

# Harris County Public Defender

## Tenth Year Report

*Statistics 2013-2019*

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May 1, 2020

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Harris County Public Defender



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## LETTER FROM THE CHIEF

The following report was funded by Harris County, Texas, to provide a statistical assessment of the Harris County Public Defender as the office completes its first decade of operations. The years covered in this report (2014-19) supplement a previous report. The prior report was authored by the same researchers who provide the statistical analysis here. See Tony Fabelo & Jessica Tyler, *Improving Indigent Defense: Evaluation of the Harris County Public Defender* (The Council of State Governments Justice Center 2013). That report covered 2011-13.

During most of its first 10 years, HCPD remained relatively stable in size and funding. Its percentage of all appointed criminal and juvenile cases remained in the single digits. Despite the many positive findings of the first report, investment in HCPD grew by little more than annual cost of living increases during its first six years. In 2017, in response to a federal lawsuit against Harris County for its cash bail practices, the HCPD was funded to provide representation at initial bail hearings. However, other operations remain relatively constant in size.

It was not until the fiscal year beginning March 1, 2019, that HCPD received a significant increase in funding. The office's budget increased from about \$11M the previous year to over \$20M. It was designed to increase staff in all divisions. The cases analyzed in this report end September 30, 2019, seven months after the budget increase. Because of the time it takes to hire new personnel and develop their workloads, the increase in cases throughout HCPD will be more accurately reflected in future statistical assessments.

The importance of this assessment is that, combined with the previous report, it shows HCPD consistently provides excellent representation to its clients and adds value to the legal system of Harris County by creating functions previously unavailable. Examples are:

- a nationally recognized training program for new lawyers seeking criminal appointments.
- free continuing legal education for the bar, providing all annual CLE required by the Texas State Bar.
- clean business attire available to all criminal defendants during jury trials.
- representation to all defendants at initial bail hearings, before the appointment of trial counsel.
- challenges resulting in the reversal or elimination illegal fees imposed on defendants.
- successful exonerations of dozens of defendants convicted by discredited forensic evidence.
- staff immigration lawyers providing advice to lawyers on the consequences of a criminal disposition.

HCPD will continue to grow and diversify. More lawyers will be hired to increase HCPD's proportion of appointed cases. The office is in the process of adding new services, including clearing criminal histories by the use of expungement and nondisclosure proceedings. Juvenile representation has included administrative school hearings that are associated with delinquency matters. Ultimately, the office embraces "holistic defense" which simply means addressing clients' needs beyond the mere disposition of their criminal cases, so they will leave the criminal legal system as soon as possible and hopefully not return.

**Alex Bunin, Chief Public Defender**

# I. Introduction

## Overview

The Harris County Public Defender (HCPD) contracted with the Texas Meadows Mental Health Policy Institute (MMHPI) to provide research support to the office. MMHPI was created in 2014. The mission of the Institute is to provide independent, nonpartisan, data-driven, and trusted policy and program guidance that creates systemic changes so all Texans can obtain effective and efficient behavioral health care when and where they need it. Given the overrepresentation of persons with mental illness in the state’s criminal justice system, the Institute also works to improve the policies and programs in said system.<sup>1</sup> A justice system that operates more effectively can also more effectively address the needs of justice involved persons with mental illness. The Technical Assistance (TA) team of the MMHPI is headed by Dr. Tony Fabelo, Senior Fellow for Justice Policy and Jessy Tyler, Senior Director for Justice Research. The team evaluated the HCPD in September 30, 2013 and provided TA regarding developing data for future statistical reports.<sup>2</sup> The TA team works closely with the Texas Indigent Defense Commission (TIDC) in strategic planning and has provided evaluations of public defense systems in different Texas counties.

Section II of this report provides a brief review of the creation of the office and key developments since its inception. Section III reviews representation annual trends for the different populations impacted by the office and review the value-added activities conducted by the office. Section IV reviews expenditures annual trends in the different operational areas of the office. Section V reviews the overall yearly outcomes for misdemeanor, state jail felony and felony cases using aggregate data. Finally, Section VI reviews outcomes comparing lawyer types for felony, state jail felony and juvenile cases and the results of the appellate work of the office. This report is also supplemented with a parallel report entitled *Review of Representation at Magistration*. The supplemental report provides an in-depth review of observations of cases represented by the office at the first bail review hearing, commonly known as the Code of Criminal Procedure (CCP) 15.17 hearing.

This project provides a set of statistical trend analyses for HCPD to generate its first comprehensive statistical report. The team examined data routinely reported to TIDC on county level expenditures and trends. This report has a set of statistical tables based on analysis done on defendant information extracted from HCPD’s defenderData portal. Sections II provides context as an introduction to the statistical sections of the report; however, HCPD can use

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<sup>1</sup> Meadows Mental Health Policy Institute. 2019. Smart Justice. <https://www.texasstateofmind.org/focus/smart-justice/>

<sup>2</sup> Dr. Tony Fabelo, Carl Reynolds, Jessica Tyler. *Improving Indigent Defense: Evaluation of the Harris County Public Defender*. Council of State Governments Justice Center, September 30, 2013.

these statistics to provide its own explanation or commentary to interpret them as needed. MMHPI is not responsible for said interpretations or commentaries made by HCPD in their reporting of these statistics.

## II. Creation of the Office and Developments Since Creation

### Creation of Office

On April 8, 2008, Harris County Commissioners Court voted to conduct a study on establishing a public defender office. After the reviews by county officials and work with the TIDC, Harris County received a \$4.2 million grant from TIDC to establish the office. The state grant covered all year one operational costs. As part of the grant acceptance, the Harris Commissioners Court appointed a 15 member Harris County Public Defender Board to oversee the office and hire the Chief Defender. On November 9, 2010, Commissioners Court hired Alexander Bunin as the Chief Defender on the recommendation of the Board. The Chief started working on December 6, 2010 and continues as the Chief Defender. Divisions within the office became operational at different times and by December 2011 the office was fully operational.

HCPD has administrative staff and four operational divisions – Mental Health, Appellate, Trial, and Juvenile. The Mental Health Division (MHD) is designed to provide specialized defense services to mentally ill defendants charged with misdemeanors, with attorneys supported by social workers that connect defendants with mental health services and research cases for mitigation purposes. MHD attorneys have specialized training in mental health law and have demonstrated aptitude and experience working with individuals with serious mental illnesses. The division has a chief (“Special Counsel”), 12 attorneys, five social workers who actually work across all divisions, and an investigator at the end of TIDC fiscal year 2019. It is staffed to handle 4200 cases (350 per attorney).

At the end of TIDC fiscal year 2019, the Appellate Division included a chief, 11 attorneys, and an investigator. With a caseload of 25 cases per attorney, it was staffed to handle 275 cases (25 per attorney less the chief); TIDC notes the division disposed 113 cases in fiscal year 2019. The Trial Division had 34 attorneys including the division chief and five investigators in fiscal year 2019. The caseload cap is 150 cases per attorney per year, with a goal of 30-35 cases open at any given time. Assuming the Division Chief did not carry a caseload, the office could handle about 5,100 cases annually across as many of the criminal district courts that participate. The Juvenile Division represents youth facing charges in juvenile court. The chief has a 10 percent reduction in a full caseload for each lawyer supervised. Lawyers in the juvenile division have a caseload limit of 200 cases. At the start of TIDC FY 2019, the four lawyers in the Juvenile

Division and one chief could represent 920 cases in a year and by the end of FY 2019 it was staffed to 12 lawyers and one chief and could cover 2,400 cases.<sup>3</sup> The Mental Health Division had 8 attorneys representing 350 clients each at the start of FY 2019; therefore, the division could represent clients on 2,800 cases that year .

## Key Developments Since Creation

Harris County received a \$4.2 million grant from the TIDC to establish the office. These proportion of funds were reduced progressively each year, with Harris County covering the non-grant funded portion, until the county fully funded the office, beginning October 1, 2014 as this was the start of the TIDC fiscal year. In total, the office received \$14.3 million in grant funds over four years with a county match of \$15.2 million. The total yearly operational budget of the office, fully staffed, was approximately \$14.9 million during TIDC's fiscal year 2019.<sup>4</sup> The most significant developments impacting the office since its creation were the federal court decisions related to the pretrial litigation in the county and the impact of Hurricane Harvey which temporally disrupted the operations of the criminal justice system when it hit the Houston area on August 25, 2017.

Since the office became operational in 2010, there have been rapidly changing policies regarding the constitutional standards federal courts now deem essential parts of a defendant's pretrial proceedings in Texas. The standards emanate from litigation in Harris County, which was commonly known as the *ODonnell* case.<sup>5</sup> This federal civil rights case was filed against judges in Harris County's criminal courts at law (misdemeanor), the sheriff, and the county. An early 2017 decision in this case by the local federal court and subsequent federal appeals court decision in 2018 declared parts of the Harris County bail system unconstitutional.<sup>6</sup> The argument in the complaint was that hundreds of defendants were not released on personal bond and were therefore unlawfully jailed for minor offenses because they could not afford money bond or bail payments. The plaintiffs demanded an immediate remedy to the system and the county challenged the proposed plans in the federal court of appeals.<sup>7</sup> More expansive complaints were filed against Galveston and Dallas counties in 2018 and included not only the county judges and magistrates, but also the state district judges (felonies).<sup>8</sup>

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<sup>3</sup> Mireles, C. December 2019. RE: Org Charts. Personal Communication - Org Chart November 2018 and Functional Org Chart 11-2019

<sup>4</sup> TIDC's fiscal year runs from October through September, so TIDC fiscal year 2019 reflects October 1, 2018 through September 30, 2019 data. Harris County's fiscal year runs from March through the following February, so the Harris County fiscal year 2019 is March 1, 2018 through February 28, 2019. The document uses TIDC fiscal year to make use of its aggregate data.

<sup>5</sup> *ODonnell v. Harris County*, Texas, 882 F.3d 528 (2018). The US Court of Appeals for the Fifth Circuit, appellate decision, No. 17-20333, on February 14, 2018 provides the best summary of the litigation in Harris County and provides the courts most recent findings.

<sup>6</sup> Rosenberg, Eli. 29 April 2017. Judge in Houston Strikes Down Harris County's Bail System. <https://www.nytimes.com/2017/04/29/us/judge-strikes-down-harris-county-bail-system.html?mcubz=0&r=0>

<sup>7</sup> Houston Chronicle, County Commissioners spar over bail system suit, March 29, 2017; Bail Reform in Texas (FAQs) by Alex Bunin, Harris County Public Defender.

<sup>8</sup> Booth v. Galveston Cty., No. 3:18-CV-00104, 2019 WL 3714455 (D.D. Tex. Aug. 7, 2019) report and recommendation adopted as modified, No. 3:18-CV-00104, 2019 WL 4305457 (S.D. Tex. Sept 11, 2019)

In Harris County's *ODonnell* case, the U.S. Court of Appeals ordered the following relief:

- Prohibition on using a prescheduled bail amount;
- Verification of an arrestee's ability to pay the money bail or bail payment, with the arrestee given "sufficient opportunity to declare under penalty of perjury, after the significance of the information has been explained, the maximum amount of financial security the arrestee would be able to post or pay up front within 48 hours of arrest."<sup>9</sup>
- Instituting "an adversarial bail review hearing before a County Judge" within 48 hours of the arrest.<sup>10</sup> This requirement was intended "to address the endemic problem of misdemeanor arrestees being detained until case disposition and pleading guilty to secure fasted release from pretrial detention."<sup>11</sup>

The above changes were part of the final opinion approving a proposed consent decree and settlement agreement issued by the U.S. District Court on November 21, 2019.<sup>12</sup>

The operations of HCPD expanded with this litigation. HCPD took responsibility for providing counsel at the first bail hearing (referred to later in the report as the Code of Criminal Procedures CCP 15.17 hearing). This was part of the Amended Local Rule 9 from the judiciary that established the bail review protocols in compliance with the federal court decision. The final decision and consent decree supported additional resource allocation to HCPD to represent these defendants. As the court stated in the final opinion, "the settlement became politically feasible because of the voters' decision in the November 2018 election."<sup>13</sup> The court stated "15 of the 16 County Judges named as defendants lost their reelection bids" and voters elected two new members of the Harris County Commissioners Court and due to said changes the "County Judges voluntarily dismissed the appeal of the amended preliminary injunction."<sup>14</sup>

In 2017, prior and concurrent to changes generated during the *ODonnell* litigation, other developments impacted the operations of the office. These include:

- Hurricane Harvey in 2017. The storm hit Houston in August causing major disruption in the local justice system's operations. The main court building (Criminal Justice Center) was evacuated then closed to operations. Harris County implemented an emergency operational plan that relocated HCPD staff until March 2019. HCPD was the first office

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<sup>9</sup> *ODonnell v. Harris County, Texas*, 882 F.3d 528, 546-49 (2018)

<sup>10</sup> *ODonnell v. Harris County, Texas*, 882 F.3d 528, 546-49 (2018)

<sup>11</sup> *ODonnell v. Harris County, Texas*, 882 F.3d 528, 546-49 (2018)

<sup>12</sup> US District Court, Southern District of Texas, Memorandum and Opinion Approving the Proposed Consent Decree and Settlement Agreement and Granting the Motion to Authorize Compensation of Class Counsel, Civil Action No. H-16-1414, November 21, 2019.

<sup>13</sup> *Ibid*, footnote 19, page 36.

<sup>14</sup> *Ibid*, footnote 10, page 6.

to move back into the building and as of December 2019 there are still courts that are not fully operational in the CJC. Moreover, there was a significant slowdown in the processing of cases, creating a backlog impacting the statistics reviewed here.

- **MacArthur Safety and Justice Challenge Initiative.** This initiative started in April 2016 when Harris County won a \$2 million-dollar grant to plan and implement reforms over two years, which ended in April 2018. The goal of the initiative was to decrease jail usage by 21 percent and reduce racial and ethnic disparities through projects, programs, and reforms tailored to Harris County needs and trends.<sup>15</sup> The county invested \$3.2 million as part of the project. This initiative led to the creation of the Reintegration Court (RIC) originally targeted to release 8,000 low level, non-violent felonies from jail into the supervision of the program. The initiative also included training on the use of the pretrial risk assessment tool, hiring a racial and ethnic disparity coordinator, and creating the First Chance Intervention Program for first time marijuana and retail theft offenders.<sup>16</sup>
- **Joint Processing Center (JPC).** Harris County transitioned to the JPC, which opened on February 2, 2019 and replaced the old Inmate Processing Center (IPC). The JPC is a 246,000 square foot, open concept booking center for the Harris County Jail and combined operations that previously occurred across two city jails (Central and Southeast) and two county buildings (IPC and Central Records) in one.<sup>17</sup> The new space allowed HCPD three intake window/interview stations, as of December 2019, to speak to detainees and private space to do background work for detainees represented by HCPD at the CCP 15.17 hearing. The JPC also replaced the in-person IPC magistration, which started post Hurricane Harvey and had supplanted the previous process of having detainees appear in front of the magistrate via closed-circuit television cameras with full courtroom that the magistrate and staff plus HCPD use. The prosecutor may choose to appear in this courtroom, but as of September 2019 seemed to prefer appearing via video link.

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<sup>15</sup> Harris County 2016 Safety and Justice Fact Sheet. April 2016. <http://www.safetyandjusticechallenge.org/wp-content/uploads/2016/04/Harris-County-Safety-Justice-Challenge-Fact-Sheet.pdf>

<sup>16</sup> Ibid.

<sup>17</sup> Harris Public Media. 31 January 2019. New Facility for Houston, Harris County Will Make Inmate Processing More Efficient. HPM. <https://www.houstonpublicmedia.org/articles/news/2019/01/31/320047/houston-harris-county-new-facility-will-make-inmate-processing-more-efficient/and> Harris Co Sheriff Office. 22 June 2017. JPC Project - City of Houston. Harris County/City of Houston Joint Processing Center. <https://www.houstontx.gov/council/committees/pshs/jpc>

# III. Overview of Caseload Trends

## Overview

This section uses publicly available caseload and cost data from TIDC. These data are provided in aggregate form to TIDC by Harris County annually and reflect the number and cost of cases within the TIDC defined fiscal year of October 1 through September 30. TIDC’s data reflect cases, not individual defendants, represented by different types of public defense options in Texas. The major types of publicly financed defense counsel representation are public defender systems, assigned counsel programs, contract attorneys, and managed assigned counsel programs. Harris County uses all but the latter during the period analyzed in this report.

**Public Defense Counsel Types Defined**

- **Public Defender (HCPD):** refers to salaried staff attorneys who provide criminal defense services for defendants who cannot afford counsel as direct government employees like their prosecutorial counterparts.
- **Appointed Counsel:** refers to court appointment of private attorneys where private attorneys are appointed by judges on a case-by-case basis.
- **Contract Attorneys:** refers to agreements with private attorneys or law firms to provide public defense services for a specific dollar amount and time period.

## Representation Trends All Cases and Misdemeanor and Felonies

Table 1 shows the total number of public defense cases in Harris County, the cases assigned to HCPD and those with appointed or term assignments from FY 2014 to FY 2019.<sup>18</sup> Appointed or contract counsel represented over 90% of the public defense cases assigned in Harris County over the six-year period. HCPD represented 8% of the cases in 2019. During this period, the number of public defense cases decreased by 13% (from 71,661 in FY 2014 to 62,123 in FY 2019) with those represented by appointed or term assignment counsel decreasing by 15% (from 66,756 to 57,040) and those assigned to HCPD increasing by 4% (from 4,905 to 5,083).

<sup>18</sup> TIDC’s fiscal year runs from October 1 of the prior year through September 30 of the named year (for example, FY 2018 is Oct 1, 2017 through Sept 30, 2018) and this was used to generate the statistics in the tables in this section.



Table 1: Number of Public Defense Cases in Harris County and Number and Percentage of HCPD and Appointed or Term Assignment Counsel, FY 2014 – FY 2019

FY	Total Public Defense Cases	HCPD Cases	% HCPD	Appointed or Term Assignments	% Not HCPD
2014	71,661	4,905	7%	66,756	93%
2015	69,821	5,437	8%	64,384	92%
2016	68,003	5,702	8%	62,301	92%
2017	68,387	5,382	8%	63,005	92%
2018	65,169	5,054	8%	60,115	92%
2019	62,123	5,083	8%	57,040	92%
<b>% Change</b>	<b>-13%</b>	<b>+4%</b>		<b>-15%</b>	

Table 2 shows the total number of public defense misdemeanor cases in Harris County, the cases assigned to HCPD and those with appointed or term assignment counsel from FY 2014 to FY 2019. The number of misdemeanor cases with public defense counsel in Harris County decreased by 45% (from 36,024 in FY 2014 to 19,658 in FY 2019) with those assigned to appointed or contracted counsel decreasing by 49% (from 34,469 to 17,534) and those assigned to HCPD increasing by 37% (from 1,555 to 2,124). The percentage of all public defense cases assigned to HCPD increased from 4% in 2014 to 11% in 2019, while the percentage for appointed or term assignment counsel decreased from 96% to 89%.

Table 2: Number of Public Defense Misdemeanor Cases in Harris County and Number and Percentage of HCPD and Appointed or Term Assignment Counsel Cases, FY 2014 – FY 2019

FY	Total Public Defense Cases	HCPD Cases	% HCPD	Appointed Cases	% Appointed
2014	36,024	1,555	4%	34,469	96%
2015	35,972	2,087	6%	33,885	94%
2016	28,840	2,782	10%	26,058	90%
2017	25,046	2,596	10%	22,450	90%
2018	23,324	2,648	11%	20,676	89%
2019	19,658	2,124	11%	17,534	89%
<b>% Change</b>	<b>-45%</b>	<b>+37%</b>		<b>-49%</b>	

Table 3 shows the total number of non-capital felony public defense cases in Harris County, the cases assigned to HCPD and those with appointed or term assignment counsel from FY 2014 to FY 2019. The count excludes cases with public defense provided in the Reintegration Court (RIC) that started in 2016. RIC is presented on the subsequent table.

The number of non-capital felony cases with public defense counsel in Harris County increased by 14% (from 28,669 in FY 2014 to 32,652 in FY 2019). Cases with appointed counsel increased by 177% (from 10,533 to 29,183), those assigned to HCPD decreased by 15% (from 2,079 to 1,772), and those with term assignment counsel decreased by 89% (from 16,057 to 1,697). The proportion of all public defense non-capital felony cases assigned to HCPD is small. HCPD provided representation on 7% of cases in 2014 then decreased to 5% in 2019, while the percentage with appointed counsel increased from 37% in FY 2014 to 89% in FY 2019.

The decrease in those assigned to a contract lawyer representation resulted from three factors. First, in fiscal year 2017 there is a bifurcation in reporting categories into felony and RIC (discussed more below) cases and where from fiscal 2014 through 2016 there was no RIC and all these cases were under the ‘felony’ heading. Second, there was an election in 2016 and the new District Court Judges did not have immediate contracts put in place. And third, and likely more impactful, was work by the TIDC. TIDC’s December 2015 board meeting “determined term assignments longer than one week in duration are considered contract cases”<sup>19</sup> as a general response to contracts and applicable to all 254 counties. TIDC then noted in its 2016 Policy Monitoring Report that the process used by District Court judges in Harris County did not comply with the Commission’s Contract Defender Rules that “require an open application process and executed contracts”<sup>20</sup> with private lawyers. TIDC recommended the District Courts “implement a system meeting the Commission’s Contract Defender Rules for all term assignments exceeding one week”<sup>21</sup> and Harris County’s written response committed to “re-write the Alternative Plan to include the ...rules.”<sup>22</sup> There is no written evidence to support that the judges stopped using term assignment counsel in lieu of taking on the work of putting contracts out to bid, but the timing of the decrease does align with this report.

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<sup>19</sup> TIDC. 2016. Review of Harris County’s Felony ID Systems. Page 14, footnote 18

<sup>20</sup> Ibid. page 15

<sup>21</sup> Ibid. page 17

<sup>22</sup> Harris County District Courts Trying Criminal Cases. 2016. TIDC Policy Monitoring Review Response.

