

The Harris County Public Defender

Overview of the Operational Evaluation Conducted by the Council of State Governments Justice Center

BACKGROUND

In January of 2011, the Harris County Public Defender (HCPD) office opened its doors, with former federal public defender Alex Bunin as the Chief Defender. Until then, Harris County had been the most populous county in the country without a public defender. Harris County is the largest criminal justice system in Texas with criminal and juvenile case filings in 2012 totaling almost 128,000.

The establishment of HCPD was funded by the Texas Indigent Defense Commission, through grants amounting to \$4.2 million in first-year funding, as well as additional grants until 2014. The county's grant application described the following objective: to create "a hybrid indigent defense system incorporating a public defender and assigned counsel [that] would ensure predictability of costs, while ensuring quality representation, specialization of representation, and the inclusion of the defense bar at policy discussions."

HCPD was established on a small scale within a larger indigent defense system. HCPD's total caseload is set at 5,075 while the total Harris County indigent caseload for FY 2012 was almost 72,000. Three divisions of HCPD—Misdemeanor Mental Health, Felony, and Juvenile—are expected to handle less than 10 percent of the indigent cases, while the Appellate division is staffed to represent all indigent appellate cases.

Harris County engaged the Council of State Governments Justice Center (Justice Center) in April 2012 to provide technical assistance to HCPD, in the form of an operational evaluation intended to advise the management of the organization. To date the Justice Center has conducted interviews and surveys, reviewed compliance with state and national standards, and utilized data in the HCPD case management system to study workload and outcomes in the Misdemeanor Mental Health and Appellate divisions. Forthcoming work includes the review of the Felony and Juvenile divisions. With years of collective experience advising and evaluating indigent defense in Texas, the Justice Center team is led by Research Division Director Dr. Tony Fabelo, Senior Legal and Policy Advisor Carl Reynolds, and Research Manager Jessica Tyler.

KEY FINDINGS

- **The Justice Center's evaluation found that HCPD has a supportive advisory board and a well-qualified Chief Defender, suitable county office space and county support, qualified employees, and sound policies.** In its first two years, the office has demonstrated due diligence and a will to solve systemic issues in Harris County criminal case processing.
- **The office has undertaken activities that have added value to the system, including providing legal education sessions, training, and mentoring to assigned counsel, and providing advocacy for greater rehabilitative resources.**
- **HCPD operations meet the objectives set out in the grant application process, as well as key quality indicators promoted by the American Bar Association that are known as the "Ten Principles of a Public Defense Delivery System."** For example, according to the key quality indicator "Workload is controlled to permit the rendering of quality representation," the caseloads of HCPD are limited by policy and controlled in practice.

TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

1. Independence	2. Bar participation	3. Timely assignment	4. Time & space for client meetings	5. Controlled workload
HCPD exhibits independence. Chief Defender should be for fixed term subject to renewal	Current system blends HCPD plus private assigned and contract counsel	Attorneys are notified as soon as feasible of initial client court appearance	Jail space is not confidential, but time is adequate – space not controlled by HCPD	Caseload cap controlled by grant requirements, statute, and internal controls
6. Quality assurance – experience	7. Attorney/ client relations	8. Defense/ prosecution parity	9. Training	10. Supervision & review
Counsel appropriately matched to cases	Attorneys represent clients through lifespan of case and in repeat cases	HCPD salary maximums consistent with DA	HCPD requires defender attendance	Defense counsel is supervised and attorneys are reviewed

- **HCPD's Misdemeanor Mental Health division represents mentally ill offenders accused of misdemeanors.** The office provides specialized attorneys teamed with psycho-social caseworkers, and achieves significantly higher dismissal rates (38 percent versus 10 percent) and lower conviction rates (70 percent versus 92 percent), compared to assigned counsel.
- **Workload analysis of HCPD's Mental Health Division showed 124 cases using an investigator (out of 1,505 cases), and that those cases were much less likely (44 percent versus 63 percent) to result in conviction, and were more likely (48 percent versus 31 percent) to be dismissed.** In Harris County's assigned counsel system, just 0.1 percent of indigent defense expenditures go for investigation.
- **Evaluation of HCPD's Appellate Division revealed qualitative support from judges and from their adversaries in the district attorney's office, and quantitative success in case outcomes, such as several successful motions for new trial, and a five percent reversal rate (ratio of number of cases reversed to number of cases heard), versus the average of three percent for criminal appeals in the 1st and 14th Courts of Appeal.** The Appellate Division also adds value to the criminal justice community by advising assigned counsel and producing legal education sessions.
- **The Justice Center's evaluation noted opportunities for improvement that HCPD is addressing. Specifically, the office can improve the reporting of time data to enable more consistent workload analysis.** Time data were not entered for every case; not all events or tasks were recorded within a case; and events were often recorded inconsistently within cases. The office determined a need for a formal Standard Operating Procedure directing time recordings, which HCPD is now developing.

CONCLUSION

The Harris County Public Defender has successfully launched and developed positive working relationships within the large and complex Harris County criminal justice system. The Justice Center's analysis revealed positive outcomes for clients in the Misdemeanor Mental Health and Appellate divisions, outcomes that appear markedly better than those for assigned counsel. HCPD can improve internal data reporting to enhance their ability to manage their office, and they committed to making these improvements. Further evaluation by the Justice Center in Summer/Fall 2013 will examine the remaining divisions' workload and outcomes.

THE ASSIGNED COUNSEL SYSTEM

Texas ranks 48th in indigent defense per-capita expenditures nationally. Harris County operates predominantly under an assigned counsel system commonly known as "the wheel." This system traditionally insures predictability in a low-cost/high-volume model, but Harris County pays considerably less per case than other urban counties in the state. Moreover, in terms of outcomes, plea bargaining is even more prevalent than elsewhere, and sentencing outcomes are more costly for the state, with Harris County over-represented in prison and state jail commitments and under-represented in probation commitments.

The indigent defense system is operated by professional court administrators, but the county's indigent defense plan allows for considerable individual judicial discretion, such as using a contract lawyer instead of the wheel, and choosing not to use the public defender as part of the wheel. The quality of representation in the assigned counsel system cannot be monitored or measured in a consistent manner, and payment records in Harris County are not kept in the method required by the state, so it is not possible to determine the payment per each assigned counsel case.

The data Harris County does report to the state allows a view of one key area to improve indigent defense—the size of assigned counsel caseloads. Under national guidelines, misdemeanor caseloads should not exceed 400. Examining the distribution of appointments in the Harris County misdemeanor wheel system, the top 10 percent of attorneys were assigned over 452 cases annually (with an average of 632 cases and the highest at 952 cases). There were 32 attorneys who received more than 400 cases, 6 of whom received more than 400 in one court. These high numbers suggest the potential of excessive caseloads and raise questions about the quality of representation that could result.