

## HISTORY OF TRAVIS COUNTY INDIGENT DEFENSE

### 1963 Gideon Decision

"Any person  
haled into court,  
who is too poor  
to hire a lawyer,  
cannot be  
assured a fair  
trial unless  
counsel is  
provided for  
him"

### 1980's Travis Leads

Utilizes attorney  
appointment  
"wheels" to  
ensure fairness  
in  
appointments  
and quality  
representation

### 2001 S.B. 7

Modeled after  
Travis County

Mandates all  
criminal courts in  
Texas to adopt  
formal procedures  
for providing  
appointed lawyers  
to indigent  
defendants.

### 2011 New Option: CCP Art. 26.047 (a)

Managed  
Assigned  
Counsel Program







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## 2011 PROCESS

1. Judges review attorney applications and approve for appropriate list.
2. Judges appoint attorneys from a public appointment list using a system of rotation. (~50% of cases not assigned by rotation)
3. Judges set the attorney fee schedule and approve all payment vouchers.
4. Judges conduct annual review of attorneys and require annual verification of CLE.

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## ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

01	Defense function is independent of the judiciary	
02	Consists of both a defender office and active participation of the private bar	
03	Clients are screened for eligibility and appointed as soon as possible	
04	Defense counsel is provided sufficient time and space to meet with clients	
05	Defense counsel's workload is controlled	
06	Defense counsel's ability, training and expertise match case complexity	
07	The same attorney represents the client until case is complete	
08	Parity exists between defense and prosecution with respect to resources	
09	Defense counsel is provided with and required to attend continuing legal education	
10	Defense counsel is supervised and reviewed for quality and efficiency	

## WHY CHANGE

Struggles to meet requirements of public defense system:

- Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.
  - None of these functions were independent of the judiciary
- Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
  - Difficult for a judge to perform this function without engaging in advocacy in individual cases
  - Limited judicial resources

## WHY CHANGE

- The judicial model did not comply with the ABA's 10 key principles of a Public Defense Delivery System
- The prior system didn't provide for meaningful oversight and evaluation
  - List was closed for years
  - No meaningful quality control
  - No one has been able to move up
  - Only evaluation is subjective
- The prior system may lead to the perception that extensive judicial involvement in selection, funding, and payment of defense counsel undermines confidence in the public defense delivery system.

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## WHY CHANGE

- Lack of uniformity in compensation among judges
- Number and type of cases appointed can vary by individual judge
- Similar systems have been found in violation of basic requirements and federal courts have issued injunctions.

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## OPTIONS EXPLORED

1. Try to keep or “fix” the existing judicial based model
2. Adopt a county agency based model
3. Adopt a private defender model
4. Adopt a public defender model

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## THE EXPLORATION

HOW DID WE GET HERE?

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## KEY EVENTS

Fall 2012

- Judges vote to explore MAC option

Jan 2013

- Collaborative meetings begin with Judges, ACDLA & ABA (100+ meetings)

May 2013

- Site visit to Lubbock, TX

Oct 2013

- Site visit to San Mateo, CA

Nov 2013

- Austin Bar Association take a more active role

March 2014

- Judges unanimously vote to pursue MAC via grant proposal

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## THE AGREEMENT

**The best way to keep what we liked and improve what must change was the private defender model established through a non-profit.**

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## HOW IT WORKS

A NEW NON-PROFIT

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## TRAVIS COUNTY PRIVATE DEFENDER

The MAC is a joint venture of:

- ACDLA (Austin Criminal Defense Attorneys Assoc.)
- Austin Bar Association
- Support expressed by:
  - Travis County Judiciary
  - Texas Criminal Defense Attorneys Assoc.
  - ACDLA Board of Directors unanimously supports continued MAC exploration

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## ORGANIZATION STRUCTURE



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## THREE PILLARS OF LEADERSHIP

1. **Board of Directors (“BOD”)**
  - 5 voting members
  - 3 ex officio members (non-voting members)
2. **Oversight Committee**
  - County leadership meets quarterly with the BOD
3. **Review Committee**
  - Panel of experienced and respected attorneys

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## BOARD OF DIRECTORS

### Voting Membership

- 2 ACDLA Board Members
  - 1 elected by membership
  - 1 elected by ACDLA BOD
- 2 ABA Board Members
  - 1 must be active in criminal defense
- 1 Selected by Oversight Committee (retired senior criminal judge)

### Function

- Fiduciary responsibilities
- Financial disclosures
- Hires/fires director
- Approves budget
- Approves recommendations of Review Committee
- Meets with Oversight Committee

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## NON-VOTING BOARD MEMBERS

- 3 ex officio members
  - Non-voting
  - Must be on the court appointment list
  - Provide guidance and expertise of the current functioning of the list