Table 3: Number of Public Defense Non-Capital Felony Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel or Contract Cases, FY 2014 – FY 2019\*

FY	Total Public Defense Cases	HCPD Cases	% HCPD	Appointed Cases	% Appointed	Contract Cases	% Contract
2014	28,669	2,079	7%	10,533	37%	16,057	56%
2015	27,173	2,015	7%	10,040	37%	15,118	56%
2016	31,377	1,797	6%	24,993	80%	4,587	15%
2017	32,952	1,624	5%	27,504	83%	3,824	12%
2018	31,693	1,575	5%	27,573	87%	2,545	8%
2019	32,652	1,772	5%	29,183	89%	1,697	5%
<b>% Change</b>	+14%	-15%		+177%		-89%	

\* Exclude Reintegration Court (RIC) cases.

Table 4 shows the total number of Reintegration Court (RIC) cases with cases assigned to HCPD and those with term assignment counsel from FY 2014 to FY 2019. RIC started in September of 2016 as a treatment and therapy court for non-violent offenders and aimed to serve about 8,000 people a year.<sup>23</sup> It was designed to “maximize diversion by increasing the use of pretrial bonds, pretrial interventions and probation placements,” though probation placements are by definition not diversions.<sup>24</sup> RIC targeted defendants with low-level felony drug possession, theft, and prostitution, and offered them personal bonds to secure a no cost jail release. The program included the possibility of a case dismissal following successful completion of a pretrial diversion program and in the case of an unsuccessful termination the person does not face a guaranteed sentence as with many other diversion programs that require a plea. The total number of public defense cases in RIC increased by 23% (from 2,592 in FY 2017 to FY 3,190 in 2019) with most of the representation provided by term assignment counsel (88% in FY 2019) compared to none by appointed counsel and 12% in FY 2019 by HCPD. RIC cases with contract representation increased by 19% during this period (from 2,355 to 2,800) while those assigned to HCPD increased by 65% (from 237 to 390). Again, the types of cases going to RIC were previously included in the felony case count and these numbers explain the drop in felony cases seen in Table 3. The program has not met the originally set 8,000-person target.

<sup>23</sup> Hardaway, Liz. 18 July 2016. The Harris County DA Invites Law-Breaking Citizens to ‘Make it Right’. *Houstonia*.

<https://www.houstoniamag.com/articles/2016/7/18/the-harris-county-da-invites-law-breaking-citizens-to-make-it-right>

<sup>24</sup> Jail Population Management. Harris County. Retrieved from <https://www.harriscountycit.org/diversion/jail-population-management/> Last accessed 1/26/2020.

Table 4: Number of Public Defense Felony - Reintegration Court (RIC) Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel or Contract Cases, FY 2014 – FY 2019

FY	Total Public Defense Cases	HCPD Cases	% HCPD	Appointed Cases	% Appointed	Contract Cases	% Contract
2017	2,592	237	9%	0	0%	2,355	91%
2018	2,523	209	8%	0	0%	2,314	92%
2019	3,190	390	12%	0	0%	2,800	88%
<b>% Change</b>	+23%	+65%		0%		+19%	

### Representation Trends Juveniles and Appellate Cases

Table 5 shows the total number of juvenile public defense cases in Harris County, the cases assigned to HCPD, and those with appointed counsel from FY 2014 to FY 2019. The total number of public defense juvenile cases decreased by 5% (from 6,438 in FY 2014 to 6,139 in FY 2019) with most of the representation provided by appointed counsel (89% in FY 2019) compared to 11% in FY 2019 by HCPD. Cases assigned to HCPD decreased by 32% during this period (from 998 to 683) while those with appointed counsel increased by less than 1% (from 5,440 to 5,456).

Table 5: Number of Public Defense Juvenile Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel, FY 2014 – FY 2019

FY	Total Public Defense Cases	HCPD Cases	% HCPD	Appointed Cases	% Appointed
2014	6,438	998	16%	5,440	84%
2015	6,225	1,138	18%	5,087	82%
2016	7,096	926	13%	6,170	87%
2017	7,136	788	11%	6,348	89%
2018	7,159	503	7%	6,656	93%
2019	6,139	683	11%	5,456	89%
<b>% Change</b>	-5%	-32%		+0.3%	

### Representation Trends Appellate Cases

Table 6 shows the total number of public defense appellate cases in Harris County, the cases assigned to HCPD, and those with appointed counsel from FY 2014 to FY 2019. The total number of appellate cases decreased by 23% (from 454 in FY 2017 to 350 in FY 2019) with most of the representation provided by appointed counsel (67% in FY 2019) compared to 33% in FY

2019 by HCPD. Cases assigned to HCPD decreased by 58% during this period (from 273 to 114) while those with appointed counsel increased by 30% (from 181 to 236).

**Table 6: Number of Public Defense Appellate Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel, FY 2014 – FY 2019**

<b>FY</b>	<b>Total Public Defense Cases</b>	<b>HCPD Cases</b>	<b>% HCPD</b>	<b>Appointed Cases</b>	<b>% Appointed</b>
<b>2014</b>	454	273	60%	181	40%
<b>2015</b>	385	188	49%	197	51%
<b>2016</b>	546	187	34%	359	66%
<b>2017</b>	535	164	31%	371	69%
<b>2018</b>	357	117	33%	240	67%
<b>2019</b>	350	114	33%	236	67%
<b>% Change</b>	<b>-23%</b>	<b>-58%</b>		<b>+30%</b>	

Table 7 shows the total number of public defense felony appellate cases in Harris County, the cases assigned to HCPD and those with appointed counsel from FY 2014 to FY 2019. The total number of felony appellate public defense cases decreased by 22% (from 433 in FY 2014 to 338 in FY 2019) with most of the representation provided by appointed counsel (70% in FY 2019) compared to 30% in FY 2014 by HCPD. Cases assigned to HCPD decreased by 61% during this period (from 258 to 103) while those with appointed counsel increased by 34% (from 175 to 235).

**Table 7: Number of Felony Appellate Public Defense Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel, FY 2014 – FY 2019**

<b>FY</b>	<b>Total Public Defense Felony Appeals</b>	<b>HCPD Cases</b>	<b>% HCPD</b>	<b>Appointed Cases</b>	<b>% Appointed</b>
<b>2014</b>	433	258	60%	175	40%
<b>2015</b>	349	166	48%	183	52%
<b>2016</b>	522	166	32%	356	68%
<b>2017</b>	497	136	27%	361	73%
<b>2018</b>	330	101	31%	229	69%
<b>2019</b>	338	103	30%	235	70%
<b>% Change</b>	<b>-22%</b>	<b>-61%</b>		<b>34%</b>	

Table 8 shows the total number of public defense misdemeanor appellate cases in Harris County, the cases assigned to HCPD and those with appointed counsel from FY 2014 to FY 2019. The total number of misdemeanor appellate cases decreased by 27% (from 15 in FY 2017 to 11

in FY 2019) with no representation provided by appointed counsel. Cases assigned to HCPD decreased by 27% during this period (from 15 to 11) while those with appointed counsel increased by 34% (from 175 to 235).

**Table 8: Number of Public Defense Misdemeanor Appellate Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel, FY 2014 – FY 2019**

<b>FY</b>	<b>Total Public Defense Misd Appeals</b>	<b>HCPD Cases</b>	<b>% HCPD</b>	<b>Appointed Cases</b>	<b>% Appointed</b>
<b>2014</b>	15	15	100%	0	0%
<b>2015</b>	36	31	86%	5	14%
<b>2016</b>	29	29	100%	0	0%
<b>2017</b>	28	28	100%	0	0%
<b>2018</b>	16	16	100%	0	0%
<b>2019</b>	11	11	100%	0	0%
<b>% Change</b>	<b>-27%</b>	<b>-27%</b>		<b>NA</b>	

Table 9 shows the total number of public defense juvenile appellate cases in Harris County, the cases assigned to HCPD and those with appointed counsel from FY 2014 to FY 2019. The total number of juvenile appellate cases decreased by 83% (from 6 in FY 2017 to 1 in FY 2019) with most of the representation provided by appointed counsel. Appointed counsel represented 100% of the public defense juvenile cases in FY 2019 and never represented less than 60%. HCPD represented four cases of 37 total over this six-year period.

**Table 9: Number of Public Defense Juvenile Appellate Cases in Harris County and Number and Percentage of HCPD and Appointed Counsel, FY 2014 – FY 2019**

<b>FY</b>	<b>Total Public Defense Juvenile Appeals</b>	<b>HCPD Cases</b>	<b>% HCPD</b>	<b>Appointed Cases</b>	<b>% Appointed</b>
<b>2014</b>	6	0	0%	6	100%
<b>2015</b>	2	0	0%	2	100%
<b>2016</b>	5	2	40%	3	60%
<b>2017</b>	10	0	0%	10	100%
<b>2018</b>	13	2	15%	11	85%
<b>2019</b>	1	0	0%	1	100%
<b>% Change</b>	<b>-83%</b>	<b>NA</b>		<b>-83%</b>	

**Representation Trends CCP 15.17 Hearing**

Texas Code of Criminal Procedures (CCP 15.17) requires an arrestee be brought before a magistrate within 48 hours to “inform in clear language the person arrested of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial.” The magistrate must also inform the person of his right to request counsel if he cannot afford it and the procedures to do so if the person requests counsel. Many counties have implemented a “24-hour policy” for all to comply with the statutory requirement that a magistrate determine whether probable cause exists within 24 hours on misdemeanor arrests without a warrant. The probable cause finding can occur in chambers based on a review of a probable cause affidavit from the arresting officer but combining the two, while not required, is good time management. Some counties like Harris County and Bexar County are providing public defenders at this hearing.

Table 10 shows the number of people represented at the CCP 15.17 hearings in Harris County from FY 2017 to FY 2019. HCPD represents all defendants at the CCP 15.17 hearing, unless the person opts out, regardless of indigence status. Representation began on July 31, 2017, but TIDC did not started collecting information on representation at the CCP 15.17 hearing for any county until FY 2018. HCPD data were used to calculate the two months of FY 2017. Over 100,000 people were represented during the fiscal year 2017 through 2019 period at the CCP 15.17 compared to none before that policy was implemented.

**Table 10: Number of CCP 15.17 Cases in Harris County Represented by HCPD, FY 2017 – FY 2019**

<b>Fiscal Year</b>	<b>Number</b>
<b>2017 (two months)</b>	1,973
<b>2018</b>	59,561
<b>2019</b>	49,050
<b>Total</b>	<b>100,594</b>

**Value Added Activities Conducted by the Office**

HCPD provides services to the Harris County criminal justice system that benefit the defense community and county. A qualitative review shows the benefits in the areas below.

**Appellate Division**

This Appellate Division provides an attorney of the week to answer a direct line for private lawyers with legal questions on their appointed cases. The Division has developed a “Brief

Bank” providing a document with the responses to the most common questions they address. The division’s lawyers also organize a “Yearly Appellate Seminar” finance by the Texas Criminal Defense Lawyers Association (TCDLA). These activities are done on top of a regular caseload of the lawyers of the division.

As part of the appellate work, the HCPD has successfully applied for relief for defendants effected by systemic errors or misconduct. The office is able to mobilize mass responses in situations that may create a lot of unrepresented, post-conviction defendants at once. These include cases of faulty forensic science; lab, police, or prosecutorial misconduct; and exonerations for actual innocence. For example, the office has:

- Reviewed more than 3,000 cases on a DNA mixture grant from TIDC.
- Filed and represented defendants charged unconstitutional fines and fees leading to a finding in *Salinas v. State* that two programs funded by fines assessed following a finding or plea of guilt (or a deferred adjudication) were not criminal-justice programs and a legal use of court costs.
- Handled about 25 post-conviction writs from a DPS lab analyst’s irregularities in drug cases.
  - This work led to an HCPD case *Ex parte Coty* that instituted new rules for how the state assesses cases when one person clearly committed misconduct in at least one instance and may have done so in many other instances.
- Represented about 25 people on motions for new trial, followed by dismissals, and criminal record erasures for people convicted of online solicitation following *Ex parte Lo’s* finding that the felony statute was unconstitutional.
- Represented persons with wrongful convictions due to false positive results on a commercial field test for controlled substances that incorrectly identified a variety of substances as illegal drugs.

### Other Divisions Added Value Activities

Other HCPD divisions engage in activities that add value. For example:

- Felony Division routinely represents fact witnesses, individuals who testify regarding personal knowledge of another’s case, in felony cases so they do not incriminate themselves.
- Juvenile Division provided TCDLA funded preparatory CLE to any lawyer interested in sitting for an exam newly required by the juvenile judges for inclusion in the juvenile appointment list.



- Immigration Section (IS) of HCPD’s Holistic Services Division, which will get a chief in May 2020, assists with clients who have immigration statuses that could be negatively impacted or revoked following an arrest, conviction, or deferred adjudication and with any defendant unable to afford counsel whose lawyer contacts the office about immigration questions.
  - This team began operating with two lawyers in August 2019 and hopes to expand in the future to work with the lawyer for any person without US citizenship status processed in the JPC.
  - IS works to find what consequences the defendant could face for the arrest, charge, or various dispositions on that charge. They provide a report outlining collateral consequences to the client’s lawyer and included suggestions with how to proceed to avoid these potential additional costs.
  - The IS also hosted in September 2019 a CLE attended by private defense lawyers who were already contacting IS six weeks after its inception.

### Countywide Activities

HCPD helped as representatives of the county during the federal *ODonnell* bail litigation. One result of the litigation was a consent decree signed in August 2019 with the requirement that each person charged with a misdemeanor in Harris County and appearing for a Code of Criminal Procedures (CCP) 15.17 hearing be represented by counsel to argue bail amount and probable cause. HCPD was positioned to provide this representation to comply with the new standards set by the consent decree (see *Supplemental Report, Review of Representation at Magistration*, March 13, 2020).

HCPD alumni are now part of the judiciary in the county, bringing more familiarity about the office and defense issues to the bench. Following the 2018 elections, six HCPD attorneys were elected to a variety of benches in the Houston area in the election of 2018 (one to the 14<sup>th</sup> Criminal Court of Appeals, one to the 1<sup>st</sup> Criminal Court of Appeals, two to District Court benches, and two to County Court at Law benches) and two more to magistrate positions.

HCPD provides services to the criminal justice involved persons in the county. For example, one lawyer leads a book club in a maximum-security female unit of the Harris County Jail. The group started in August 2018, meets twice a month, and is supplied with books by a crowdfunding campaign started by the lawyer, Ms. Beckner. It is hard to quantify the impact of this type of activity on inmates’ behavior or recidivism. *The Texas Observer* reported a decline in disciplinary incidents in the female unit per anecdotal story by the sergeant on duty.<sup>25</sup> Finally,

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<sup>25</sup> Beckner, Amalia. 2 Dec 2019. Why I Started a Book Club in the Harris County Jail. *The Texas Observer*. <https://www.texasobserver.org/why-i-started-a-book-club-in-the-harris-county-jail/>

the office collects presentable professional clothing for any Harris County defendants unable to afford counsel to wear during jury trial.

### Activities Impacting the Defense Community

HCPD conducts activities that improve the Harris County defense community. For example, the office designed the Future Appointed Counsel Training Program (FACT) in 2013 as a one-year comprehensive training, mentoring, and support program for 10 new criminal defense lawyers who wanted to take appointed cases in the county. FACT trained young lawyers on how to represent clients in criminal cases and, specifically, how to do so in Harris County. The program included curriculum, assignment to mentor lawyers in Houston and placement in *Gideon's Promise*, a three-year program for new public defenders.<sup>26</sup> By 2020, FACT trained over 40 lawyers in Harris County. It was named as an ABA Exemplary Defense Program in 2018 and became a model for numerous mentorship programs in Texas, including TIDC's statewide program Future Indigent Defense Leaders (FIDL) for which HCPD holds and manages a grant. HCPD delivered FACT with grant funding from the Department of Justice (DOJ), Bureau of Justice Assistance (BJA) at no cost to the county.

As previously noted, HCPD regularly hosts CLE training that is subsidized by TCDLA at no cost to the county. The Fair Defense Act requires a minimum of six hours of criminal law CLE for lawyers to take appointments in any county. HCPD provides a two-day seminar annually for counsel to meet this requirement. In 2019, 887 people attended 25 CLE courses. These courses provided 41.5 credit hours (including 5.75 in ethics) for a total of 1,590 hours delivered.<sup>27</sup> For comparison, the statewide membership organization Texas District and County Attorney Association (TDCAA) provided 68 CLE events.<sup>28</sup>

The lawyers of the office play outside leadership roles. The Chief Defender Alex Bunin was deposed and submitted a declaration, both of which were relied upon in the order, in *Booth v. Galveston County*, a case similar to *ODonnell*, and sits on the TIDC board. He has published numerous articles as have other lawyers in the office. Among other staff, Allison Mathis has a regular column in the ABA's Criminal Justice Section Magazine while others have contributed to TCDLA's magazine *Voices for the Defense* and the State Bar of Texas Magazine; Eric Davis is on faculty at NACDL National Trial College; Kenneth Hardin is on the board of *Gideon's Promise*; and Janie Maselli Wood chairs the State Bar's Legal Services to the Poor in Criminal Matters.

Finally, the office leadership also participates in the following committees or task forces:

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<sup>26</sup> *Gideon's Promise* is a 501 (C)(3) public defender organization whose mission is to transform the criminal justice system by building a movement of public defenders who provide equal justice for marginalized communities. More information available: <https://www.gideonspromise.org/>

<sup>27</sup> The sum for all courses of number of attendees x number of credit hours for each course.

<sup>28</sup> Texas District and County Attorney Association (@TDCAA). "Some TDCAA data to share as we close the books on 2019." 2/5/2020. Tweet.

- Harris County Criminal Justice Coordinating Council
- MacArthur Foundation’s Safety + Justice Grant Implementation Committee
- Criminal Justice Center Tenant’s Committee
- Citation and Release Working Group
- Racial and Ethnic Disparity Committee
- PFM Consulting Study
- Harris County Criminal Lawyers Association (HCCLA)
- Texas Criminal Defense Lawyers Association (TCDLA)
- National Association for Public Defense (NAPD)
- National Associate of Criminal Defense Attorneys (NACDL)
- American Bar Association (ABA)
- Trial Lawyer’s College and Gideon’s Promise.

## IV. Expenditure Trends

### Overview

This section reviews the expenditure trends for HCPD using TIDC data. Throughout the years reviewed here the office grew rapidly and regularly. The snapshot aggregate data has limits in terms of capturing the active cases and attorneys. The TIDC cases typically reflect disposed cases while the number of attorneys reflect the number at a given point in a year. This creates a lag in the cases per attorney calculation as new attorneys come on but have not been employed long enough to dispose many cases. It also creates a likely artificially higher cost per case as the attorney has received salary and benefits during this period thus the county incurred costs but may not have disposed many or any cases so the TIDC caseloads.

### Expenditure Trends All Cases and Misdemeanor and Felonies

Table 11 shows Harris County’s total public defense costs and breaks down costs by HCPD and appointed or term assignment counsel from FY 2014 to FY 2019. Total public defense cases declined during this period by 13% but total public defense costs to the county increased by 50% (from \$31.8 million in FY 2014 to \$47.6 million in FY 2019). The cases assigned to HCPD increased by 4% during this period (from 4,905 to 5,083), but the cost of the office increased by 54% (from \$8.8 million to \$13.5 million). The cases assigned to appointed or term assignment counsel declined by 15% during this period (from 66,756 to 57,040) but the cost to the county increased by 48% (from \$22.9 million to \$34 million).

Table 11: Total Harris County Public Defense Cost, by HCPD and Appointed or Contract Counsel, FY 2014 – FY 2019

FY	Total Public Defense Cases	HCPD Cases	Total HCPD Cost	Appointed or Contract	Total Cost Appointed or Term Assignment	Total Harris County Cost
2014	71,661	4,905	\$8,816,335	66,756	\$22,945,975	\$31,762,310
2015	69,821	5,437	\$9,443,597	64,384	\$23,056,751	\$32,500,348
2016	68,003	5,702	\$10,138,311	62,301	\$25,628,119	\$35,766,430
2017	68,387	5,382	\$11,373,211	63,005	\$27,888,974	\$39,262,185
2018	65,169	5,054	\$11,146,178	60,115	\$28,347,148	\$39,493,326
2019	62,123	5,083	\$13,577,288	57,040	\$33,977,434	\$47,554,722
% Change	-13%	+4%	+54%	-15%	+48%	50%

Table 12 shows Harris County’s public defense costs for misdemeanor cases and breaks down cost for HCPD and appointed counsel from FY 2014 to FY 2019. Total public defense misdemeanor cases declined for appointed counsel by 49% (from 34,469 in FY 2014 to 17,534 in FY 2019) while they increased during the same period for HCPD by 37% (from 1,555 to 2,124). The overall cost for HCPD increased by 94% (from \$1.2 million to \$2.4 million) and for appointed counsel overall cost increased by 62% (from \$3.4 million to \$5.5 million). The cost per case also increased for both. HCPD cost per case increased by 42% and appointed counsel increased by 218%. In all the years reviewed, the cost per case was higher for HCPD than for appointed cases (\$1,131 cost per case in FY 2019 for HCPD compared to \$312 for appointed cases).

Table 12: Total Harris County Misdemeanor Public Defense Cost and Cost per Case, by HCPD and Appointed, FY 2014 – FY 2019

FY	HCPD Cases	Costs	Cost Per Case	Appointed Cases	Costs	Cost Per Case
2014	1,555	\$1,236,175	\$795	34,469	\$3,370,670	\$98
2015	2,087	\$1,548,864	\$742	33,885	\$3,367,198	\$99
2016	2,782	\$1,965,888	\$707	26,058	\$3,321,852	\$127
2017	2,596	\$1,937,008	\$746	22,450	\$3,618,293	\$161
2018	2,648	\$2,145,917	\$810	20,676	\$4,758,758	\$230
2019	2,124	\$2,401,546	\$1,131	17,534	\$5,473,855	\$312
% Change	+37%	+94%	42%	-49%	+62%	+218%

Table 13 shows Harris County’s public defense costs for non-capital felony cases and breaks down cost for HCPD and appointed counsel from FY 2014 to FY 2019 cases. Total public defense non-capital felony cases declined for HCPD by 15% (from 2,079 in FY 2014 to 1,772 in FY 2019) but total costs increased by 28% (from \$3.4 million to \$4.4 million). Part of this decrease is due to RIC bifurcating the felony cases into two different reporting cohorts (see Table 14); the same pattern is seen for contract cases. Cost per case increased by 50% (from \$1,641 to \$2,464) for HCPD.

