grant, approximately \$12.6 million in Discretionary Grants would be awarded. Net added costs to the County over four years—when offsetting projected TIDC Discretionary and Formula Grants are included—would only be about \$425,000. When the county is paying the full cost of the new system in year 5 (including the Office of Parental Representation cases), its costs will be about \$3.5 million more per year than the existing system.

V. CONCLUSION

TIDC applauds Travis County for the steps it is taking to improve indigent defense. TIDC has determined that a Travis County Public Defender Office is both feasible and desirable. The office would improve quality, accountability, data, and efficiency. TIDC stands ready to offer technical and possibly financial assistance.

⁴⁵ These estimates assume that additional year 1 expenditures remain the same, whether the office takes 15% or 30% of cases in the first year. We assumed that the county would make all one-time purchases for such items as computers, furniture, phones, and vehicles for investigators in the first year to take advantage of TIDC’s 80% grant during the first year.