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## OVERSIGHT COMMITTEE

### Membership

1. Presiding District Court Judge
2. Presiding County Court Judge
3. Court Administrator
4. Criminal Justice Planning Chair
5. Commissioner
6. Director of Mental Health Public Defender
7. Director of Juvenile Public Defender

### Function

- Annual contract review
- Quarterly meetings with BOD on state of organization
- Monthly reports of status of funds spent
- Annual report presented for review and comment before publishing

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## REVIEW COMMITTEE

- Structure
  - Authorized by statute
  - 3-11 members
  - 10 years minimum criminal law experience
  - 3 members sit on any case review and full panel on annual list review
  - May add additional temporary members as approved by BOD to hear individual cases
  - Cannot be on court appointment list
  - Recruited/Nominated by Director and approved by BOD
  - Serve 1 year renewable terms

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## REVIEW COMMITTEE

- Function
  - Final determination on qualified attorneys for list
  - Final determination on level on list
  - Hears appeals of MAC Director determination on vouchers (further appeals to per statute)
  - Hears specific allegations of unsatisfactory performance based on subject matter area
  - Hears any matter referred by the MAC Director for adverse action against panel member

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## FINANCIAL OVERVIEW

A COST BREAKDOWN

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## STAFFING

### Lubbock

- 10,000 cases
- 80 attorney list
- 3 million budget
- 1 Director
  - 3 full time non-attorney employees
- Total personnel cost is \$360,400

- Recently added a new full time attorney position for mentoring and training

### San Mateo

- 15,000 cases
- 110 attorney list
- 16 million budget
- 1 Director
  - 3 supervising attorneys
  - ~12 staff members
- Total personnel cost is \$1,796,000

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## FULLY PRIVATE VS. HYBRID MODEL

### Lubbock and San Mateo

- Fully privatized all services including payment and individual appointment
- Entire indigent defense budget paid directly to organization

### Travis County

- Hybrid model leaving many of the administrative functions in Court Administration
- Reduces complexity of implementation
- Reduces costs
- Retains integrated and highly effective support system
- Auditors office will continue to make individual payments for services

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## TRAVIS COUNTY MAC STAFFING

- 25,000 cases (current case load)
- 250 attorney list (current list size)
  - Future list size is not determined
- 8.3 million budget (to allocate for individual services)
- Staff
  - 1 Director
  - 1 Assistant Director
  - 1 Mentor Attorney
  - 1 Full time investigator
  - 1 Full time administrative staff member
  - 1 Part time financial analyst

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## STAFFING BREAKDOWN

- Attorney Director - \$150,000
  - Salary Comparison
    - District Attorney 1<sup>st</sup> Assistant - \$133,996 to \$214,399
    - District Attorney Division Director - \$109,380 to \$175,009
    - District Attorney VII - \$95,524 to \$152,828
- Assistant Director - \$120,000
- Supervising Attorney - \$120,000
- Full time investigator - \$75,000
- Administrative Assistant - \$40,000
- Part time Financial Analyst- \$25,000
- Benefits - \$100,560
- Taxes – \$36,805
- **Total Cost – \$667,365**

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## OPERATIONAL COSTS

• Insurance	\$4,000
• Travel and training	\$10,500
• Supplies	\$0 (ABA provided)
• Prof. Services (CPA)	\$5,000
• Office Space	\$0 (ABA provided until 9/1/15)
• <u>Mentorship Program</u>	<u>\$30,000</u>
• Total	\$49,500
• Capital Equipment (Software, office equipment, phones, furniture, etc.)	\$113,714 (one time cost)

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## TOTAL ONGOING COST

- Total Ongoing Cost      \$716,865
  - Grant available for 50% matching over 4 years.
  - First year cost to county \$166,116 (assuming normal 80/20 split)
- MAC would be new expenditure for the county
  - Grant available for 50% matching over 5 years.
  - First year would be 80/20 match for the county
    - 1.8 % of current indigent defense spending

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## HOW'S IT GOING?

BY THE NUMBERS

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## INITIAL SELECTION

- Initial selection process in November – December 2014
  - All attorneys had to reapply

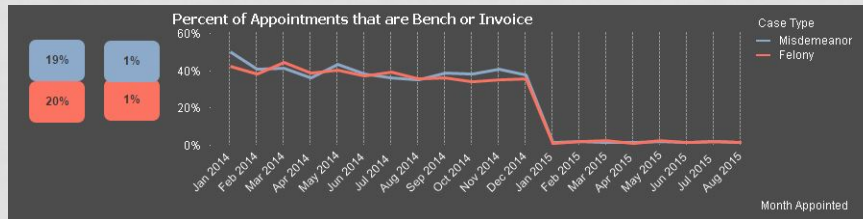
### Application Process:

225	Total Applications		
66%	received the same level (150 attorneys)		
7%	received a higher level (16 attorneys)		
15%	received a lower level (34 attorneys)		
5%	on existing list(s) were not admitted to CAPDS (11 attorneys)		
44%	of those receiving a lower level/denied did not meet the minimal trial standards for their current list (19 attorneys)		
21	attorneys not on the existing program were added to CAPDS		
21	applications were denied		
Misdemeanor Mental Health			
13 still on (59% same)			
5 removed	8 added	1 didn't reapply	
Felony Mental Health			
15 still on (65% same)			
12 removed	8 added	1 didn't reapply	

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## FAIR AND NEUTRAL

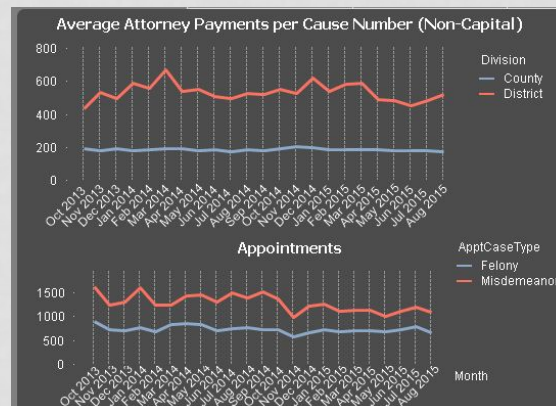
- Pre CAPDS bench appointment rate was ~45%
- Post CAPDS bench appointment rate is ~1%



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## MAINTAINING COSTS

- Average cost of case is slightly down
- In August 2015 CAPDS determined 83% of vouchers

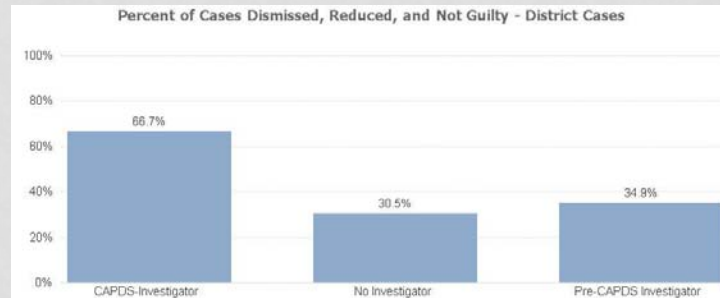


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## INVESTIGATIONS

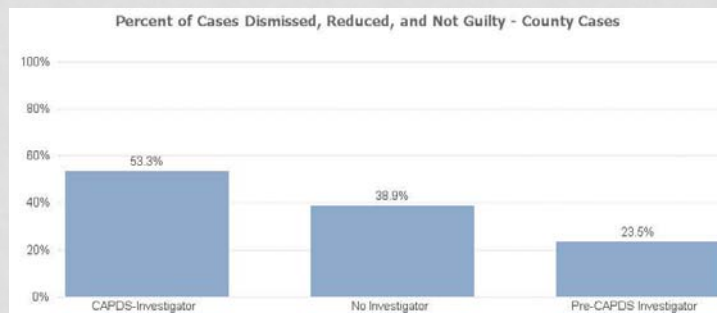
- Greater utilization of investigative resources show better outcomes (small data set from early results)



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## IMMIGRATION RESOURCE

- CAPDS added an immigration attorney to the staff (1 day a week by contract)
- 130+ consultations
- Dozens of changed outcomes due to consultation

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## CHALLENGES ALONG THE WAY

- Overcoming judicial concerns surrounding loss of control and quality assurance
  - Concerns of budget overrun
    - Close monitoring
  - Unqualified attorneys being selected
    - Several changes made to program
  - Selection of key positions
    - Organization of non-profit
  - Bench Appointments
    - Attorney of the day

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## CHALLENGES ALONG THE WAY

- Overcoming resistance by some members of the bar
  - Strong response from those who were denied/downgraded
    - Public response to criticism by select few
    - All stakeholders were prepared and held the line
  - Ultimately accepting not everyone would support change
    - Strong group of invested stakeholder in bar
    - Brought in civil and criminal bar
  - Concern over slippery slope to public defender
- Overcoming concerns regarding cost
  - Demonstrated need
  - Grant supported

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## CHALLENGES ALONG THE WAY

- Destabilizing influence of personal relationships
- Accepting change was hard
- Coordinating changes among county processes
  - Court process are complicated web of interactions to be untangled
  - Implementation path was more complex than anticipated

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## WHAT'S CHANGED

- Independent review of performance and qualification
- Independent determination of payment amounts
- Formal mentorship and training program
- Peer-evaluation and assessment in question of fitness
- Full time positions dedicated to providing quality review of indigent defense services

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