Total public defense non-capital felony cases increased for appointed counsel by 177% (from 10,533 in FY 2014 to 29,183 in FY 2019) while the total cost of the cases increased by 66% (from \$13.5 million to \$22.5 million). Cost per case decreased by 40% (from \$1,285 to \$770) for appointed counsel. Finally, total public defense non-capital felony cases declined for term assignment counsel by 89% (from 16,057 in FY 2014 to 1,697 in FY 2019) and the total cost of the cases declined by 58% (from \$3 million to \$1.2 million). Term assignment counsel’s cost per case increased by 294% (from \$185 to \$728). During this period, the per case cost of appointed and term assignment counsel converged: in FY 2014 there was an \$1,100 cost difference for cases by counsel type and by FY 2019 the difference was only \$42. It is possible the type of cases represented by contract and appointed counsel shifted, so cost per case amount may reflect that shift as well as any other policy level changes surrounding use of counsel type.

**Table 13: Total Harris County Non-Capital Felony Public Defense Cost and Cost per Case, by HCPD, Appointed and Contract Counsel, FY 2014 – FY 2019**

FY	HCPD Cases	Costs	Cost Per Case	Appointed Cases	Costs	Cost Per Case	Term Assignment Cases	Costs	Cost Per Case
2014	2,079	\$3,412,359	\$1,641	10,533	\$13,536,495	\$1,285	16,057	\$2,963,300	\$185
2015	2,015	\$3,490,810	\$1,732	10,040	\$13,329,047	\$1,328	15,118	\$2,998,311	\$198
2016	1,797	\$3,707,205	\$2,062	24,993	\$16,869,348	\$675	4,587	\$1,715,875	\$374
2017	1,624	\$3,628,499	\$2,243	27,504	\$17,612,969	\$640	3,824	\$1,726,935	\$452
2018	1,575	\$3,604,719	\$2,289	27,573	\$17,086,252	\$620	2,545	\$1,508,445	\$593
2019	1,772	\$4,366,801	\$2,464	29,183	\$22,478,924	\$770	1,697	\$1,235,715	\$728
% Change	-15%	+28%	+50%	+177%	+66%	-40%	-89%	-58%	+294%

**Expenditure Trends Reintegration Court (RIC)**

Table 14 shows Harris County’s total public defense cost for non-capital felony cases represented in the Reintegration Court (RIC) and breaks down cost by HCPD and term assignment counsel from FY 2017 to FY 2019. Public defense provision in RIC came from contract attorneys and HCPD only; there were not case by case assignments of private

appointed counsel. Total non-capital felony RIC cases increased for HCPD by 65% (from 297 in FY 2017 to 390 in FY 2019) and the cost of the cases increased by 81% (from \$526,529 to \$961,090). HCPD cost per case increased by 10% from \$2,234 to \$2,464. Total public defense non-capital felony RIC cases represented by contract counsel increased by 19% from 2,355 in FY 2017 to 2,800 in FY 2019, the cost of the cases increased by 46% from \$845,990 million to \$1.2 million, and the cost per case increased by 23% (from \$359 to \$440).

**Table 14: Total Harris County Non-Capital Felony Public Defense Cost and Cost per Case for Reintegration Court (RIC), by HCPD, Appointed, and Term Assignment Counsel, FY 2017 – FY 2019**

FY	HCPD Cases	Costs	Cost Per Case	Appt. Cases	Term Assign. Cases	Costs	Cost Per Case
<b>2017</b>	237	\$529,529	\$2,234	0	2,355	\$845,990	\$359
<b>2018</b>	209	\$478,340	\$2,289	0	2,314	\$1,802,995	\$468
<b>2019</b>	390	\$961,090	\$2,464	0	2,800	\$1,231,735	\$440
<b>% Change</b>	<b>+65%</b>	<b>+81%</b>	<b>+10%</b>	<b>0%</b>	<b>+19%</b>	<b>+46%</b>	<b>+23%</b>

**Expenditure Trends CCP 15.17 Hearings**

Table 15 shows the Harris County’s cost for providing representation at CCP 15.17 hearings for FY 2018 and FY 2019. The representation is provided by HCPD to all felony defendants who do not opt out and all misdemeanor defendants who do not automatically get a personal bond regardless of whether the person’s ability to afford counsel. Although representation started in July 31, 2017, TIDC did not compile statistics until FY 2018. The number of cases represented decreased by 18% (from 59,561 in FY 2018 to 49,050 in during this period) likely due to policy changes regarding automatic personal bonds for misdemeanor arrestees. The overall cost decreased by 6% (from \$1.4 million to \$1.3 million) and the cost per person increased by 13% (from \$24.04 to \$27.23) or \$3.19.

**Table 15: Harris County Cost for CCP 15.17 Hearings by HCPD, FY 2018 – FY 2019**

Fiscal Year	Number	Cost	Per Person
<b>2018</b>	59,561	\$1,432,006	\$24.04
<b>2019</b>	49,050	\$1,335,617	\$27.23
<b>% Change</b>	<b>-18%</b>	<b>-6%</b>	<b>13%</b>

**Expenditure Trends Juvenile Justice**

Table 16 shows Harris County’s public defense costs for juvenile cases and breaks down cost for HCPD and appointed counsel from FY 2014 to FY 2019 cases. It is important to note that

juvenile cases are appointed and paid differently than adult criminal cases, which are typically paid at disposition. Juvenile cases may be paid at multiple points through the adjudicative process and multiple appointed lawyers may also work on an individual case from filing to disposition, so a paid case does not work as a proxy for a disposed case. As a result, the cost of representation per case disposed is a weaker measure for singular cases represented from filing to disposition when reviewing these data. Cost per case for juvenile cases may be better described as cost per payment with one case having multiple payments between filing and disposition. The number of status hearings for those in custody, one every 10 days by law, amplifies this difference. For example, a case with appointed counsel where the juvenile is in custody for 100 days could have 11 payments (10 status hearings and one disposition) and look like 11 cases at \$554 each when it was really one case at \$6,094. Conversely, if HCPD does not get appointed on in custody cases or reports disposed cases and not per activity payments, HCPD’s cost per case may be artificially higher. The aggregate data does not disambiguate this information to measure this impact.

The number of juvenile cases assigned representation by HCPD fluctuated significantly during this period, with the number of cases peaking in FY 2015 (1,138) and a number less than half of the peak in 2018 (503). The trend during this period shows a decline of 32% (from 998 cases in 2014 to 683 in 2019) while expenditures increased by 4% (from \$1.3 million to \$1.4 million). With the caveat stated above, the cost per case for juvenile cases represented by HCPD increased by 51% during this period (from \$1,332 in FY 2014 to \$2,016 in FY 2019). The number of juvenile cases represented by appointed counsel increased by less than 1% (from 5,440 to 5,456) and the overall costs increased by 23% (from \$2.5 million to \$3 million). The cost per case for appointed cases increased by 23% (from \$452 to \$554).

**Table 16: Total Harris County Public Defense Costs and Cost per Case for Juvenile Cases, by HCPD and Appointed Counsel, FY 2014 – FY 2019**

FY	HCPD Cases	Costs	Cost Per Case	Appointed Cases	Costs	Cost Per Case
<b>2014</b>	998	\$1,328,115	\$1,331	5,440	\$2,456,661	\$452
<b>2015</b>	1,138	\$1,480,061	\$1,301	5,087	\$2,654,579	\$522
<b>2016</b>	926	\$1,460,360	\$1,577	6,170	\$2,989,056	\$484
<b>2017</b>	788	\$1,463,495	\$1,857	6,348	\$3,379,879	\$532
<b>2018</b>	503	\$1,411,419	\$2,806	6,656	\$3,414,098	\$513
<b>2019</b>	683	\$1,377,086	\$2,016	5,456	\$3,021,382	\$554
<b>% Change</b>	<b>-32%</b>	<b>+4%</b>	<b>+51%</b>	<b>+0.3%</b>	<b>+23%</b>	<b>+23%</b>

### Expenditure Trends Appellate Cases

Table 17 shows the Harris County’s total public defense cost for felony appellate cases with a break down by HCPD and appointed counsel from FY 2014 to FY 2019. The number of felony appellate cases in Harris County decreased by 61% (from 258 in FY 2014 to 103 in 2019), while total costs increased by 14% from \$1.7 million in FY 2014 to \$1.9 million in FY 2019. The cost per case increased by 185% from \$6,621 in FY 2014 to \$18,884 in FY 2019 as the total costs increased while the caseload declined. Appointed counsel had an increase of 34% as the number of cases increased from 175 to 235, but costs decreased by 9% from \$0.6 million to \$0.5 million. The cost per case dropped even faster with a 32% decrease from \$3,350 to \$2,267. As noted in the value-add section earlier in the report, the Appellate Division also addresses broad systemic issues which may not be captured within the number of disposed appeals.

**Table 17: Total Harris County Public Defense Felony Appellate Cost and Cost per Case for HCPD and Appointed Counsel, FY 2014 – FY 2019**

FY	HCPD Cases	Costs	Cost Per Case	Appointed Cases	Costs	Cost Per Case
<b>2014</b>	258	\$1,708,474	\$6,621	175	\$586,235	\$3,350
<b>2015</b>	166	\$1,579,071	\$9,512	183	\$704,995	\$3,852
<b>2016</b>	166	\$1,670,423	\$10,063	356	\$716,162	\$2,012
<b>2017</b>	136	\$1,989,995	\$14,632	361	\$671,768	\$1,861
<b>2018</b>	101	\$1,701,618	\$16,847	229	\$461,185	\$2,014
<b>2019</b>	103	\$1,945,035	\$18,884	235	\$532,823	\$2,267
<b>% Change</b>	<b>-61%</b>	<b>+14%</b>	<b>+185%</b>	<b>34%</b>	<b>-9%</b>	<b>-32%</b>

Table 18 shows Harris County’s total public defense cost for misdemeanor appellate cases with a break down HCPD and appointed counsel from FY 2014 to FY 2019. Except for 2015, when 5 misdemeanor appellate cases were represented by appointed counsel, HCPD provided all the representation for this case level. HCPD cases declined by 27% during this period (from 15 to 11). The cost to represent these cases increased by 232% (from \$57,149 to \$189,849) and the cost of representation per case increased by 353% (from \$3,810 to \$17,259).



Table 18: Harris County Total Public Defense Misdemeanor Appellate Cost and Cost per Case, by HCPD and Appointed Counsel, FY 2014 – FY 2019

FY	HCPD Cases	Costs	Cost Per Case	Appointed Cases	Costs	Cost Per Case
2014	15	\$57,149	\$3,810	0		
2015	31	\$197,211	\$6,362	5	\$10,688	\$2,138
2016	29	\$89,625	\$3,091	0		
2017	28	\$184,163	\$6,577	0		
2018	16	\$124,446	\$7,778	0		
2019	11	\$189,849	\$17,259	0		
<b>% Change</b>	<b>-27%</b>	<b>+232%</b>	<b>+353%</b>	<b>NA</b>		

Table 19 shows the Harris County’s total public defense cost for juvenile appellate cases and breaks down costs by appointed counsel from FY 2014 to FY 2019. Except for 2016 and 2018, when 2 juvenile appellate cases were represented by HCPD, all the representation done in these cases was provided by appointed counsel. Cost and cost per case for HCPD is not reported to TIDC and with only 4 of 37 cases over six years, any cost report would be anomalous and not indicative of a pattern. The appointed cases declined by 83% during this period (from 6 to 1). The cost to represent these cases decreased by 86% (from \$21,507 to \$3,000) and the cost of representation per case decreased by 16% (from \$3,585 to \$3,000).

Table 19: Total Harris County Public Defense Juvenile Appellate Cost for Appointed Counsel, FY 2014 – FY 2019

FY	Appointed Cases	Costs	Cost Per Case
2014	6	\$21,507	\$3,585
2015	2	\$2,621	\$1,311
2016	3	\$15,826	\$5,275
2017	10	\$33,140	\$3,314
2018	11	\$35,415	\$3,220
2019	1	\$3,000	\$3,000
<b>% Change</b>	<b>-83%</b>	<b>-86%</b>	<b>-16%</b>

## V. Trends Highlighting Key Outcome Categories

### Overview

The section provides an overview of general trends in the outcomes of misdemeanor and felony cases. Outcomes are defined in the list below. Note that if the defendant has one case, the outcome is measured for that case. If the defendant has multiple cases, the “ruling outcome” is the “worst” outcome. The “ruling case” for measuring outcomes is the one with the most serious charge as defined by the standard ranking of offense grade at filing, e.g. First Degree Felony, Misdemeanor A, etc. This information was generated using HCPD case level records from defenderData for the TIDC fiscal years of interest.

#### Defendant Outcomes Defined

- **Acquittal:** Defendant was found not guilty on all charges at trial (bench or jury).
- **Case Dismissed:** Defendant does not face punishment for the case/charge and the case is dismissed.
- **Pretrial Diversion Dismissal:** Defendant does not face punishment for the case/charge following successful completion of a pretrial diversion program and the case is dismissed. The number of these is so low, it is only broken out for RIC as this is the desired outcome for persons who did not have a case dismissal.
- **Deferred Adjudication:** Defendant received a supervisory term that, if either successfully completed or terminated, results in no conviction.
- **Dismissed Some, Guilty Some:** Defendants with more than one charge that have a mixed outcome including at least one finding of guilt and one dismissal.
- **Guilty:** Defendant plead guilty or was found guilty at trial, this includes pleas of no contest not resulting in deferred adjudication.

For defendants disposed with deferred adjudication, entering a plea of guilty, or found guilty at trial, the following sentence outcomes are used:

- **Fine Imposed:** Only a monetary fine was imposed.
- **Deferred Adjudication:** Placed on community supervision following a disposition of deferred adjudication. Upon successful completion of the supervision term, the defendant avoids a formal criminal conviction. It is considered a ‘better’ outcome than straight probation though it carries many of the collateral consequences of a conviction until the term of supervision is successfully completed and the defendant returns to court and successfully petitions to expunge this record. If the client is revoked, he faces the maximum possible penalty for the offense without credit for any time served in the community.
- **Sentenced to Community Supervision:** Placed on community supervision with a sentence of straight probation.
- **Sentenced to Time Served:** Sentenced to incarceration in county jail, state jail, or prison.

### Outcomes Misdemeanor Defendants

Table 20 shows the outcomes for misdemeanor defendants represented by HCPD from FY 2014 to FY 2019. The percentage of misdemeanor defendants found “guilty/guilty all” decreased from 77% in 2014 to 41% in 2019. The percentage found “guilty in some/dismissed in some” increased from 5% in 2014 to 20% in 2018 then declined to 13% in 2019. Those with “all cases dismissed” increased from 17% in 2014 to 39% in 2019. The percent disposed with a deferred adjudication stayed between 1% and 2% during this period.

Table 20: Outcomes for Misdemeanor Defendants Represented by HCPD, FY 2014 – FY 2019

Outcome	2014	2015	2016	2017	2018	2019
<b>Acquittal</b>	1	0	3	2	1	0
	0.1%	0.0%	0.1%	0.1%	0.1%	1%
<b>Dismissed All</b>	229	248	502	520	530	783
	17%	16%	21%	25%	29%	39%
<b>Deferred Adjudication</b>	21	28	26	29	17	25
	2%	2%	1%	1%	1%	1%
<b>Guilty Some, Dismissed Some</b>	64	99	152	175	368	238
	5%	6%	6%	8%	20%	13%
<b>Guilty/Guilty All</b>	1,035	1,200	1,698	1,391	910	718
	77%	76%	71%	66%	50%	41%
<b>Total Defendants</b>	<b>1,350</b>	<b>1,575</b>	<b>2,381</b>	<b>2,117</b>	<b>1,826</b>	<b>1,764</b>

Table 21 shows the punishments for misdemeanor defendants represented by HCPD from FY 2014 to FY 2019. The results are stable overtime and almost all defendants found guilty getting county jail time (between 97% and 98%).

**Table 21: Punishments for Misdemeanor Defendants Represented by HCPD, FY 2014 – FY 2019**

<b>Punishment</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Deferred</b>	21	28	26	29	17	25
	1.9%	2.1%	1.4%	1.8%	1.3%	2.5%
<b>Probation</b>	2	2	4	6	6	4
	0.2%	0.2%	0.2%	0.4%	0.5%	0.4%
<b>County Jail</b>	1,095	1,297	1,845	1,559	1,272	752
	97.9%	97.7%	98.4%	97.8%	98.2%	97.0%
<b>Total</b>	<b>1,118</b>	<b>1,327</b>	<b>1,875</b>	<b>1,594</b>	<b>1,295</b>	<b>751</b>

Table 22 shows the average length of punishments for misdemeanor defendants represented by HCPD and found guilty or receiving deferred adjudication from FY 2014 to FY 2019. As stated above, the majority of defendants were punished with jail time. The average number of days for the jail sentence fluctuated from 38 days in 2014 to a low of 29 days in 2017 to a high of 39 days in 2019. County jail days credited fluctuated from 18 in 2014 to a high of 23 in 2019. Actual jail days to serve fluctuated from a high of 20 days in 2014 and 2019 and to a low of 13 days in 2016. Note that not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant. The deferred sentences increased from an average of 10 months in 2014 to 15 months in 2018 then decreased to 10 months in 2019. Probation sentences increased from an average of 12 months in 2014 to 16 months in 2019; however, the number of probation sentences is so low than one particularly long or short sentence can have a large impact on the average.

Table 22: Punishment Length Average for Misdemeanor Defendants Represented by HCPD, FY 2014 – FY 2019

Punishment Length		2014	2015	2016	2017	2018	2019
<b>Deferred</b>	#	21	28	26	29	17	25
	Months	10	12	9	11	15	10
<b>Probation</b>	#	2	2	4	6	6	4
	Months	12	12	18	15.8	16	16
<b>County Jail</b>	#	1,095	1,297	1,845	1,559	1,272	952
	Days	38	34	30	29	33	39
<b>County Jail Credit</b>	Days	18	15	18	14	21	23
<b>Actual County Jail to Serve*</b>	Days	20	19	13	15	12	20

\*Not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant

Table 23 shows the number of trials for misdemeanor defendants represented by HCPD from FY 2014 to FY 2019. The number of trials is low, with six in 2016, two in 2014, 2015, 2017 and one in 2018, representing less than 1% of the number of defendants each year. A low trial rate on misdemeanors is not uncommon especially for clients with mental health diagnoses charged with offenses like trespass that are easily proven. All two defendants in 2017 and one defendant in 2018 were acquitted. There were no defendants brought to trial in 2019. Note that the low number of trials make any minor change in the trial outcomes impact these percentages in ways that seem impactful. The low base numbers should be considered in making interpretations about the percentages.

Table 23: Number of Trials and Trial Outcomes for Misdemeanor Defendants Represented, FY 2014 – FY 2019

Trial Outcomes	2014	2015	2016	2017	2018	2019
<b>Acquittal</b>	1	0	3	2	1	
	50%	0%	50%	100%	100%	
<b>Guilty/Guilty All</b>	1	2	3	0	0	
	50%	100%	50%	0%	0%	
<b>Trials</b>	2	2	6	2	1	0
<b>Total Defendants with Original Cases</b>	1,350	1,575	2,381	2,117	1,826	1,784
<b>% Ending Going to Trial</b>	0.1%	0.1%	0.3%	0.1%	0.1%	0%

### Outcomes State Jail Felony Defendants

Table 24 shows the outcomes for State Jail Felony defendants represented by HCPD from FY 2014 to 2019. The percentage of State Jail Felony defendants found “guilty/guilty all” decreased from 61% in 2014 to 41% in 2019. The percentage found “guilty in some/dismissed in some” increased from 4% in 2014 to 6% in 2018 then declined to 4% in 2019. Those with “all cases dismissed” increased from 11% in 2014 to 37% in 2018. The percent getting deferred adjudication declined from 23% in 2014 to 18% in 2019. There was an overall decrease in the number of defendants represented by the HCPD on State Jail Felony charges likely due to the implementation of RIC in FY 2017. This same year saw a drop from 374 to 299 defendants. Although RIC is not for *only* State Jail charges, the majority of those in the program are there for State Jail Felonies.

Table 24: Outcomes for State Jail Felony Defendants Represented by HCPD, FY 2014 – FY 2019

Outcome Categories	2014	2015	2016	2017	2018	2019
<b>Acquittal</b>	2	1	0	0	0	0
	0.5%	0.3%	0.0%	0.0%	0.0%	0.0%
<b>No Billed</b>	5	6	3	3	1	2
	1.2%	1.6%	0.8%	1.0%	0.4%	0.9%
<b>Dismissed All</b>	49	64	84	85	72	83
	11%	17%	22%	28%	29%	37%
<b>Deferred Adjudication</b>	97	100	83	48	42	40
	23%	27%	22%	16%	17%	18%
<b>Guilty Some, Dismissed Some</b>	15	11	13	6	15	10
	4%	3%	3%	2%	6%	4%
<b>Guilty/Guilty All</b>	260	194	191	157	117	92
	61%	52%	51%	53%	47%	41%
<b>Total Defendants</b>	<b>428</b>	<b>376</b>	<b>374</b>	<b>299</b>	<b>247</b>	<b>227</b>

Table 25 shows the punishments for State Jail Felony defendants represented by HCPD from FY 2014 to FY 2019. The percentage of defendants represented by HCPD getting county jail time increased from 33% in 2014 to 54% in 2019 while the percentage of people getting State Jail time decreased from 40% in 2014 to 17% in 2019. The percentage getting deferred adjudication fluctuated increasing from 26% in 2014 to 33% in 2015, decreasing to a low of 23% in 2017, and increasing back to 29% in 2019. During this period a total 15 defendants received probation sentences of which there were none in 2019.

Table 25: Punishments for State Jail Felony Defendants Represented by HCPD, FY 2014 – FY 2019

Punishment	2014	2015	2016	2017	2018	2019
<b>Deferred</b>	97	100	83	48	42	40
	26%	33%	29%	23%	24%	29%
<b>Probation</b>	2	3	2	4	4	0
	1%	1%	1%	2%	2%	0%
<b>County Jail</b>	123	111	113	100	101	74
	33%	36%	39%	47%	58%	54%
<b>State Jail</b>	150	91	88	59	27	24
	40%	30%	31%	28%	16%	17%
<b>Total</b>	<b>372</b>	<b>305</b>	<b>287</b>	<b>211</b>	<b>174</b>	<b>138</b>

Table 26 shows the average length of punishments for State Jail Felony defendants represented by HCPD and found guilty or receiving a deferred adjudication from FY 2014 to FY 2019. The county jail sentence days decreased from 137 days in 2014 to 110 in 2019. The actual amount of jail time to serve declined from 109 days in 2014 to 68 days in 2019. Note that not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant. The average state jail sentence increased from 7.3 months in 2014 to 8.3 months in 2019, after peaking in 2018 at 12.5 months. The average length of deferred sentences increased from 28 months in 2014 to 32 months in 2019.

Table 26: Punishment Length Average for State Jail Felony Defendants Represented by HCPD, FY 2014 – FY 2019

Punishment Length		2014	2015	2016**	2017	2018	2019
<b>Deferred</b>	#	97	100	83	48	42	40
	Months	28	29	29	26	31	32
<b>Probation</b>	#	2	3	2	4	4	0
	Months	30	44	30	21	42	
<b>County Jail</b>	#	123	111	113	100	101	74
	Days	137	149	147	160	119	110
<b>County Jail Credit</b>	Days	29	39	49	56	54	33
<b>Actual County Jail to Serve*</b>	Days	109	111	97	105	68	68
<b>State Jail</b>	#	150	91	88	59	27	24
	Months	7.3	7.4	7.4	7.4	12.5	8.3

\*Not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant instead of average days minus average credit time; \*\* One person received a fine only in 2016

Table 27 shows the number of trials and trial outcomes for State Jail Felony defendants represented by HCPD from FY 2014 to FY 2019. The number of trials is low, with three in 2014, one in 2015, three in 2016 and none in 2017, 2018, or 2019. Less than 1% of defendants had their charges resolved at trial. Two of the three defendants in 2014 were acquitted, one out of one in 2015 was acquitted and three out of three were found guilty/guilty all in 2016. Note that the low number of trials make any minor change in the number of trial outcomes impact these percentages in ways that seem impactful. The low base numbers should be considered in making interpretations about the percentages.

**Table 27: Number of Trials and Trial Outcomes for Defendants Represented, FY 2014 – FY 2019**

<b>Trial Outcomes</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Acquittal</b>	2	1	0	0	0	0
	67%	100%	0%	-	-	-
<b>Guilty/Guilty All</b>	1	0	3	0	0	0
	33%	0%	100%	-	-	-
<b>Trials</b>	3	1	3	0	0	0
<b>Total Defendants with Original Cases</b>	428	376	374	299	247	227
<b>% Ending Going to Trial</b>	0.7%	0.3%	0.8%	0%	0%	0%



### Outcomes RIC Court Defendants

Table 28 shows the outcomes for defendants is RIC Court represented by HCPD from FY 2017 to FY 2019. Although RIC does take Third- and Second-Degree Felonies per HCPD records, the vast majority of defendants had State Jail Felony charges so comparisons with State Jail Felonies are included below for context. The percentage of defendants with all cases dismissed decreased from 47% in 2017 to 37% in 2019 (the same percentage of State Jail Felony defendants were dismissed in 2019 as in Table 24). The percentage of defendants who received a deferred adjudication increased from 22% in 2017 to 25% in 2019 (18% of State Jail Felony defendants received deferred adjudication in 2019 as in Table 24). The percentage found guilty/guilty all decreased from 28% in 2017 to 26% in 2019 (41% of State Jail Felony defendants were found guilty/guilty all in 2019 as in Table 24). Defendants with cases dismissed following pretrial intervention, the goal of the program, represented 13% of the defendants in 2018 and 9% in 2019. The period necessary to complete the Pretrial Intervention Program excluded this as a viable option for FY 2017 outcomes, because the person needed to complete a full 12-month course of supervision and treatment. The decrease in proportion of dismissed all outcomes is clearly absorbed into the increase of dismissed post PTI. There were no acquittals, because a defendant interested in going to trial transfers to a regular felony docket and out of RIC.

Table 28: Outcomes for RIC Court Defendants Represented by HCPD, FY 2017 – FY 2019

Outcomes	2017	2018	2019
Acquittal – NA	0	0	0
No Billed	1 0.5%	0 0%	1 0.4%
Dismissed All	100 47%	56 35%	91 37%
Dismissed Following Pretrial Intervention (Goal of Program)	0	20 13%	23 9%
Deferred Adjudication	46 22%	47 30%	62 25%
Guilty Some, Dism Some	4 2%	2 1%	4 2%
Guilty/Guilty All	60 28%	34 21%	63 26%
<b>Total Defendants</b>	<b>211</b>	<b>159</b>	<b>244</b>

Table 29 shows the punishment outcomes for RIC defendants represented by HCPD from FY 2017 to FY 2019 and found guilty or receiving deferred adjudication. The percentage of defendants with deferred adjudication increased from 43% in 2017 to 48% in 2019 (29% of State Jail Felony defendants were granted deferred adjudication in 2019 as in Table 25). The percentage of defendants sentenced to county jail time decreased from 41% in 2017 to 31% in 2019 (54% of State Jail Felony defendants received county jail time in 2019 as in Table 25). The percentage of defendants receiving State Jail time increased from 17% in 2017 to 19% in 2019 (17% of State Jail Felony defendants received State Jail time in 2019 as in Table 25). None of the defendants received probation and three in 2019 received Texas Department of Criminal Justice (TDCJ) time. As mentioned above, the majority of RIC participants have State Jail Felony charges, but HCPD did represent a few defendants with Third- and Second-Degree Felony drug charges which are eligible for TDCJ time.

**Table 29: Punishment Outcomes for RIC Court Defendants Represented by HCPD, FY 2017 – FY 2019**

<b>Punishment</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Deferred</b>	46	47	62
	43%	57%	48%
<b>Probation</b>	0	0	0
	0%	0%	0%
<b>County Jail</b>	44	24	40
	41%	29%	31%
<b>State Jail</b>	18	12	24
	17%	14%	19%
<b>TDCJ</b>	0	0	3
	0%	0%	2%
<b>Total</b>	<b>108</b>	<b>83</b>	<b>129</b>

Table 30 shows the punishment length outcomes for RIC Court defendants represented by HCPD from FY 2017 to FY 2019. The county jail sentence days decreased from 145 days in 2017 to 138 in 2019 (the average for State Jail Felons in 2019 was 110 days in Table 26). The actual amount of jail time to serve increased from 46 days in 2017 to 96 days in 2019. Note that not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant. The average sentence to a state jail in months increased from 6.9 months in 2017 to 7.8 months in 2019 (the average for State Jail Felons in 2019 was 8.3 months in Table 26). The deferred sentences decreased from 35 months in 2017 to 30 months in 2019 (the average for State Jail Felons in 2019 was 32 months in Table 26). In 2019, there were 3 people who received a sentence to TDCJ, and the average sentence was 2 years long. This is the minimum amount of time a person can receive in TDCJ.

**Table 30: Punishment Length Average for RIC Court Defendants Represented by HCPD, FY 2014 – FY 2019**

<b>Punishment Length</b>		<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Deferred</b>	#	46	47	62
	Months	35	30	30
<b>Probation</b>	#	-	-	-
	Months	NA	NA	NA
<b>County Jail</b>	#	44	24	40
	Days	145	137	138
<b>County Jail Credit</b>	Days	99	73	42
<b>Actual County Jail to Serve**</b>	Days	46	65	96
<b>State Jail</b>	#	18	12	24
	Months	6.9	6.8	7.8
<b>TDCJ</b>	#	-	-	3
	Years	NA	NA	2

\*Not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant instead of average days minus average credit time

### Outcomes Felony Defendants

Table 31 shows the outcomes for felony defendants represented by HCPD from FY 2014 to 2019. The percentage of felony defendants found “guilty/guilty all” decreased from 48% in 2014 to 34% in 2019. The percentage found “guilty in some/dismitted in some” stayed at about 10% during the period and peaked at 14% in 2018. Those with “all cases dismissed” increased from 17% in 2014 to 33% in 2019. The percent getting deferred adjudication was 21% in 2014, 23% in 2016 and 2017, and 19% in 2019. Defendants acquitted in all their cases was 0.5% or less until FY 2019 when it tripled to 1.5%. Defendants with a result of no bill, which occurs when the Grand Jury finds there is not enough evidence to indict, decreased from 2.8% in FY 2014 to 1.5% in FY 2018 then increased to 2.4% in FY 2019. A result of no bill should be considered as positive as an acquittal and it happens much faster as it occurs at the front end of the case(s) in lieu of indictment.

Table 31: Outcomes for Felony Defendants Represented by HCPD, FY 2014 – FY 2019

Outcome	2014	2015	2016	2017	2018	2019
<b>Acquittal All</b>	4	2	2	2	0	11
	0.5%	0.3%	0.3%	0.3%	0.0%	1.5%
<b>No Billed</b>	22	14	11	10	9	17
	2.8%	2.3%	1.6%	1.5%	1.5%	2.4%
<b>Dismissed All</b>	136	128	126	171	140	238
	17%	21%	18%	26%	23%	33%
<b>Deferred</b>	164	121	160	150	121	140
	21%	20%	23%	23%	20%	19%
<b>Guilty Some, Dism Some</b>	83	63	88	71	82	69
	10%	10%	13%	11%	14%	10%
<b>Guilty All</b>	383	285	295	255	245	247
	48%	46%	43%	39%	41%	34%
<b>Total Original Defendants</b>	<b>792</b>	<b>613</b>	<b>682</b>	<b>659</b>	<b>597</b>	<b>722</b>

Table 32 shows the punishments for felony defendants represented by HCPD and found guilty or receiving a deferred adjudication from FY 2014 to 2019. The percentage of defendants represented by HCPD getting county jail time increased from 19% in 2014 to 30% in 2019 while the percentage getting a State Jail time decreased from 10% in 2014 to 6% in 2019. Note, a felony defendant may receive time in State Jail if: (a) defendant had multiple cases and a finding of guilt only on a State Jail offense; (b) if the defendant had a higher level felony that was reduced to a State Jail as part of plea negation; or, (c) if during the pre-adjudicative period the weight of the drug or the amount of the property crime was shown to be at a State Jail Felony level and not the level at which the offense was originally filed. The percentage receiving a prison sentence (TDCJ) decreased from 43% in 2014 to 32% in 2019. Deferred adjudication fluctuated from 26% in 2014 to 32% in 2017 to 31% in 2019. During this period 3% of defendants, or less, received probation.

**Table 32: Punishments for Felony Defendants Represented by HCPD, FY 2014 – FY 2019**

<b>Punishment</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Deferred</b>	163	120	160	150	121	140
	26%	26%	29%	32%	27%	31%
<b>Probation</b>	18	5	11	9	14	14
	3%	1%	2%	2%	3%	1%
<b>County Jail</b>	117	94	113	123	141	126
	19%	20%	21%	26%	31%	30%
<b>State Jail</b>	63	58	45	39	43	28
	10%	12%	8%	8%	10%	6%
<b>TDCJ</b>	269	192	214	155	128	147
	43%	41%	39%	33%	29%	32%
<b>Total</b>	<b>630</b>	<b>469</b>	<b>543</b>	<b>476</b>	<b>447*</b>	<b>455*</b>

\*Note: there is one defendant who received a fine only in 2018; this is 0.2% of total dispositions receiving a punishment. In 2019, same 1 person and 0.2%.

Table 33 shows the average length of punishments for felony defendants represented by HCPD from FY 2014 to 2019. The county jail sentence days decreased from 292 days in 2014 to 191 in 2019. The actual length of jail time to serve declined from 213 days in 2014 to 93 days in 2019. Note that not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant. The average sentence in months at a State Jail increased from 9.3 months in 2014 to 11.6 months in 2019. The average years for a prison sentence was 9.5 in 2014, peaking at 15.8 in 2016, declining to 8.5 in 2018 and increasing to 10.8 in 2019. There were three defendants receiving a Life Sentence in 2014 and one each in 2016, 2017 and 2018. The deferred sentences in months increased from 43 months in 2014 to a peak of 46 months in 2016 to 42 months in 2019. The probation sentences increased from 52 months in 2014 to 69 months in 2019.

**Table 33: Punishment Length Average for Felony Defendants Represented by HCPD, FY 2014 – FY 2019**

<b>Punishment Length</b>		<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Deferred</b>	#	163	120	160	150	121	140
	Months	43	42	46	41	43	42
<b>Probation</b>	#	18	5	11	9	14	14
	Months	52	55	47	53	54	69
<b>County Jail</b>	#	117	94	113	123	141	136
	Days	292	220	208	223	175	191
<b>County Jail Credit</b>	Days	78	111	105	124	102	128
<b>Actual County Jail to Serve*</b>	Days	213	108	103	98	72	93
<b>State Jail</b>	#	63	58	45	39	43	28
	Months	9.3	8.7	8.5	10.2	10.0	11.6
<b>TDCJ</b>	#	269	192	214	155	128	147
<b>TDCJ Not Life Sentences</b>	Years	9.5	10.3	15.8	10.6	8.5	10.8
<b>TDCJ Life Sentences</b>	#	3	0	1	1	1	0

\*Not every jail sentence had corresponding credit recorded, so the calculation is the average of total sentence minus credit for each defendant instead of average days minus average credit time

Table 34 shows number of trials and trial outcomes for felony defendants represented by HCPD from FY 2014 to FY 2019. The number of trials fluctuated from a high of 25 in 2014 to a low of 10 in 2018 and back up to 23 in 2019. The percentage of defendants going to trial fluctuated from 3.2% in 2014 to 1.7% in 2017 and 2018 then increased to 3.2% in 2019. The percentage of defendants found guilty of all at trial charges fluctuated from 48% in 2014 to 73% in 2017 to a low of 35% in 2019. The percentage found guilty of some, acquitted of some charges, fluctuated from 36% in 2014 to 9% in 2017 to a high of 40% in 2018 and ended at 17% in 2019. The percentage acquitted of all charges fluctuated from 16% in 2014 to zero in 2018 to a high of 48% in 2019. Note that the low number of trials make any minor change in the number of trial outcomes impact these percentages in ways that seem impactful. The low base numbers should be considered in making interpretations about the percentages.

Table 34: Number of Trials and Trial Outcomes for Felony Defendants Represented, FY 2014 – FY 2019

<b>Trial Outcomes</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
<b>Acquittal All</b>	4	2	2	2	0	11
	16%	14%	9%	18%	0%	48%
<b>Guilty Some, Acquittal Some</b>	9	2	7	1	4	4
	36%	14%	32%	9%	40%	17%
<b>Guilty All</b>	12	10	13	8	6	8
	48%	71%	59%	73%	60%	35%
<b>Trials</b>	25	14	22	11	10	23
<b>Total Defendants with Original Cases</b>	792	613	682	659	597	722
<b>% Ending Going to Trial</b>	3.2%	2.3%	3.2%	1.7%	1.7%	3.2%

**Dispositions to Lower Offense Level Charges**

Table 35 shows the misdemeanor defendants represented by HCPD disposed with a deferred adjudication or guilty of all charges disposed at original charge level or disposed at a lower charge between FY 2014 and FY 2019. Almost all the misdemeanor defendants were disposed as the same offense level as they were charged; however, misdemeanors have less reduction opportunities and some of the “better” outcomes are simply for other offenses at the same level with fewer collateral consequences.

**Table 35: Number and Percentage of Misdemeanor Defendants Represented by HCPD Disposed with Deferred Adjudication or Guilty of All Charges Disposed for Originally Charge or Disposed at a Lower Charge, FY 2014 to FY 2019**

FY	All Offenses Kept at Same Level		At Least One Offenses Disposed at a Lower Level		Total Deferred or Guilty – All PD
<b>FY 2014</b>	1,113	99.4%	7	0.6%	1,120
<b>FY 2015</b>	1,324	99.8%	3	0.2%	1,327
<b>FY 2016</b>	1,872	99.8%	4	0.2%	1,876
<b>FY 2017</b>	1,593	99.9%	2	0.1%	1,595
<b>FY 2018</b>	1,292	99.8%	3	0.2%	1,295
<b>FY 2019</b>	980	99.9%	1	0.1%	981

Table 36 shows the State Jail Felony defendants represented by HCPD disposed with a deferred adjudication or guilty of all charges disposed at original charge level or disposed as a lower charge between FY 2014 and FY 2019. A great majority of State Jail Felony defendants were disposed at the same offense level as they were charged, over 90% between 2014 and 2016 and over 84% between 2017 and 2019.

**Table 36: Number and Percentage of State Jail Felony Defendants Represented by HCPD Disposed with Deferred Adjudication or Guilty of All Charges Disposed for Originally Charge or Disposed at a Lower Charge, FY 2014 to FY 2019**

FY	All Offenses Kept at Same Level		At Least One Offenses Disposed at a Lower Level		Total Deferred or Guilty
<b>FY 2014</b>	345	93%	26	7%	371
<b>FY 2015</b>	275	90%	30	10%	305
<b>FY 2016</b>	261	91%	26	9%	287
<b>FY 2017</b>	185	88%	26	12%	211
<b>FY 2018</b>	147	84%	27	16%	174
<b>FY 2019</b>	126	89%	16	11%	142



Table 37 shows the RIC defendants represented by HCPD disposed with a deferred adjudication or guilty of all charges disposed at original charge level or disposed as a lower charge between FY 2014 and FY 2019. A great majority of RIC defendants were disposed at the same offense level as they were charged. The proportion was at or over 92% during this period.

**Table 37: Number and Percentage of RIC Defendants Represented by HCPD Disposed with Deferred Adjudication or Guilty of All Charges Disposed for Originally Charge or Disposed at a Lower Charge, FY 2014 to FY 2019**

	All Offenses Kept at Same Level		At Least One Offenses Disposed at a Lower Level		Total Deferred or Guilty
<b>FY 2017</b>	107	96%	4	4%	111
<b>FY 2018</b>	78	94%	5	6%	83
<b>FY 2019</b>	119	92%	10	8%	129

Table 38 shows the felony defendants represented by HCPD disposed with a deferred adjudication or guilty of all charges disposed at original charge level or disposed as a lower charge between FY 2014 and FY 2019. A majority of felony defendants were disposed at the same offense level as they were charged; however, the percentage of felony defendants that were disposed at a lower offense level was about one-fourth. This is a substantially higher proportion than the equivalent for misdemeanor and State Jail Felony defendants. In 2014, felony defendants disposed to a lower level represented 27% of the felony defendants, increasing to 33% in 2018, and declining to the lowest in this period of 23% in FY 2019.

**Table 38: Number and Percentage of Felony Defendants Represented by HCPD Disposed with Deferred Adjudication or Guilty of All Charges Disposed for Originally Charge or Disposed at a Lower Charge, FY 2014 to FY 2019**

FY	All Offenses Kept at Same Level		At Least One Offenses Disposed at a Lower Level		Total Deferred or Guilty
<b>FY 2014</b>	579	73%	213	27%	792
<b>FY 2015</b>	461	75%	152	25%	613
<b>FY 2016</b>	516	76%	166	24%	982
<b>FY 2017</b>	496	75%	163	25%	659
<b>FY 2018</b>	400	67%	197	33%	597
<b>FY 2019</b>	559	77%	163	23%	722

### Outcomes Appellate Division

Texas law provides two strategies to overturn or modify a judgement. First is the Motion for New Trial (MNT) and the second is writing a brief and submitting it to either the 1<sup>st</sup> or 14<sup>th</sup> Courts of Appeal (Harris County tracks to both). The statistical trends related to both strategies are discussed below.

#### Motion for New Trial

HCPD designed the Appellate Division to have a “Motion for New Trial” or MNT Team. Having a motion for new trial granted is a swift response to an error at trial. In 2016, the office assigned an appellate attorney to handle only motion for new trials, which allowed the other attorneys to focus on brief writing. In 2017, HCPD added a second attorney to this team.

MNT are filed in the court within which the defendant was found guilty at trial within 30 days of adjudication. The defendant may ask for a new trial if there was an error that made the original trial, for example erroneous jury instructions, juror misconduct, the verdict is not allowed by law, the defendant was denied counsel, or new evidence is available that was unavailable at trial. The MNT asks the judge to set aside the finding of guilt or the punishment. The motion may lead to a new trial or the court may update the judgement by modifying, correcting, vacating, or reforming the original sentence or length of sentence.

Table 39 shows the number of MNTs between TIDC’s FY 2014 and FY 2019 (October 1, 2014 through September 30, 2019). HCPD resolved 66 MNTs during this period. Some of these MNTs may have been filed prior to the fiscal year noted, but all decisions on the MNT occurred during the fiscal year presented.

Table 39: Number of Motions for New Trial Decided, FY 2014 through FY 2019

Fiscal Year	Total
2014	20
2015	11
2016	11
2017	7
2018	11
2019	6
Average	11
<b>Total</b>	<b>66</b>

Table 40 shows the outcomes for MNTs. There are three potential outcomes: the MNT is either granted, denied, or withdraw. In this analysis, granted means both granting a new trial after setting aside the finding of guilty and granting a new punishment phase while keeping a defendants finding of guilt; denial means the defendant will not receive a new trial, nor a new punishment assessment; and withdraw means HCPD retracted its MNT and has chosen a different appellate strategy including not filing an appeal. Withdraw likely occurs as a result of

the MNT filing deadline happening prior to the transcript delivery deadlines; therefore, HCPD's full understanding of the case's facts may prove impossible prior to the deadline to file an MNT. These are excluded from the base used to calculate proportions granted or denied. The average proportion of MNTs granted during this period was 28% with 72% denied.

**Table 40: Number of Motions for New Trial Outcomes, FY 2014 through FY 2019**

FY	Total	Withdraw	Total Decided	Granted	Denied
2014	20	2	18	6 (32%)	12 (68%)
2015	11	0	11	1 (9%)	10 (91%)
2016	11	0	11	2 (18%)	9 (82%)
2017	7	0	7	3 (43%)	4 (57%)
2018	11	0	11	2 (18%)	9 (82%)
2019	6	2	4	2 (50%)	2 (50%)
<b>Average</b>	11	0.5	10.5	2.8 (28%)	7.7 (72%)
<b>Total</b>	<b>66</b>	<b>4</b>	<b>62</b>	<b>16 (26%)</b>	<b>46 (74%)</b>

Table 41 shows the new outcomes for those granted an MNT. Often, after the granting of an MNT, the State and the defense will work out a plea agreement which partially explains the higher proportion of new punishments. The following table shows the number of MNTs granted and the outcomes. During this period there were 16 motions granted, with three leading to the dismissal of charges and 11 leading to a new punishment with two cases pending trial. The table also shows the difference in sentences before and after a motion for new trial has been granted. For example, in 2018 two MNTs were granted and both led to a reduction of the punishment from incarceration to community supervision.

**Table 41: Motions for New Trial Granted Outcomes, FY 2014 through FY 2019**

FY	Granted	Charges Dismissed	New Punishment	Incarceration to Supervision	Reduced Incarceration
2014	6	2 (33%)	4 (67%)	2	2
2015	1*				
2016	2		2 (100%)		2
2017	3	1 (33%)	2 (67%)	1	1
2018	2		2 (100%)	2**	
2019	2*		1	1 (PTI)	
<b>Average</b>	2.8	0.5	2.3	1	0.8
<b>Total</b>	<b>16</b>	<b>3</b>	<b>11</b>	<b>6</b>	<b>5</b>

\*New trial pending

\*\*One resentence from probation to deferred adjudication, which was immediately terminated (successfully); therefore, the person avoids a conviction, can go through the process to have his record expunged, and avoids collateral consequences related to his immigration status.

## Courts of Appeals

In cases where there is no motion for new trial filed or a motion was filed but denied, the next step is to file a brief in the 1<sup>st</sup> or 14<sup>th</sup> Courts of Appeals.<sup>29</sup> The appealed cases can have the following outcomes:

- **Dismiss:** there are a variety of reasons for which a case can be dismissed, and they all stop the case's progression through the appellate process; therefore, they are presented but not included in the denominator for analysis.
- **Reverse:** voids part or all of the lower court's decision and the case returns to the original trial court where a new trial could occur, or the trial court can correct the judgement, or the appellate court implements the judgement the trial court should have rendered.
- **Reform:** the case is not reversed, but one part of the original judgement, for example fine amount or punishment length, is modified.
- **Affirm:** uphold the original judgement from the trial court at which point the case may be appealed to the State Criminal Court of Appeals (CCA) or the appellant may stop seeking relief.

Table 42 shows the total appeals decided by the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeals by fiscal year from TIDC fiscal year 2014 through 2019. These cases take a long time to dispose and cases can go back and forth from one level of appeals court to another (1<sup>st</sup> to CCA) or from appeals court to court of original jurisdiction. Therefore, the number of decisions should not be taken as synonymous with number of filings, caseloads, or individuals.

There were 639 total decisions by these courts in the six-year period for an average of 107 per year. The proportions are calculated using the total decisions minus the dismissals. For example, in fiscal year 2019 there were 87 total decisions minus 25 dismissals for a denominator of 62. The total was 527 decisions with an average of 88 per year. The average reversal rate was 7% with a high of 17% in fiscal year 2018 and the average reform rate was 6% with a high of 15% in 2014. The average affirm rate was 87% with a high of 96% in 2016. Note, just because the case received a decision in a given year does not necessarily translate to the case being closed.

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<sup>29</sup> Harris County is one of ten counties tracking to both of these courts; the other counties are Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Waller, and Washington.

Table 42: Decisions at the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeal, FY 2014 through FY 2019

FY	Total Not Dismissed	Reverse		Reform		Affirm		Dismissed	Total
	#	#	%	#	%	#	%	#	#
2014	137	5	4%	20	15%	112	82%	28	165
2015	106	10	9%	3	3%	93	88%	12	118
2016	118	2	2%	3	3%	113	96%	23	141
2017	57	8	14%	3	5%	46	81%	14	71
2018	47	8	17%	2	4%	37	79%	10	57
2019	62	2	3%	3	5%	57	92%	25	87
<b>Average</b>	88	6	7%	6	6%	76	87%	19	107
<b>Total</b>	<b>527</b>	<b>35</b>	<b>7%</b>	<b>34</b>	<b>6%</b>	<b>458</b>	<b>87%</b>	<b>112</b>	<b>639</b>

Table 43 shows the combined total of reverse and reform (generally a good outcome for HCPD) and affirmed (generally not a good outcome) from the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeals by TIDC fiscal year from 2014 through 2019. During this period, there were 527 cases not dismissed of which 13% (69 cases) were reversed and reformed and 87% (458 cases) were affirmed.

Table 43: Decisions at the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeal, FY 2014 through FY 2019

FY	Total Not Dismissed	Reverse + Reform		Affirm	
	#	#	%	#	%
2014	137	25	18%	112	82%
2015	106	13	12%	93	88%
2016	118	5	4%	113	96%
2017	57	11	19%	46	81%
2018	47	10	21%	37	79%
2019	62	5	8%	57	92%
<b>Average</b>	88	12	13%	76	87%
<b>Total</b>	<b>527</b>	<b>69</b>	<b>13%</b>	<b>458</b>	<b>87%</b>

Table 44 shows the average amount of lawyer time spent prior to the decision date, for lawyers entering time into the office case tracking system (defenderData), by outcome. The total overall average time per case is 80 hours, which corresponds to 25 cases per year per lawyer. These averages are for total decisions in the six-year study and for the total number of cases, even cases dismissed, because those cases still require writing, research, and attorney time. The working caseload limit for HCPD is from 1973's National Advisory Commission on Criminal Justice Standards and Goals suggested caseload of 25 appeals cases per year per attorney,<sup>30</sup> which appears to be a comfortable standard assuming a 2,000 hour work year (52 weeks, at 40 hours a week, minus 2 weeks of holiday time).<sup>31</sup> This limit is slightly less than the 31.2 appellate cases from a 2016 report produced for TIDC by Texas Public Policy Research Institute, but that study had access to additional weighting factors such as record length and proportion of cases by record length so this is not offered as a comparison just a note.<sup>32</sup>

**Table 44: Average Amount of Time Logged on Case Prior to Decision at 1st or 14th Court of Appeals, FY 2014 through FY 2019**

	<b>Number of Decisions</b>	<b>Average Hours Entered for Case</b>	<b>Number of 8 Hour Days</b>	<b>Suggested Caseload for a 2,000H Work Year</b>
<b>Reverse</b>	35	76	9.50	26
<b>Reform</b>	34	66	8.25	30
<b>Affirm</b>	458	86	10.75	23
<b>Dismissed</b>	112	49	6.13	41
<b>Average for Total Decisions</b>	639	80	10	25

<sup>30</sup> National Legal Aid and Defender Association. 2011. National Advisory Commission on Criminal Justice Standards and Goals: The Defense (1973). <http://www.nlada.org/defender-standards/national-advisory-commission/black-letter>

<sup>31</sup> The PPRI study used 2,087 hours per year; however, HCPD employees are Harris County employees who have at least ten paid holidays per year on the calendar, so 2,000 is a more appropriate number.

<sup>32</sup> Texas A&M University Public Policy Research Institute. December 2016. Appellate Addendum: Guidelines for Indigent Defense Caseloads. p 15 [http://www.tidc.texas.gov/media/50833/161214\\_wcl-appellate.pdf](http://www.tidc.texas.gov/media/50833/161214_wcl-appellate.pdf)

**Court of Criminal Appeals**

Table 45 shows the total appeals decided by the Criminal Court of Appeals by fiscal year from TIDC fiscal year 2014 through 2019. The information analyzing the State CCA is also decision based, not filing based, as explained above. There were 58 cases decided during this period, with 17% reversed (10 cases), 12% reformed (7 cases) and 71% affirmed (41 cases). One case was dismissed by the court during this period. Fiscal year 2014 was an outlier with 32 cases decided, many regarding fines and fees question. The subsequent years had between 3 and 8 cases decided.

**Table 45: Decisions at Criminal Court of Appeal, FY 2014 through FY 2019**

	<b>Total Not Dismissed</b>	<b>Reverse</b>		<b>Reform</b>		<b>Affirm</b>		<b>Dismissed</b>	<b>Total</b>
<b>FY</b>	<b>#</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>%</b>	<b>#</b>	<b>#</b>
<b>2014</b>	32	2	6%	0	0%	30	94%	0	32
<b>2015</b>	5	2	40%	0	0%	3	60%	0	5
<b>2016</b>	5	2	40%	0	0%	3	60%	0	5
<b>2017</b>	8	1	13%	4	50%	3	38%	1	9
<b>2018</b>	5	0	0%	3	60%	2	40%	0	5
<b>2019</b>	3	3	100%	0	0%	0	0%	0	3
<b>Average</b>	9.7	1.7	18%	1.2	12%	6.8	70%	0.2	9.8
<b>Total</b>	<b>58</b>	<b>10</b>	<b>17%</b>	<b>7</b>	<b>12%</b>	<b>41</b>	<b>71%</b>	<b>1</b>	<b>59</b>

Table 46 shows the combined total of reverse and reformed (typically successful for the defendant) and number and proportion of cases affirmed (typically unsuccessful for the defendant) at the Criminal Court of Appeals. During this period, there were 58 cases not dismissed of which 29% (17 cases) were reversed and reformed and 71% (41 cases) were affirmed. In fiscal year 2014, 6 percent of cases were reversed or reformed and then the proportion was between 40 percent and 100 percent with a high of 100 percent in 2019. The remaining cases were affirmed with a high of 94 percent in 2014 and then low of 0 percent in 2019.

Table 46: Decisions at the Criminal Court of Appeals, FY 2014 through FY 2019

FY	Total Not Dismissed	Reverse + Reform		Affirm	
	#	#	%	#	%
2014	32	2	6%	30	94%
2015	5	2	40%	3	60%
2016	5	2	40%	3	60%
2017	8	5	62%	3	38%
2018	5	3	60%	2	40%
2019	3	3	100%	0	0%
<b>Average</b>	9.7	2.9	30%	6.8	70%
<b>Total</b>	<b>58</b>	<b>17</b>	<b>29%</b>	<b>41</b>	<b>71%</b>

Table 47 shows the average amount of time spent prior to the decision date, for lawyers entering time into the office case tracking system (defenderData), by outcome. The total overall average time per case is 108 hours, which corresponds to 18.5 cases per year per lawyer. These averages are for total decisions in the six-year studied and present the total number of cases, even cases dismissed, because those cases still require writing, research, and attorney time. As stated above, the working caseload limit for HCPD is from 1973’s National Advisory Commission on Criminal Justice Standards and Goals suggested caseload of 25 appeals cases per year per attorney.<sup>33</sup> This assumes a 2,000 hour work year or 52 weeks minus 2 weeks of holiday time with each week being 40 hours though it is impractical to assume an attorney will never get sick, nor take vacation. It is not possible to know which case will make it to the CCA but if it does, the case should be treated as 1.35 cases in an annual caseload.<sup>34</sup>

<sup>33</sup> National Legal Aid and Defender Association. 2011. National Advisory Commission on Criminal Justice Standards and Goals The Defense (1973). <http://www.nlada.org/defender-standards/national-advisory-commission/black-letter>

<sup>34</sup> If one case is 80 hours, then 108 works out to a weighted case of 1.35.



Table 47: Average Amount of Time Logged on Case Prior to Decision by Criminal Court of Appeals, FY 2014 through FY 2019

	Number of Decisions	Average Hours Entered for Case	Number of 8 Hour Days	Suggested Caseload for a 2,000H Work Year
<b>Reverse</b>	10	120	15.0	16.7
<b>Reform</b>	7	69	8.5	29.0
<b>Affirm</b>	41	115	14.8	17.4
<b>Dismissed</b>	1	43	46.5	46.5
<b>Average for Total Decisions</b>	59	108	13.5	18.5

### United States Supreme Court Level

Since October 1, 2013, HCPD has filed four petitions for certiorari to the US Supreme Court. Two have been denied (50%), one is currently pending (25%), and one was granted (25%). For the case granted, the U.S. Supreme Court reversed a unanimous decision from the Court of Criminal Appeals. On remand, the Court of Criminal Appeals unanimously reversed the 14<sup>th</sup> Court of Appeals’ decision originally affirmed and remanded the case back to the 14th Court of Appeals. A new briefing schedule has not yet been set for this case. The Supreme Court disposed between 7,000 and 6,192 cases from 2014 to 2018, the most recent year of published data, but only 69 to 82 were argued (average 74) during the same period.<sup>35</sup> A total of 370 were argued during these years and 4 (1.1%) were from HCPD.

### Case Highlights

Quantifying appellate outcomes presents challenges, because a case can show up in many categories throughout the appeal’s lifespan and the outcome are recorded the same way whether or not the “typically good” outcomes of reverse and/or reform occurs for the defense or the state. Given that difficulty of determining what the quantitative results means, a short highlight of HCPD’s wins at the CCA are presented below.

- *Taylor v. State* reversed the State Court of Appeals and gave Mr. Taylor the right to appeal. This right was in question due to a rule on timeliness, because the original trial court had not received the appeal within the limit set in the Texas Rules of Appellate Procedure, but had received it within the extended period granted by the “Prisoner Mailbox Rule” which concedes that incarcerated persons have less control over their mail handling. Mr. Taylor filed his case *pro se* originally, but HCPD represented him on the timeliness issue.<sup>36</sup>

<sup>35</sup> US Courts. 30 Sept 2019. Supreme Court of the United State – Cases on Docket, Disposed of, and Remaining on Docket at Conclusion of October Terms, 2014 through 2018. [https://www.uscourts.gov/sites/default/files/data\\_tables/supcourt\\_a1\\_0930.2019.pdf](https://www.uscourts.gov/sites/default/files/data_tables/supcourt_a1_0930.2019.pdf)

<sup>36</sup> *Taylor v. State*, 424 S.W. 3d 39 (Tex. Crim. App. 2015).

- *Brown v. State* remanded Mr. Brown’s murder conviction to the original court for a retrospective competency hearing. He had been shot in the head in the course of his murder trial and the court did not hold a formal competency hearing after the gun shot injury. The court had, instead, gone forward with trial and punishment phase without him after the trial judge ruled the absence was voluntary due to potential self-injury.<sup>37</sup>
- *Salinas v. State* went to the CCA twice to address the issue of the constitutionality of court costs and whether they constitute a tax. The first time, the CCA remanded the case to the Court of Appeals for correct the analysis because certain issues had not be correctly addressed regarding constitutionality. The second time the CCA held the costs unconstitutional and modified court costs. Following this finding, there were four additional cases modifying court costs all decided within a two-week period at the CCA.<sup>38</sup> *London v. State* also dealt with court costs and found a defendant had the right to challenge costs for the first time on appeal if costs were not imposed in open court and the judgement did not contain an itemized list of the costs being imposed, because the appeal would be the first opportunity to address this objection.<sup>39</sup> *Bowden v. State* addressed court costs, too, under the *London* decision and the CCA remanded the case back to the court of appeals to rehear the objection to part of the court costs.
- *Stairhime v. State* found a statement by defense counsel of “no objection” to jury seating cannot be understood as a waiver of previously preserved voir dire error and remanded the case back to the court of appeals for consideration.<sup>40</sup>
- *Roberts v. State* questioned whether the 14<sup>th</sup> Court of Appeals had improperly disposed of his appeal, because it had not addressed each point in his appeal. The CCA agreed and send the case back to the court of appeals for consideration.<sup>41</sup>
- *Bullock v. State* found the trial court erred in omitting the option to find the defendant guilty of a lesser-included offense and sent the case back to the 14<sup>th</sup> Court of Appeals for harm analysis, i.e. if the failure to provide a lesser included instruction harmed Mr. Bullock.<sup>42</sup>

Finally, there were also three writs from the HCPD Appellate at the CCA to highlight here. *Ex parte David Jones* and *Ex parte Darren Lewis* both resulted in reversal of felony convictions with

<sup>37</sup> *Brown v. State*, No. PD -1732-12, 2014 WL 1032054, *withdrawn*, 439 S.W. 3d 929 (Tex. Crim. App. 2014).

<sup>38</sup> *Salinas v. State*, 523 S.W. 3d 103 (Tex. Crim. App.); *see also Salinas v. State*, 464 S.W. 3d 363 (Tex. Crim. App. 2015).

<sup>39</sup> *London v. State*, 490 S.W. 3d 503 (Tex. Crim. App. 2016).

<sup>40</sup> *Stairhime v. State*, 463 S.W. 3d 902 (Tex. Crim. App. 2015).

<sup>41</sup> *Roberts v. State*, No. PD-1672-15, 2016 WL 1474425 (Tex. Crim. App. 2016).

<sup>42</sup> *Bullock v. State*, 509 S.W. 3d 921 (Tex. Crim. App. 2016).

the cases ultimately being dismissed.<sup>43,44</sup> *Ex parte Leroy Edward Coty*, created a new rule applicable statewide in cases with systemic problems regarding how to assess other cases involving a person who clearly committed misconduct against a defendant. These were also noted in the value-added section earlier in the report.<sup>45</sup>

## VI. Analysis of Outcomes by Lawyer Type

### Overview

This section presents the results of the analysis of defendant outcomes by lawyer type. The impact of representation on case outcomes by HCPD is compared to representation provided by retained and appointed counsel when data are sufficiently available. The section describes the case selection process for the comparison, presents the defendant-based outcomes by type of counsel, sentence outcomes for those receiving a deferred adjudication, pleading guilty, or found guilty, and then presents the length of sentence by type. Trial rates are also compared when applicable. The analysis is done on original cases disposed during TIDC's fiscal year 2019 (October 1, 2018 to September 30, 2019). This includes cases disposed by the Felony Division representing defendants on TDCJ eligible felonies as their highest or only offense (first, second, and third degree felony cases) and defendants with state jail felonies as their highest or only offense; cases disposed by the Juvenile Division representing respondents on felonies or misdemeanors cases as their highest or only offense; and cases disposed by the Appellate Division.

There is no comparative analysis done for the cases disposed by the Misdemeanor Mental Health Division. This division represents every misdemeanor mentally ill defendant qualified under Harris County's selection criteria to receive this specialized representation and, therefore, it is not possible to compare outcomes with similar defendants represented by retained or appointed counsel. The research team explored strategies for the Harris County Office of Court Management to extract specific misdemeanor cases for defendants with mental illness diagnoses by finding cause numbers HCPD's data system for cases closed after the defendant hired counsel, was appointed new counsel, or HCPD had a conflict and was unable to represent the defendant. This process only identified 32 defendants and an analysis of their characteristics showed that this group could not provide a good comparison to measure outcomes against HCPD's defendants.

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<sup>43</sup> *Ex parte Jones*, WR-83,465-02, 2017 WL 4946220 (Tex. Crim. App. 2017).

<sup>44</sup> *Ex parte Lewis*, 537 S.W. 3d 917 (Tex. Crim. App. 2017).

<sup>45</sup> *Ex parte Coty*, 418 S.W. 3d 597 (Tex. Crim. App. 2014).

## Felony Division

HCPD's Felony Division represents clients at all felony levels except Capital Felonies. The comparison presented here are for cases disposed with first, second, and third degree felonies (TDCJ eligible felonies) as their highest or only offense and for cases disposed on state jail felonies as their highest or only offense.

Figure 1 illustrates the process to create the comparison groups. The research team had access to the case records of HCPD clients with cases disposed during TIDC fiscal year 2019. For non-HCPD defendants with cases disposed during the same period the records were extracted from the Administrative Office of Harris County District Courts. The case data included a variable indicating if the counsel was retained or appointed though did not distinguish between contract or singular appointed counsel cases, so the comparison refers to this counsel type as "appointed". Then a subset of original case dispositions by defendant was created for each counsel type. The defendants represented by retained or appointed counsel were analyzed to determine their demographic and criminogenic characteristics in comparison with HCPD represented defendants. Then a random assignment computer algorithm was used to create groups of defendants with retained and appointed counsel that exactly matched the key demographic and criminogenic characteristics of HCPD's defendants. This allowed for a comparison of outcomes for clients that look like HCPD's clients. Defendants represented only on motions to revoke or motions to adjudicate were excluded from the comparison as there are other factors beside the impact of representation driving the dispositions of these cases.

It is important to note that this comparison does not address what total retained or appointed counsel defendant outcomes were. Instead it only presents the outcomes of a subset of defendants with demographic and criminogenic characteristics that match across all lawyer types. It is also important to note that every charge disposed on a given date for a defendant with multiple cases was combined to produce a defendant-based outcome. If the defendant had one case and it was dismissed, the defendant outcome is coded as case dismissed; if the defendant had three dispositions including one dismissal and two guilty findings, then the outcome was coded as dismissed some, guilty some. Each lawyer had the exact same number and proportion of clients with multiple charges within each offense level.

Figure 1: Selection Process to Create Matched Groups with HCPD for TDCJ Eligible Felony Defendants

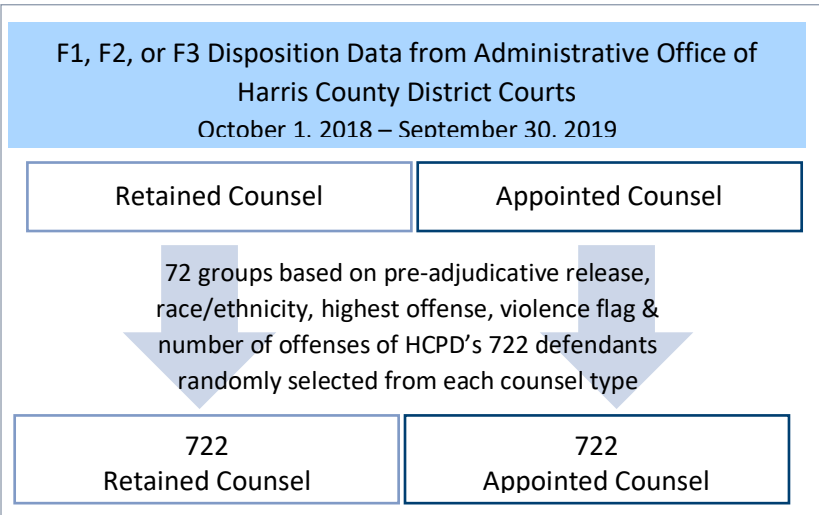


Table 48 shows the outcomes by lawyer type for felony defendants. The analysis shows that:

- A larger percentage of the HCPD felony defendants exit the system without a record or penalty for the charges(s) than other counsel types. Of defendants represented by HCPD, 37% exited the criminal justice process compared to 34% for retained counsel and 28% for appointed counsel.
  - The sum of acquittal all, no bill, and dismissed all is the number and proportion of defendants who exit the system without a record or penalty for the charge(s).
- A lower percentage of the HCPD felony defendants received deferred adjudication at 19% compared to 31% for retained counsel and the 30% for appointed counsel.
  - A deferred adjudication is not a conviction; however, it carries many of the collateral consequences of a conviction until the term of supervision is successfully completed and the defendant returns to court and successfully petitions to expunge this record. If a person’s deferred sentence is revoked, he faces up to the maximum sentence allowed by law and does not receive credit for time completed on the community sentence.
- The HCPD had 10% of felony defendants found guilty on at least one offense and dismissed on at least one and 34% found guilty on all offenses for a total of 44% compared to the similar total for appointed counsel of 42% and 34% for retained counsel.

- The outcome of dismissed some, guilty some plus guilty all are defendants who now have a criminal conviction and may face incarceration as a punishment.

**Table 48: TDCJ Eligible Felony Outcomes**

	HCPD		Appointed Counsel		Retained Counsel	
	#	%	#	%	#	%
<b>Acquittal All</b>	11	1.5%	1	0.1%	0	0%
<b>No Billed</b>	17	2.4%	14	1.9%	30	4.0%
<b>Dismissed All</b>	238	33%	186	26%	223	31%
<b>Deferred Adjudication</b>	140	19%	219	30%	227	31%
<b>Dismissed Some, Guilty Some</b>	69	10%	57	8%	55	8%
<b>Guilty All</b>	247	34%	243	34%	187	26%
<b>Total Original Defendants</b>	<b>722</b>		<b>722</b>		<b>722</b>	

Table 49 below shows the proportion of clients with outcomes decided at trial and the outcome at trial. The trial rate is only for the matched samples and is not the overall trial rate in the county. HCPD went to trial with 3% of their felony defendants compared to about 1% for both retained (1.4%) and appointed counsel (0.7%). HCPD also received acquittals on a larger proportion of defendants with 11 defendants (45%) acquitted at trial compared to 1 (20%) of appointed counsel. Retained counsel did not receive acquittals for any trial in this subset sample. Note that the small numbers affect fluctuations in the percentage and these comparisons should take that in consideration.

**Table 49: TDCJ Eligible Felony Trial Rates and Outcomes, FY 2019**

	HCPD		Appointed Counsel		Retained Counsel	
	#	%	#	%	#	%
<b>Acquittal All</b>	11	45%	1	20%	0	0%
<b>Guilty on Any</b>	12	55%	4	80%	10	100%
<b>Total Trials from Sample</b>	23		5		10	
<b>Rate Decided at Trial (722)</b>	3.2%		0.7%		1.4%	

Figure 2 shows the punishment outcomes for defendants receiving deferred adjudication, dismissed some, guilty some, and guilty on all. The punishments are fine only, community supervision, and incarceration. Fine only includes a conviction on one’s record but is the terminus of the punishment. Deferred adjudication and probation are both opportunities to serve a sentence in the community. Deferred adjudication is both a disposition type and a sentence type; the sentence type, like probation, is supervised by the Harris County Community Supervision and Corrections Department (CSCD), but unlike probation, successful completion of

the deferred adjudication term could result in an expunction of the defendant’s record. On the other hand, revocation of deferred adjudication can lead to an incarceration sentence with no credit given for time on supervision. Finally, county jail, state jail, and TDCJ time are all sentences to incarceration. If a felony is dismissed, reduced or served as a misdemeanor (in the case of state jail felonies), a defendant may serve county jail time.

**Figure 2: Punishment Continuum for Defendants with Deferred Adjudication or Guilty on Any Offense**



Table 50 shows the sentences for felony defendants found guilty of at least one offense or receiving deferred adjudication at disposition by lawyer type. The denominator (total) for this comparison is different than the above denominator, because the number of punishments was determined by the different outcomes at disposition (the HCPD group had 456 defendants, the appointed counsel group had 519 defendants and the retained counsel group had 469 defendants). The analysis showed that:

- HCPD had the only felony defendant receiving fine only as an outcome.
- About one third of the HCPD felony defendants, or 34%, received a community sentence compared to 45% for those with appointed counsel and 54% for those with retained counsel. The majority of those sentences were deferred adjudication.
- Two-thirds, or 66%, of HCPD felony defendants received sentences to incarceration compared to 55% of defendants with appointed counsel and 46% of defendants with retained counsel.
  - HCPD had the highest percentage of felony defendants sentenced to TDCJ at 32% compared to 24% for retained counsel and 22% of appointed counsel.
  - HCPD had the highest percentage of felony defendants sentenced to state jail at 6% compared to 5% of appointed counsel and 4% for retained counsel.

- HCPD had the same percentage of felony defendants sentenced to county jail as appointed counsel with 28% compared to 18% for retained counsel.

Table 50: TDCJ Eligible Felony Sentence Outcomes by Lawyer Type, FY 2019

		Fine Only	Community Supervision			Incarceration			
		Total	Total CS	Def. Adj.	Prob.	Total Inc	HC Jail	State Jail	TDCJ
<b>HCPD (456)</b>	#	1	154	140	14	301	126	28	147
	%	0.2%	34%	31%	3%	66%	28%	6%	32%
<b>Appointed (519)</b>	#	0	232	219	13	287	146	27	114
	%		45%	42%	3%	55%	28%	5%	22%
<b>Retained (469)</b>	#	0	255	227	28	214	86	17	111
	%		54%	48%	6%	46%	18%	4%	24%

Table 51 shows the average length sentence by type of sentence for felony defendants. Deferred, probation, and TDCJ are all presented in years; Harris County Jail in days; and, state jail in months. The analysis shows that:

- There was little difference in the average deferred sentence with all counsel types getting about around 3.75 years.
- Probation sentences for felony defendants ranged from four years and one month for defendants with retained counsel to four years and eight months for appointed counsel and five years and eight months for HCPD.
- The shortest average jail sentence for felony defendants was 138 days for defendants with retained counsel followed by 163 days for those represented by appointed counsel and 191 days for those represented by HCPD.
- HCPD and retained counsel had similar average TDCJ sentences with 11 and 10 years on average, respectively, and appointed received the lowest average years at 6.



Table 51: TDCJ Eligible Felony Sentence Length Outcomes by Lawyer Type, FY 2019

		Fine Only	Community Supervision		Incarceration				
		Total	Total CS	Def. Adj.	Prob.	Total Inc	HC Jail	State Jail	TDCJ
<b>HCPD (456)</b>	#	1	154	140	14	301	126	28	147
				3Y 6M	5Y 9M		191D	12M	11Y
<b>Appointed (519)</b>	#	0	232	219	13	287	146	27	114
				3Y 8M	4Y 8M		163D	8M	6Y
<b>Retained (469)</b>	#	0	255	227	28	214	86	17	111
				3Y 10M	4Y 1M		138D	12M	10Y

Figure 3 depicts the selection process use to create matched groups with HCPD for state jail felony defendants. As stated above, the Felony Division represents defendants with state jail felony charges. The same methodology described above was used to select the comparison cases for defendants with state jail felony charges, in this case 227 defendants for each group. Note that for this comparison defendants with state jail felonies participating in the RIC court were excluded. Again, “appointed counsel” refers to appointed or term assignment counsel as the variable did not distinguish between the two.

Figure 3: Selection Process to Create Matched Groups with HCPD for State Jail Felony Defendants

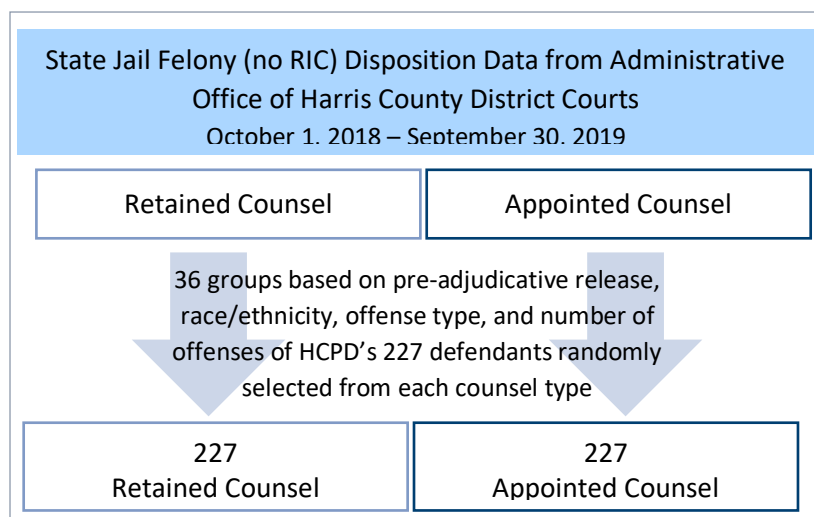


Table 52 shows the outcomes for state jail felony defendants by type of counsel for the 227 person groups. No defendant in the study was acquitted on all charges. The analysis shows that:

- A larger percentage of HCPD and retained counsel state jail felony defendants exit the system without a record or penalty for the charges(s) than other counsel types. Of defendants represented by HCPD, 38% exited the criminal justice process compared to 18% for appointed counsel.
  - The sum of acquittal all, no bill, and dismissed all is the number and proportion of defendants who exit the system without a record or penalty for the charge(s).
- A lower percentage of the HCPD state jail felony defendants received deferred adjudication at 18% compared to 34% for retained counsel and the 25% for appointed counsel.
  - A deferred adjudication is not a conviction; however, it carries many of the collateral consequences of a conviction until the term of supervision is successfully completed and the defendant returns to court and successfully petitions to expunge this record. If a person’s deferred sentence is revoked, he faces up to the maximum sentence allowed by law and does not receive credit for time completed on the community sentence.
- The HCPD had 4% of state jail felony defendants found guilty on at least one offense and dismissed on at least one and 41% found guilty on all offenses for a total of 45% compared to the similar total for appointed counsel of 56% and 29% for retained counsel.
  - The outcome of dismissed some, guilty some plus guilty all are defendants who now have a criminal conviction and may face incarceration as a punishment.

There were also no trials on state jail felonies in fiscal year 2019. The trial rate for HCPD, appointed, and retained counsel was zero percent.

Table 52: State Jail Felony Outcomes, FY 2019

	HCPD		Appointed Counsel		Retained Counsel	
	#	%	#	%	#	%
<b>Acquittal All</b>	0	0%	0	0%	0	0%
<b>No Billed</b>	2	1%	3	1%	2	1%
<b>Dismissed All</b>	83	37%	38	17%	83	37%
<b>Deferred Adjudication</b>	40	18%	57	25%	77	34%
<b>Dismissed Some, Guilty Some</b>	10	4%	10	4%	7	3%
<b>Guilty All</b>	92	41%	119	52%	58	26%
<b>Total Original Defendants</b>	<b>227</b>		<b>227</b>		<b>227</b>	

Figure 4 shows the sentence outcomes for state jail felony defendants receiving deferred adjudication, dismissed some, guilty some, and guilty on all. The punishments are fine only, community supervision, and incarceration as discussed previously. State jail felony defendants can enter a plea referred to as a CCP 12.44a or CCP 12.44b sentence. A 12.44a sentence is a state jail felony disposed as a misdemeanor with a misdemeanor punishment and a 12.44b sentence is a state jail felony disposed as a state jail felony with a misdemeanor punishment.

Figure 4: Punishment Continuum for Defendants with Deferred Adjudication or Guilty on Any Offense



Table 53 shows the sentences for state jail felony defendants found guilty of at least one offense or receiving deferred adjudication at disposition by lawyer type. The denominator (total) for this comparison is different than the above denominator, because the number of punishments was determined by the different outcomes at disposition (HCPD group had 138 defendants, the appointed counsel group had 142 defendants, and the retained counsel group had 185 defendants). The analysis showed that:

- There were no state jail felony defendants receiving fine only as an outcome.
- About one third of the HCPD defendants, or 29%, received a community sentence compared to 32% for those with appointed counsel and 58% for those with retained counsel. The overwhelming majority of those sentences were deferred adjudication.
- More than two-thirds, or 71%, of HCPD state jail felony defendants received sentences to incarceration compared to 68% of defendants with appointed counsel and 42% of defendants with retained counsel. Although proportionately higher than appointed counsel, HCPD had a numerically lower number of defendants sentenced to incarceration than appointed (98 versus 126) but was higher for both metrics than retained counsel (59).

- HCPD had the second highest percentage of state jail felony defendants sentenced to state jail at 17% compared to 30% for appointed counsel and 12% for retained counsel.
- HCPD had the highest percentage of state jail felony defendants sentenced to county jail at 54% compared to 38% for appointed counsel and 30% for appointed counsel.

Table 53: State Jail Felony Sentence Outcomes by Lawyer Type, FY 2019

		Fine Only	Community Supervision			Incarceration		
		Total	Total CS	Def. Adj.	Prob.	Total Inc	HC Jail	State Jail
<b>HCPD (138)</b>	#	0	40	40	0	98	74	24
	%		29%	29%		71%	54%	17%
<b>Appointed (185)</b>	#	0	59	57	2	126	71	55
	%		32%	31%	1%	68%	38%	30%
<b>Retained (142)</b>	#	0	83	77	6	59	42	17
	%		58%	54%	4%	42%	30%	12%

Table 54 shows the average sentence length by type of sentence for state jail felons. Deferred, and probation are all presented in years; Harris County Jail in days; and, state jail in months. The analysis shows that:

- There was little difference in the average deferred sentence with all counsel types getting about around 2 years and five months.
- Probation sentences average about two years for defendants with appointed and retained counsel. None of the state jail felony defendants represented by the HCPD received probation.
- The shortest average county jail sentence was 74 days for state jail felony defendants represented by HCPD followed by 104 days for defendants represented by retained counsel and 180 days for those represented by appointed counsel.
- The shortest average state jail sentence was 8 months for state jail felony defendants represented by HCPD followed by 11 months for defendants represented by appointed counsel and 16 months for those represented by appointed counsel.

Table 54: State Jail Felony Sentence Length Outcomes by Lawyer Type, FY 2019

		Fine Only	Community Supervision		Incarceration			
		Total	Total CS	Def. Adj.	Prob.	Total Inc	HC Jail	State Jail
<b>HCPD (138)</b>	#	0	40	40	0	98	74	24
	%			2Y 8M			74D	8M
<b>Appointed (185)</b>	#	0	59	57	2	126	71	55
	%			2Y 5M	2Y		180D	11M
<b>Retained (142)</b>	#	0	83	77	6	59	42	17
	%			2Y 7M	2Y 2M		104D	16M

### Juvenile Division Felony Respondents

HCPD’s Juvenile Division represents juveniles on all offense levels from misdemeanor B through first degree felonies. The Administrative Office of Harris County District Courts in coordination with Harris County Juvenile Probation provided anonymized data on most juvenile cases disposed in TIDC fiscal year 2019. It is important to note that this data set excluded records that were sealed by the juvenile court and the characteristics of these cases is unknown. Therefore, it is not possible to assess if the sealing of cases disproportionately occurred for one lawyer type. Another problem with creating the juvenile comparison groups was the limited number of cases represented by both HCPD and retained counsel. There were 271 original disposition records in fiscal year 2019 for retained counsel and 272 for HCPD.

Figure 5 illustrate how the match groups were created for the different types of counsel in a manner that would control for race/ethnicity, offense level, number of offenses, and gender. Instead of starting with HCPD clients and match the groups for retained and appointed counsel to HCPD’s clients as was done for analyzing felony defendant, for juveniles a group that every defense type could provide representative juvenile respondents was created. The number of HCPD juvenile respondents, therefore, do not match the intra-defense comparison numbers of HCPD in fiscal year 2019 shown earlier in the report. For example, HCPD did not represent any white females with two or more offenses with a state jail felony as the highest, so that respondent type was excluded. In total, each group had 187 respondents that all look alike on criminogenic and demographics features. There were 85 juveniles whose highest or only allegation was a felony. For juveniles, state jail felonies are not treated as a separate category, because it does not impact sentencing options. The other 102 juveniles had only misdemeanor allegations.

Figure 5: Selection Process to Create Matched Groups with HCPD for State Jail Felony Defendants

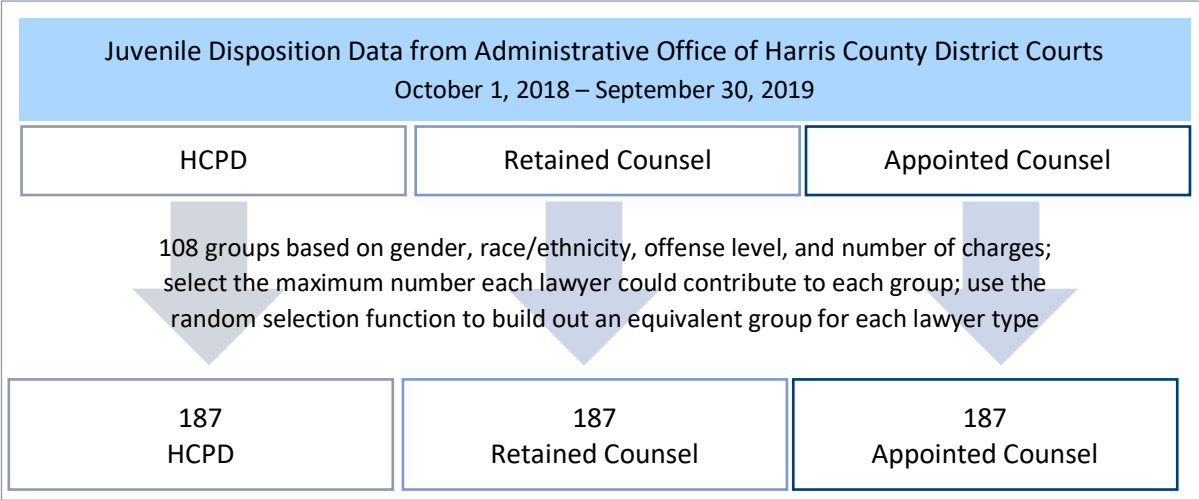


Table 55 shows the outcomes for felony juvenile respondents by type of counsel for the 85 felony respondent groups. No respondent in the study was acquitted on all charges; however, as noted above, there were records excluded from the dataset provided because they are sealed. Having a finding of “Not True at Trial” is likely the type of disposition that would lead to record sealing. The analysis shows that:

- HCPD had the lowest proportion of non-suit dispositions for juvenile felony respondents with 12% or 10 clients, which was close to the 13% or 11 clients for retained counsel and slightly lower than the 16% of 14 for those represented by appointed counsel.
- HCPD had the highest proportion of deferred dispositions for juvenile felony respondents with 42%, which was 3% points higher than respondents represented by retained counsel at 39% and 10% points higher than respondents represented by appointed counsel at 32%.<sup>46</sup>
- HCPD had 11% (9 clients) juvenile felony respondents with cases that were dismissed some, true compared to 15% for those represented by retained counsel and 9% of those represented by appointed counsel.
- Appointed counsel had the highest number of juvenile felony respondents and higher percentage of their respondents with true on all dispositions with 36 respondents and 42% compared to HCPD at 35% (30 respondents) and retained counsel at 32% (27 respondents).

<sup>46</sup> For juveniles, deferred may refer to deferred adjudication or deferred prosecution.

- Retained counsel had one juvenile respondent certified to stand accused in adult criminal court. This is not necessarily a conviction in adult court, but the juvenile moved out of the juvenile system to the adult criminal system at that point in the case disposition process and this is the resolution in juvenile court.

No respondents in this study had all allegations found not true at trial. HCPD’s data records indicate that the office secured this result for juveniles with felony charges, which reinforces the assumption that is this type of disposition that would lead to records being sealed. As a result, it is not possible to calculate a trial rate for the lawyer type.

Table 55: Juvenile Felony Outcomes, FY 2019

	HCPD		Appointed Counsel		Retained Counsel	
	#	%	#	%	#	%
<b>Not True</b>	0		0		0	
<b>Non-Suit</b>	10	12%	14	16%	11	13%
<b>Deferred</b>	36	42%	27	32%	33	39%
<b>Dismissed Some, True Some</b>	9	11%	8	9%	13	15%
<b>All True</b>	30	35%	36	42%	27	32%
<b>Certified</b>					1	1%
<b>Total Juv Felony Respondents</b>	<b>85</b>		<b>85</b>		<b>85</b>	

Figure 6 shows the punishment outcomes for juvenile respondents receiving deferred, dismissed some, true some, and true on all. The deferred outcomes are split between deferred prosecution (after successful completion of a six-month term, the case is dismissed) and deferred adjudication. Probation outcomes are probation in the field and a quasi-community sentence of probation with a facility placement; this is labeled quasi because the facility placement may occur because the juvenile is involved in treatment provided at the facility or because the juvenile is a ward of the state and does not have a parent or guardian’s home to return to for probation. This outcome is not necessarily more punitive than field probation. Some offenses can have determinate probation sentences, which means the sentences can be up to 10 years, but the prosecutor must set a transfer hearing by the juvenile’s 19<sup>th</sup> birthday if they do not want the sentence to expire automatically when the juvenile turns 19. The incarceration punishments include receiving an indeterminate or determinate sentence to the Texas Juvenile Justice Department (TJJD). Juveniles committed to TJJD with an indeterminate sentence must be discharge by age 19 and may leave earlier at the discretion of the agency based on progress and behavior. For a determinate sentence, a juvenile may be transferred to the adult system based on progress and behavior and faces a known sentence length. TJJD is the only punishment option for felony respondents.

Figure 6: Punishment Continuum for Defendants with Deferred or True on Any Offense

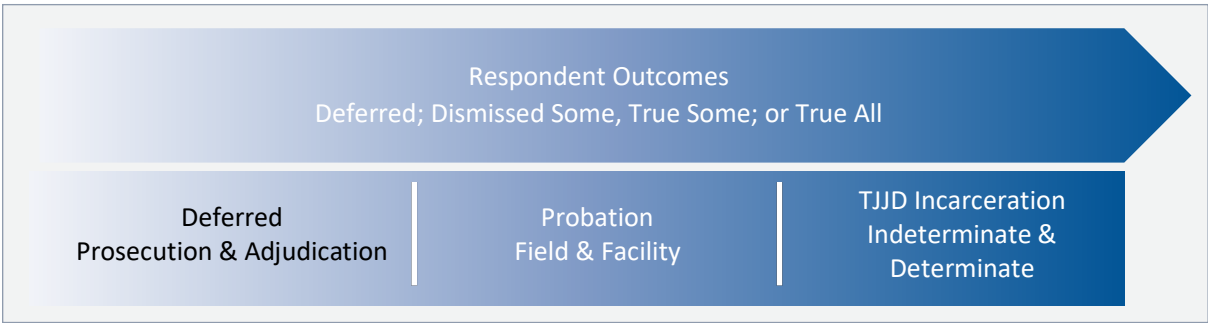


Table 56 shows sentences for the felony juvenile respondents who received deferred adjudication or were found guilty on at least one offense (dismissed some, guilty some plus guilty all). The analysis shows that:

- Juvenile felony respondents represented by HCPD had the highest proportion of deferred sentences at 49% compared to 48% for juvenile respondents represented by retained counsel and 38% for those represented by appointed counsel.
- Of the deferred sentences, HCPD had the highest proportion of juvenile felony respondents receiving deferred prosecution at 8% compared to 4% for respondents represented by appointed counsel and 3% for those represented by retained counsel.
- HCPD had more deferred adjudication sentences for juvenile felony respondents at 41% compared to 34% for appointed counsel but less than retained counsel at 45%.
- The opposite pattern occurred with probation in which 59% of felony respondents represented by appointed counsel received probation compared to 48% of HCPD and the same percentage for those represented by retained counsel.
- HCPD juvenile felony respondents did have more field probation sentences than appointed counsel at 36% compared to 34% with retained counsel having the highest percentage at 40%.
- Appointed counsel had the highest proportion of juvenile felony respondents receiving a probation placement sentence at 25% compared to juvenile felony respondents represented by HCPD at 12% and appointed counsel at 8%. Respondents that are in state foster care or have specific needs requiring treatment in a facility setting may drive this outcome, but the data were not available to measure this.



- TJJD was an unlikely outcome for all counsel types for juvenile felony respondents with those represented by HCPD and appointed counsel receiving one indeterminate and one determinate sentence each and those represented by retained counsel having one respondent with an indeterminate sentence and two with a determinate sentence.

Table 56: Felony Respondent Sentence Outcomes by Lawyer Type, FY 2019

		Deferred			Probation			TJJD - Incarceration		
		Total Def	Def. Pro.	Def. Adj.	Total Prob	Field Prob.	Prob - Facility	Total TJJD	TJJD Ind	TJJD Det
<b>HCPD (75)</b>	#	37	6	31	36	27	9	2	1	1
	%	49%	8%	41%	48%	36%	12%	2%	1%	1%
<b>Appointed (71)</b>	#	27	3	24	42	24	18	2	1	1
	%	38%	4%	34%	59%	34%	25%	2%	1%	1%
<b>Retained (73)</b>	#	35	2	33	35	29	6	3	1	2
	%	48%	3%	45%	48%	40%	8%	4%	1%	3%

Table 57 shows sentence length by type of sentence for felony juvenile respondents. The length of sentence is presented in months for all except for TJJD-Determinate sentences which is presented in years. The analysis shows that:

- Felony juvenile respondents who received deferred probation received six months regardless of lawyer type, which is the standard period for this sentence.
- HCPD felony juvenile respondents received an average six month deferred adjudication, shorter than the seven months for those represented by retained counsel and the eight months of those represented by appointed counsel.
- HCPD felony juvenile respondents received an average field probation sentence of 16 months, shorter than the 18 months for those represented by retained counsel and the 17 months of those represented by appointed counsel.
- HCPD felony juvenile respondents received an average probation placement sentence of 24 months, shorter than the 57 months for those represented by retained counsel and the 29 months of those represented by appointed counsel. Further analysis showed 67% of retained sentences to probation in a facility were determinate sentences (determinate probation sentences can be up to 10 years, if the prosecutor does not set

a transfer hearing by the juvenile’s 19<sup>th</sup> birthday than the sentence expires automatically) compared to 17% for appointed and 11% for HCPD.<sup>47</sup>

One should be cautious in comparing these average lengths as they are normally driven by the age of the client and the amount of time from disposition until the client reaches adulthood, unless the sentence is determinate. TJJD Indeterminate Sentences do not have an average length as the law allows a client to stay in TJJD facilities up to age 19, but also be released early by TJJD depending on behavior and progress. There were few juvenile felony respondents receiving determinate sentences, with the one represented by the HDPDO receiving a ten-year sentence, the one represented by appointed counsel receiving an eight-year sentence and the two represented by retained counsel receiving six years and seven-month sentence.

Table 57: Felony Respondent Sentence Length by Type of Sentence by Lawyer Type, FY 2019

	Deferred		Probation		TJJD		
	Def. Pro.	Def. Adj.	Field Prob.	Prob - Facility	TJJD Ind	TJJD Det	
<b>HCPD (75)</b>	#	6	31	27	9	1	1
		6 M	6 M	16 M	24 M		10 Y
<b>Appointed (71)</b>	#	3	24	24	18	1	1
		6 M	8 M	17 M	29 M		8 Y
<b>Retained (73)</b>	#	2	33	29	6	1	2
		6 M	7 M	18 M	57 M		6 Y 7 M

<sup>47</sup> The average determinate sentence to a probation facility was 4 years for HCPD, 6 years for appointed, and 6 years and 2 months for retained. The other sentences then average 1 year and 5 months for HCPD and 2 years for both appointed and retained. A similar pattern exists for field probation with the average determinate sentence at 3 years 8 months for HCPD, 3 years 3 months for appointed, and 3 year 10 months for retained compared to 1 year for sentences not determinate for HCPD and 1 year 1 month for both appointed and retained; however, the distribution was more comparable (11% determinate for HCPD, 13% for appointed, and 14% for retained) so the outliers do not disproportionately weight any counsel types sentence.

## Juvenile Division Misdemeanor Respondents

Table 58 shows the outcomes for juvenile misdemeanor juvenile respondents by type of counsel for the 102 misdemeanor respondent groups. No juvenile respondent in the study had all allegations found not true at trial; however, as noted above, there was a group excluded from the dataset provided because their records are sealed. Having a finding of “Not True at Trial” is likely the type of disposition that would lead to record sealing.

The analysis shows that:

- HCPD had the lowest proportion of non-suit dispositions with 17% or 17 misdemeanor juvenile respondents, followed by 19% or 19 respondents for appointed counsel. The highest percentage of non-suit disposition was for misdemeanor juvenile respondents represented by retained counsel at 22% or 22 respondents.
- HCPD had the second highest proportion of deferred for misdemeanor juvenile respondents with 57%, which was 5% points lower than respondents represented by retained counsel at 62% and 9% points higher than respondents represented by appointed counsel at 48%.<sup>48</sup>
- HCPD and retained counsel had about the same proportion of misdemeanor juvenile respondents with cases that were dismissed some, true some with 7% (7 clients) and 6% (6 clients) respectively while appointed counsel had this disposition for 2% or 2 of their respondents.
- Appointed counsel had the highest number of respondents and higher percentage of their juvenile misdemeanor respondents with true on all dispositions with 32 defendants and 31% compared to HCPD at 20% (20 clients) and retained counsel at 11% (11 clients).

No respondents in this study had all allegations found not true at trial. As a result, it is not possible to calculate a trial rate for the lawyer types because there are trials missing.

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<sup>48</sup> For juveniles, deferred may refer to deferred adjudication or deferred prosecution.

Table 58: Juvenile Misdemeanor Outcomes, FY 2019

	HCPD		Appointed Counsel		Retained Counsel	
	#	%	#	%	#	%
<b>Not True at Trial</b>	0	0%	0	0%	0	0%
<b>Non-Suit</b>	17	17%	19	19%	22	22%
<b>Deferred</b>	58	57%	49	48%	63	62%
<b>Dismissed Some, True Some</b>	7	7%	2	2%	6	6%
<b>All True</b>	20	20%	32	31%	11	11%
<b>Total Misd Juv Respondents</b>	<b>102</b>		<b>102</b>		<b>102</b>	

Figure 7 shows the punishment outcomes for juvenile misdemeanor respondents receiving deferred, dismissed some, true some, and true on all. Outcomes for misdemeanor juvenile respondents are the same as described above for felony juvenile respondents except misdemeanor juvenile respondents are not subject to a TJJD commitment.

Figure 7: Punishment Continuum for Defendants with Deferred or True on Any Offense



Table 59 shows the sentence outcomes by lawyer type for juvenile misdemeanor respondents. The analysis shows that:

- Juvenile misdemeanor respondents represented by retained counsel had the highest proportion of deferred sentences at 81% compared to 68% for juvenile respondents represented by HCPD and 59% for those represented by appointed counsel.
- Of the deferred sentences, retained counsel had the highest proportion of juvenile respondents receiving deferred prosecution at 8% compared to 5% for respondents represented by HCPD and 2% for those represented by appointed counsel.
- Retained counsel had the most deferred adjudication sentences for juvenile respondents at 73% compared to 63% for HCPD and 57% for appointed counsel.

- The opposite pattern occurred with probation in which 41% of appointed counsel’s misdemeanor juvenile respondents received probation compared to 32% of juvenile respondents represented by HCPD and 20% of represented by retained counsel.
- Of the juvenile misdemeanor respondents represented by appointed counsel 36% received field probation compared to 27% for those represented by appointed counsel and 27% for those represented by HCPD.
- Appointed counsel and HCPD had the same proportion of juvenile misdemeanor respondent receiving a probation placement sentence at 5% each while retained counsel misdemeanor juvenile respondents had none. Respondents that are in state foster care or have specific needs requiring treatment in a facility setting may drive this outcome, but the data were not available to measure or confirm this hypothesis.

Table 59: Misdemeanor Respondent Sentence Outcomes by Lawyer Type, FY 2019

		Deferred			Probation		
		Total Def.	Def. Pro.	Def. Adj.	Total Prob.	Field Prob.	Facility Prob.
<b>HCPD (85)</b>	#	58	4	54	27	23	4
	%	68%	5%	63%	32%	27%	5%
<b>Appointed (83)</b>	#	49	2	47	34	30	4
	%	59%	2%	57%	41%	36%	5%
<b>Retained (80)</b>	#	64	6	58	16	16	0
	%	81%	8%	73%	20%	20%	0%

Table 60 shows sentence length by type of sentence for misdemeanor juvenile respondents. These sentences are driven by statute and juvenile probation local practices, so there is limited variation. All deferred prosecution sentences are six months. HCPD had the longest deferred adjudication sentence by a month (average 8 months) and the same probation, both field and facility, sentence as appointed counsel at 12 months.

Table 60: Misdemeanor Respondent Sentence Length Outcomes by Lawyer Type, FY 2019

	Deferred		Probation		
	Def. Pro.	Def. Adj.	Field Prob.	Prob - Facility	
<b>HCPD (85)</b>	#	4	54	23	4
		6 M	8 M	12 M	12 M
<b>Appointed (83)</b>	#	2	47	30	4
		6 M	7 M	12 M	12 M
<b>Retained (80)</b>	#	6	58	16	0
		6 M	7 M	16 M	-

## Appellate Division 1st and 14th Courts of Appeals Decisions

This section reviews the results of the work by the HCPD's Appellate Division. Lawyers in this division represent defendants in the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeal, the Texas Court of Criminal Appeals (CCA), and the US Supreme Court. Appeals are not a common occurrence in the criminal justice system, for example in FY 2019 there were 4,714 criminal cases filed across all 14 courts of appeals in Texas compared to 876,946 felony dispositions in Texas's district courts so about 0.5% of felony disposed cases resulted in a filed appeal.<sup>49</sup> Success at the appeals level is also rare. The analysis here uses aggregate data from the Texas Office of Court Administration (OCA).<sup>50</sup> The office tracks aggregate appellate outcomes and the data is not case specific which means that there is no matched sample technique presented here to compare appellate outcomes. The number of cases appealed is also small and the specific nature of the cases and arguments with those cases does not make it possible to create a valid matched sample of comparison cases.

Table 61 shows the number and proportion of cases reversed or reformed (typically successful for the defendant) and number and proportion of cases affirmed (typically unsuccessful for the defendant) for the HCPD, then subtracts those numbers from the OCA's Court of Appeals activity report, to estimate the number of decisions not involving the HCPD. The number of appellate decisions fluctuate significantly each year; therefore, an average is computed for the period of 2014 to 2019. During this period, HCPD had 13% of total cases reversed or reformed compared to 12% of the non-HCPD cases. Unfortunately, as the numbers are pre-aggregated it is not possible to tell in detail who brought the combined cases to the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeals.<sup>51</sup>

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<sup>49</sup> Although this math does not fully reflect an accurate picture of proportion of disposed cases appealed because of the lag between disposition and the subsequent appeal deadline, it is close and unlikely to be noticeably different. Texas Office of Court Administration. 2019. Annual Statistical Report for the Texas Judiciary Fiscal Year 2019. <https://www.txcourts.gov/media/1445760/fy-19-annual-statistical-report.pdf>

<sup>50</sup> *Courts of Appeals Activity for the Fiscal Year Ended August 31, 2014-2019.*

<sup>51</sup> A case may go to the CCA and then back to the 1st or 14th Court of Appeals. That court may have the State's argument receiving the reverse or reform decision and these data cannot disaggregate these numbers to get a better estimate of outcomes, so although the reverse/reform is typically successful for the defendant if the case returns to 1<sup>st</sup> or 14<sup>th</sup> because the State appealed the new outcome, then it is not a success for the defendant.

Table 61: Decisions at the 1st and 14th Courts of Appeal, FY 2014 through FY 2019

FY	HCPD					1 <sup>st</sup> and 14 <sup>th</sup> Combined Less HCPD				
	Total Not Dismissed	Reverse + Reform		Affirm		Total Not Dismissed	Reverse + Reform		Affirm	
	#	#	%	#	%	#	#	%	#	%
2014	137	25	18%	112	82%	618	119	19%	499	81%
2015	106	13	12%	93	88%	551	62	11%	489	89%
2016	118	5	4%	113	96%	542	55	10%	487	90%
2017	57	11	19%	46	81%	499	57	11%	442	89%
2018	47	10	21%	37	79%	457	37	8%	420	92%
2019	62	5	8%	57	92%	422	47	11%	375	89%
<b>Average</b>	<b>88</b>	<b>12</b>	<b>13%</b>	<b>76</b>	<b>87%</b>	<b>515</b>	<b>63</b>	<b>12%</b>	<b>452</b>	<b>88%</b>
<b>Total</b>	<b>527</b>	<b>69</b>	<b>13%</b>	<b>548</b>	<b>87%</b>	<b>3,089</b>	<b>377</b>	<b>12%</b>	<b>2,712</b>	<b>88%</b>

Table 62 presents the same numbers as in Table 61 above, but with the proportion reflecting the percentage of appeals made up by HCPD cases. HCPD appeals represented 17.1% of the total cases not dismissed in the 1<sup>st</sup> and 14<sup>th</sup> Courts of Appeal during this period. HCPD had 18.3% of the total reverse and reform decisions and 16.9% of the affirm decisions, meaning HCPD had disproportionately more cases with a reverse or reform decisions in relation to their share of total cases.<sup>52</sup>

Table 62: Decisions at the 1st and 14th Courts of Appeal, FY 2014 through FY 2019

FY	Total Not Dismissed			Reverse + Reform			Affirm		
	HCPD	All Others	% HCPD	HCPD	All Others	% HCPD	HCPD	All Others	% HCPD
2014	137	618	22.2%	25	119	21.0%	112	499	22.4%
2015	106	551	19.2%	13	62	21.0%	93	489	19.0%
2016	118	542	21.8%	5	55	9.1%	113	487	23.2%
2017	57	499	11.4%	11	57	19.3%	46	442	10.4%
2018	47	457	10.3%	10	37	27.0%	37	420	8.8%
2019	62	422	14.7%	5	47	10.6%	57	375	15.2%
<b>Average</b>	<b>88</b>	<b>515</b>	<b>17.1%</b>	<b>12</b>	<b>63</b>	<b>19.0%</b>	<b>76</b>	<b>452</b>	<b>16.8%</b>
<b>Total</b>	<b>527</b>	<b>3,089</b>	<b>17.1%</b>	<b>69</b>	<b>377</b>	<b>18.3%</b>	<b>458</b>	<b>2,712</b>	<b>16.9%</b>

### Appellate Division State Court of Criminal Appeals Decisions

Comparing the outcome of HCPD with other lawyers at the CCA is difficult for multiple reasons. First, there are a limited number of cases as the CCA does not grant review unless the issue raised is one of statewide concern or if there is a disagreement among the Courts of Appeals that should be settled by the CCA. HCPD received 58 decisions from fiscal year 2014 through

<sup>52</sup> Ibid.



2019 and 32 of those were in 2014, which leaves 26 decisions on all other years. Second, the outcomes for these cases are rarely the terminal outcome in the appeals process unless the case was affirmed or dismissed, so following the CCA's decision the case is referred back to a different court level. Finally, the problem mentioned above regarding the lack of clarity in whether the reversal is a win for the State or the defense is heightened here due to the limited number of cases; therefore, one would have to read each opinion and code by hand who won the case. This was beyond the scope of this project.<sup>53</sup>

HCPD Appellate lawyer Angela Cameron worked through such manual review of cases for the fiscal year 2018 decisions and the result of her work is presented below.

*The most recent OCA report is for fiscal year 2018. There were 14 PDRs granted from Harris County during this time frame. The granting of the PDRs was split 50/50 between State and Defense PDRs. Of the 7 defense PDRs granted, 3 or 42.86% were PDO cases. However, 5 of the State's 7 PDRs were PDO cases (71.43%). Thus, out of the 14 PDRs granted our office represents the client 57.14% (8 cases). Of these 8 cases, the PDO prevailed 75% of the time on the merits (6 cases - 3 defense, 3 State).*

*For the OCA fiscal year 2018, the CCA has reported there were 12 reversals from the 1<sup>st</sup> and 14<sup>th</sup> Court of Appeals. Looking at the actual numbers of the 12, 5 were reversals when the State filed the PDR and 2 were reversals on the Court's own motion. This leaves 5 reversals on defense PDRs from Harris County. Three of the five cases, or 60% were PDO cases. All three cases involve the constitutionality of the comprehensive rehabilitation fee.<sup>54</sup>*

Table 63 below shows the proportion of the cases from Harris County granted review by the CCA from fiscal year 2014 through fiscal year 2019. This information also is extracted from the OCA aggregate reports.<sup>55</sup> Half of the reviews granted were represented by HCPD over the five-year period. There is lag between granting and disposition and a month's difference between the OCA and TIDC fiscal year; therefore, these do not align perfectly to the fiscal year used in the analysis in this section of the report.

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<sup>53</sup> Ibid.

<sup>54</sup> Cameron, Angela. January 2, 2020. Email Correspondence "HCPD Appellate"

<sup>55</sup> OCA. Court of Criminal Appeals Activity 2014-19. <https://www.txcourts.gov/statistics/annual-statistical-reports>

Table 63: Cases Granted at the Criminal Court of Appeals, FY 2014 through FY 2019

	<b>Total Granted from Harris County</b>	<b>Total HCPD Cases</b>	<b>Proportion HCPD</b>
<b>2014</b>	42	32	76%
<b>2015</b>	17	5	29%
<b>2016</b>	21	5	24%
<b>2017</b>	13	8	62%
<b>2018</b>	14	5	36%
<b>2019</b>	Not Reported	3	
<b>Average</b>	21.4	11	51%
<b>Total</b>	<b>107</b>	<b>55</b>	<b>51%</b>

# Appendix A

## Overview

HCPD contracted with the Texas Meadows Mental Health Policy Institute (MMHPI) to provide research support to the office. MMHPI was created in 2014. The mission of the Institute is to provide independent, nonpartisan, data-driven, and trusted policy and program guidance that creates systemic changes so all Texans can obtain effective and efficient behavioral health care when and where they need it. Given the overrepresentation of persons with mental illness in the state’s criminal justice system, the Institute also works to improve the policies and programs in said system.<sup>56</sup> A justice system that operates more effectively can also more effectively address the needs of justice-involved persons with mental illness. The TA team of the MMHPI is headed by Dr. Tony Fabelo, Senior Fellow for Justice Policy and Jessy Tyler, Senior Director for Justice Research. The TA team is experienced in indigent defense work. The team evaluated the HCPD in September 30, 2013 and provided TA regarding developing data for future statistical reports.<sup>57</sup> The TA team works closely with the Texas Indigent Defense Commission (TIDC) in strategic planning and has provided indigent defense evaluations in different Texas counties.

The Harris County Public Defender’s Office (HCPD) with the agreement of Harris County judicial and county officials started providing representation at the first bail hearing, commonly known as the Code of Criminal Procedure’s (CCP) “15.17 hearing” through their Bail Division in July 31, 2017. This started via video link in the Inmate Processing Center (IPC). After Hurricane Harvey hit Houston and flooded the courthouse on August 24, 2017, the hearings were moved to the IPC and conducted with the District Attorney (DA) and Magistrate present, although the DA later resumed appearance via video. In February 2019, the hearings moved to the Joint Processing Center (JPC) where misdemeanor arrestees are received and processed, generally within 24 hours or less and felony arrestees within 48 hours or less, as required by law.

Presently, state law does not require defense representation at this hearing, but recent federal court decisions pursuant to the Sixth Amendment to the U.S. Constitution seem to indicate representation should be provided at this first point of entry into the justice system because it is a critical stage of trial. Moreover, the consent decree signed by Harris County officials as part of the settlement of the federal *ODonnell* pretrial system litigation requires representation at magistration. As stated in Section VII, 37, of the decree:

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<sup>56</sup> Meadows Mental Health Policy Institute. 2019. Smart Justice. <https://www.texasstateofmind.org/focus/smart-justice/>

<sup>57</sup> Dr. Tony Fabelo, Carl Reynolds, Jessica Tyler. *Improving Indigent Defense: Evaluation of the Harris County Public Defender*. Council of State Governments Justice Center, September 30, 2013.

*The Parties agree that zealous and effective representation at bail hearings is important to protecting arrestees’ right to pretrial liberty and right against wealth-based detention. The Parties further agree that the availability of adequate time and workspace for defense counsel to confidentially interview misdemeanor arrestees in preparation for bail hearings, as well as access to early and effective support staff to assist defense counsel in gathering and presenting information relevant to the bail decision and appropriate conditions of release, are important to supporting defense counsel’s ability to make the best available arguments for release.*<sup>58</sup>

This report provides a qualitative view of the process and presents general trends since the representation started.

There are seven counties in Texas, including Harris County, providing representation at magistration; however, Harris County is the only one providing it for all arrestees less exclusions discussed below. Bexar County and Dallas County provide representation for a subset of arrestees with identified mental health concerns who would be eligible for specialized pretrial release (CCP 17.032 Mental Health Bond). Webb, Cameron, and Ft. Bend counties provide representation for some defendants at magistration, but data are unclear as to which defendants are represented.<sup>59</sup> Galveston County began providing representation in September 2019 to people magistrated at the Galveston County Jail for “on view” felonies following an injunction related to the *Booth* case.<sup>60</sup> Hayes County is planning to provide this representation and it is in the planning phase for implementation at this time.

### **Bail Division Capacity and Clients**

During TIDC fiscal year 2017 running October 1, 2016 through September 30, 2017, there were eight regular dockets. The early morning and morning dockets were held at 2 AM, 4 AM, 7 AM, and 10 AM. The afternoon, evening, and late evening dockets were held at 1 PM, 6 PM, 8 PM, and 11 PM. During TIDC fiscal year 2018, there were 9 regular dockets including the times listed above with a 4 PM docket added to regular rotation in May 2018. In TIDC fiscal year 2019, there were also 9 regular dockets with no additions.

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<sup>58</sup> US District Court for the Southern District of Texas, Houston Division, Case No. 16-cv-01414, Maranda Lynn ODonnell, et al. vs Harris County, Texas Consent Decree, August 1, 2019.

<sup>59</sup> Re: Question on 15.17s. Personal Communication. Joel Lieurance. 2/27/2020.

<sup>60</sup> *Booth v. Galveston Cty.*, 3:19-CV-00104, 2019 WL 4305457 (S.D. Tex. Sept 11, 2019).

The Bail Division of the HCPDO is staffed with ten lawyers. Monday through Friday, the office deploys three lawyers per shift which run from 6 AM to 2 PM; 2 PM to 10 PM; and 10PM to 6AM. To staff weekends, lawyers sign up for an overtime pool to be scheduled into the same eight-hour shifts as the week.

The Bail Division represents all persons with new felonies (felony charges without prior court dates) following consent from the arrestee. The work done is dictated by a signed order from the district and county court at law judges. For persons charged only with misdemeanors not qualifying for General Order Bonds (GOB), the Bail Division represents everyone unless the arrestee affirmatively waives representation. The misdemeanors that do not qualify for GOBs are family violence, second DWIs (Driving While Intoxicated) within five years of the first, and any offenses alleged to have been committed while on bond or under court supervision.

HCPDO does not represent persons with felony bond forfeitures or felony motions to adjudicate or revoke probation during magistration, those who opt-out, or those arrested on misdemeanors who qualify for GOBs. The magistrate has no ability to release the first three as another judge controls the case and GOB releases do not go before the magistrate. A small portion of those arrested on felonies also receive personal bonds prior to magistration.

The general work for the Bail Division lawyers includes reviewing the District Clerk's docket sheet and prepping for all persons to be represented on a docket. The office reviews information provided by Pretrial Services on the arrestee's criminal history, risk, financial, criminogenic, and housing information. This information is collected through computerized records and in person interviews. The lawyer also reviews the DA Intake Management System (DIMS) for information on the arrest which provides the foundation for the probable cause affidavit. The ODonnell settlement expressly gives permission for the lawyer to argue probable cause on misdemeanors. The Bail Division does not have an affirmative charge to argue probable cause on felonies but directs the court's attention to points related to probable cause during magistration as the weight of the evidence is an issue for setting individualized bail.

### **Workload Trends**

Table A-1 shows the number of people represented at magistration by HCPD. Representation started in TIDC fiscal year 2017, but the representation only occurred for 62 days of that fiscal year and was interrupted by Hurricane Harvey. In fiscal year 2018, the office represented 59,561 defendants and this number declined to 49,050 in fiscal year 2019 following the implementation GOBs for misdemeanors which reduced the number of defendants that needed representation.

Table A-1: Number of Defendants Represented at Magistration by the Bail Division of HCPD

TIDC Fiscal Year	Number	Notes
2017	1,973	FY 2017 is Oct 1, 2016 through September 30, 2017 but Rep at Mag only started July 31, 2017; From HCPDO records
2018	59,561	From TIDC
2019	49,050	From TIDC

HCPD has been providing information on the number of defendants represented at magistration and the cost to the Texas Indigent Defense Commission (TIDC) since TIDC began collecting this information in fiscal year 2018. Bexar, Cameron, Dallas, Ft Bend, and Galveston have not provided complete reporting to make comparisons with Harris County. Webb County provides more information, but there is still too much ambiguity to clearly calculate a cost per case outcome.<sup>61</sup> In fiscal year 2019, Harris County reported expending \$1,335,617 in supporting this process, which translated to an average of \$27 per arrestee.

### Qualitative Study of Sample of Cases

To offer some insight into the CCP 15.17 representation process, the research team reviewed 115 individuals participating in these hearings. The hearings occurred in four settings on September 18, 2019 and five settings on September 27, 2019. The research team watched the recordings of each of these hearings to learn the dynamics of this process and make some observations for this report. There was no attempt to select a random sample of cases, though the dates and dockets were arbitrary, as this presented some difficulties and the purpose here is just to provide some general observations of the process.

Every docket was structured the same way: first, individuals with Misdemeanor C only were processed without defense counsel; CCP 15.17 magistrate's warnings were read to individuals with Misdemeanor B and higher arrestees; then each person appeared in front of the magistrate individually to hear the charges faced. Once in front of the magistrate, the prosecutor read either the DIMS statement or provided a summary of the details from the warrant. For those arrested without a warrant, the magistrate decides if there is probable cause. For those arrested with a warrant and those for which there is probable cause, HCPD provided reasons to have a personal bond when applicable (some offenses do not qualify) and suggested a bond amount. The prosecutor then responded with an opinion on bond amount and personal bond release. The hearing concluded with the magistrate setting bond and an approval or denial of personal bond. After all hearings are completed, the magistrate concludes by issuing protective orders for a subset of applicable cases.

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<sup>61</sup> Re: Question on 15.17s. Personal Communication. Joel Lieurance. 2/27/2020

Four of the 115 individuals did not complete the hearing. One individual was in medical observation; another needed a mental health evaluation before the CCP 15.17 could be completed with a comprehensive list of release options; one individual was too combative to participate; and one person’s full arrest description was incomplete in DIMS so the magistrate did not have enough information to find probable cause. Of the 111, there was one arrestee for whom the magistrate did not find probable cause; however, the arrestee had multiple offenses at arrest. Therefore, the CCP 15.17 process statistics presented below uses the 111 arrestees as a denominator for all proportions.

Table A-2 shows the number of arrestees excluded from getting personal bond out of the 111 individuals that faced the magistrate. There were ten arrestees with an ICE hold or flag. Historically if released on personal bond, these arrestees were immediately to be taken into custody by ICE and would fail to appear for their dates in court, so they are not released on personal bond by practice. There were eight arrestees not eligible for a personal bond under CCP 17.03 as they were being charged with one of the offenses not eligible for personal bond (Burglary, Aggravated Robbery, Injury to a Child/Elderly/Disabled Individual, or a Health and Safety Code violation punishable at a First Degree Felony level). Finally, one arrestee charged with misdemeanor theft requested no personal bond and his bond was set at \$100. This arrestee is excluded from further analysis because HCPD presented the defendant’s choice to stay in jail prior to adjudication to the magistrate and the magistrate granted this request. This leaves a total of 92 arguments for personal bond or 84 percent of the total arrestees.

**Table A-2: Calculating Arrestees Eligible for Personal Bond**

Category	N	Percent of 111
<b>Total Arrestees</b>	111	
<b>ICE Holds</b>	10	9%
<b>CCP 17.03 Excluded Offense</b>	8	7%
<b>Requested No Personal Bond</b>	1	1%
<b>Arrestees</b>	92	84%

Table A-3 shows the distribution of common arguments made by HCPD at the personal bond review. These arguments were coded in seven categories as listed in the table below. Specifically, the defense informs the magistrate about:

- Defendants’ Houston/Harris County residency and length of residency to show the defendant has ties to the community (60%), or to note that the defendant can live somewhere away from the complaining witness in family violence cases (24%);

- Items from the PSA Risk Assessment completed by the Pretrial Services, specifically whether or not the offense is violent, if the defendant has violence in the criminal history, and the defendant’s prior failures to appear (55%);
- Defendants’ employment status, specifically whether the defendant has a job, whether the defendant may lose the job with further incarceration, and if the defendant does not have a job thus limiting the ability to pay bond (39%);
- Defendants’ access to transportation to show an ability to access resources helping to appear in court (38%);
- Defendants’ status as a caretaker for children, disabled relatives, or elderly parent/relative (24%); and,
- Defendants’ mental and physical health issues (18%).

An individual arrestee may have more than one argument presented. There are also some arguments that applied to only one person, such as age of prior convictions, pending cases in other states, and one defendant turned himself in to the court.

**Table A-3: Types of Arguments Made by HCPD for Personal Bond**

<b>Argument</b>	<b>Number</b>	<b>Percent of 92</b>
<b>Houston/Harris Co Resident</b>	55	60%
<b>Risk Elements or Score</b>	51	55%
<b>Job/Employment</b>	36	39%
<b>Transportation</b>	35	38%
<b>Alternative Housing</b>	22	24%
<b>Caretaker</b>	22	24%
<b>Health (Mental or Physical)</b>	17	18%

Table A-4 shows the number of defendants in which HCPD requested a personal bond, the number for which the DA supported personal bond, and the number receiving personal bond. HCPD asked for personal bond for all arrestees. The DA supported, supported with conditions, or had no opinion in a limited number of cases. The DA only supported one release on personal bond. The DA supported personal bond for an additional three people if specific conditions were imposed (4% total). Of the 92 individuals in which HCPD requested a personal bond, 50 people or 54 percent were granted a personal bond.



Table A-4: HCPD and Harris District Attorney Office Support for Personal Bond

FY 2019 Total Magistrated	N	% of
<b>Arrestees Magistrated and Qualified for Personal Bond</b>	92	100%
<b>HCPDO Supports Personal Bond</b>	92	100%
<b>District Attorney Supports</b>	1	1%
<b>District Attorney Supports with Conditions</b>	3	3%
<b>District Attorney – No Position</b>	5	5%
<b>District Attorney Opposes Personal Bond</b>	83	90%
<b>Released on Personal Bond</b>	50	54%
<b>Not Released on Personal Bond</b>	42	46%

Table A-5 shows the proportion released on personal bond at each offense level. The proportions of misdemeanors are skewed, because the majority of people with misdemeanor charges are released on GOBs prior to the magistration hearing. Additionally, persons in need of mental health screenings were held back to receive an assessment and may qualify for a CCP 17.032 mental health bond. Those charged with State Jail Felonies had the lowest proportion of personal bond release. There were only eight personal bond releases for state jail felony defendants. A little less than half of the third degree felonies were released on personal bond and four of ten second degree felony defendants were released on bond. Of the three defendants with first degree felonies, only one was released on personal bond (33%).

Table A-5: Personal Bond Release by Offense Type

Offense Category	Total with Highest Offense	Released on Personal Bond	Percent	Not Released	Percent
Misd B	10	6	60%	4	40%
Misd A	20	16	80%	4	20%
State Jail Felony	18	8	44%	10 <i>3 Ref. to RIC</i>	56%
Felony 3	31	15	48%	16	52%
Felony 2	10	4	40%	6	60%
Felony 1	3	1	33%	2	67%
<b>Total</b>	<b>92</b>	<b>50</b>	<b>54%</b>	<b>42</b>	<b>46%</b>

Table A-6 shows the average bond requested by the DA and suggested by HCPD at each offense level, the average bond set by the magistrate, and the magistrate’s average assuming PR Bond is operationally \$0 bond amount. There is a note when the DA did not support any bond amount being set at magistration. For the misdemeanor charges, one caveat in interpreting these number is the majority of misdemeanor defendants are released on general order bonds

and not seen by the magistrate; those who do see the magistrate are likely to have additional considerations which would increase bond amounts. For example, one defendant with a misdemeanor A had a \$50,000 bond set. On misdemeanor A charges, the magistrate set bond higher than the average requested by either attorney type; however, one of the misdemeanor A arrestees was given a \$50,000 bond as previously noted. He was charged with violating a protective order in a felony case for which he was currently on bond release. Without that outlier, the magistrate set an average \$2,629 bond and a \$122 bond when defendants receiving PR Bond are assumed to be operationally \$0. This was higher than HCPD and lower than the DA’s request. On all felony level charges, the DA requested an amount higher than the magistrate eventually set for each felony level and when PR Bond was assumed to be equivalent to zero the same pattern held for all felony levels except felony 1 for which the magistrate set an amount higher than both the DA and HCPD.

Table A-6: Average Bond Amount Suggested by DA and HCPD then Average Set by Magistrate

Offense Category	Total with Highest Offense	DA Suggested Amount	DA Suggested No Bond	HCPDO Suggested Amount	Bond Set by Magistrate	Bond Set by Mag (PR Bond is \$0)
Misd B	10	\$864	0	\$440	\$1,211	\$870
Misd A	20	\$4,764	1	\$1,740	\$5,122 \$2,629 w/o outlier	\$2,616 \$122 w/o outlier
State Jail Felony	18	\$15,844	1	\$4,250	\$8,441	\$6,972
Felony 3	31	\$27,153	5	\$8,500	\$18,583	\$11,845
Felony 2	10	\$23,750	0	\$12,857	\$17,778	\$18,500
Felony 1	3	\$62,500	1	\$21,667	\$56,667	\$75,000
<b>Total</b>	<b>92</b>		<b>8</b>			

Figure A-1 below graphically presents the same information presented in Table A-6 above. This shows the proportional difference between the bond amount set by the magistrate, the proportion under that amount suggested by HCPD, and the proportion over the amount set by DA. For example, for people with felony 3 charges, the magistrate set a \$18,583 bond on average after the DA requested a bond 46 percent higher and HCPD suggested a bond 54 percent lower. Misdemeanor B was not included, because both DA and HCPD asked for a bond lower than what the magistrate requested, and the amounts set were driven by another judge.

Figure A- 1: Difference between HCPD and DA Bond Amounts from the Magistrate on Misdemeanor A and Higher Offenses

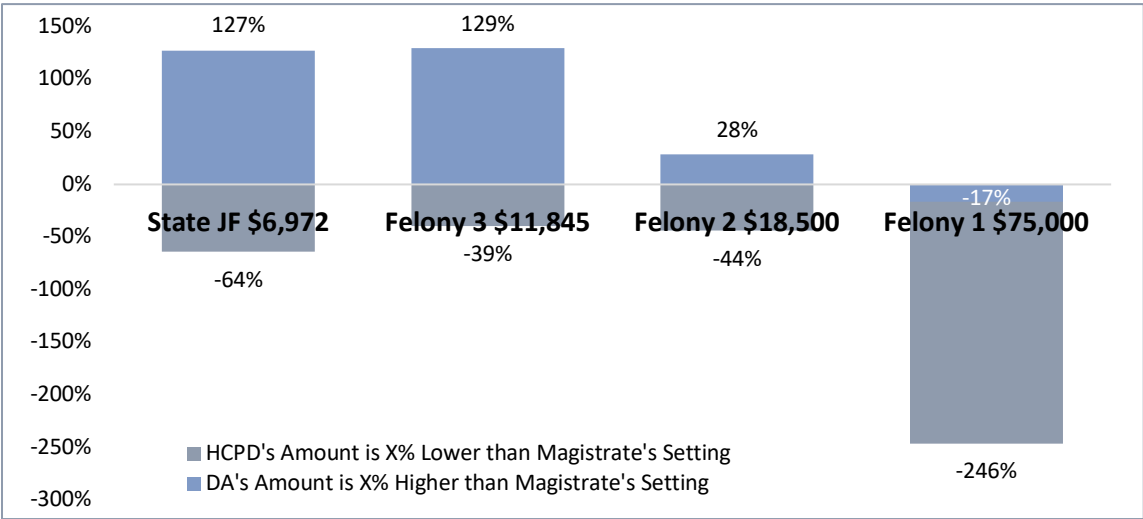
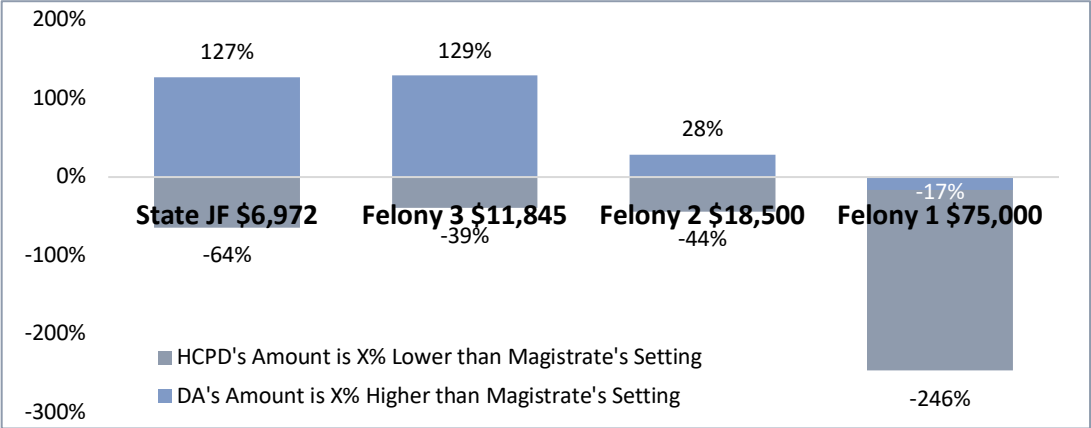


Figure A-2 below graphically presents the same information presented in Table A-6’s column with bond for those released on PR Bond set operationally at \$0 above. This shows the proportional difference between the bond amount set by the magistrate, the proportion under that amount suggested by HCPD, and the proportion over the amount set by DA. For example, for people with felony 3 charges, the magistrate set a \$11,845 bond on average after the DA requested a bond 129 percent higher and HCPD suggested a bond 39 percent lower. Misdemeanor B and A were not included, because both DA and HCPD asked for a bond lower than what the magistrate requested, and the amounts set were driven by another judge.

Figure A- 2: Difference between HCPD and DA Bond Amounts from the Magistrate on Misdemeanor A and Higher Offenses Assuming PR Bond is Operationally \$0



As referenced earlier in Table 2, there were eight people excluded from personal bond consideration due to CCP 17.03 excluded offenses and seven of them were represented by the HCPDO to argue over the bond amount. One of the eight defendants that did not qualify was not available for the hearing at the time of this observation.

Table A-7 shows the information presented to the judge on the seven represented by HCPD. For these, the arguments routinely used for personal bond were used to advocate for lowered bond amounts. The argument a defendant had transportation was used most frequently (71%) and then elements of the risk score, employment, and residency were all used in 57 percent of cases. There were specialized arguments used, too, such as being a high school student and having a post-H.S. degree.

**Table A-7: Information Presented to the Magistrate for Persons Not Qualifying for PR Bond**

Argument	Number	Percent of 7
Houston/Harris Co Resident	4	57%
Risk Elements or Score	4	57%
Job/Employment	4	57%
Transportation	5	71%
Alternative Housing	1	14%
Caretaker	0	0%
Health (Mental or Physical)	0	0%

Table A-8 shows the average amount requested by the DA, the amount suggested by HCPD, and the amount set by the magistrate for the seven people who were ineligible for personal bond. The magistrate matched the bond amount requested by the DA in one case, but the remaining were lower than the DA’s request and two matched HCPD suggestion. Both of the HCPD matches were for 17-year-old defendants charged with altercations at their high school. The average DA’s request was 87 percent higher than what was eventually set by the magistrate and the magistrate’s average suggested amount was 43 percent lower than what was set by the magistrate.

**Table A-8: Average Bond Amount Suggested by DA and HCPDO then Average Set by Magistrate**

Category	DA Suggested Amount	DA Suggested No Bond	HCPDO Suggested Amount	Bond Set by Magistrate
Average	\$51,857	0	\$15,857	\$27,786
Difference	+87% Above Magistrate		-43% Below Magistrate	

As previously noted, HCPD can argue probable cause on all misdemeanors. There were only three probable cause arguments made during the total magistrations observed. One resulted in the defendant passed to the next docket so the DA could go back and review the arrest instrument and follow up with the arresting officers. One resulted in the magistrate finding probable cause as the argument was more suitable for a suppression motion in the defendant's now assigned district court. And, the final instance resulted in no probable cause for one of multiple misdemeanor charges.

### **Additional Value Added by the Representation**

The presence of HCPD impacts other parts of the magistrations process that are not captured by the argument for personal bond reviewed in these observations. These activities can and were done for all persons before the magistrate, not just those with the potential for a personal bond. Therefore, the observations apply to all 111 hearings. These activities are conceptualized in four areas below.

1. HCPD is available to answer process questions from those being magistrated which allows the magistrations process to continue uninterrupted and likely cuts down on bottlenecks as people leave court to pretrial services. HCPDO was seen answering questions from nine (8%) specific arrestees and one lawyer appeared to help everyone with personal bond instructions, if applicable, on his docket for an additional 17 people (15%).
2. HCPD is available to ask and answer questions from the magistrate related to process, e.g. location of the person – the person is in medical; why the person did not get a general order bond – the person requested no general order bond; etc. This occurred for seven (6%) of the people in front of the magistrate. The DA also answered one of the questions.
3. HCPD acts as another set of eyes on the person at magistrations. As they speak directly to and with the arrestees, HCPDO is able to pick up signs that the person may benefit from a mental health evaluation. This happened for four people (3%). One of these defendants was actively decompensating in the magistrations video and HCPD asked to pass until the next docket so the client could speak to somebody. This request was subtle and did not draw attention to the MH status of the person; the magistrate noted a “16.22 issue” when agreeing with the pass.
4. HCPD actively “shushed” seven (6%) people before they potentially adversely impacted their future case and/or slowed the magistrations process. The HCPD lawyers have different approaches. Some turn and make a quiet down motion while others jump up and block the conversation with a legal pad. The arrestee's personality probably impacts

the option. Not including the 15 percent assisted on pretrial paperwork by one lawyer, this is about a quarter of the people in the magistration process (23% - one person was counted in two categories) with services beyond representation.

The above cannot count interactions off camera or outside of the courtroom. Qualitative interviewing suggests HCPD performs process-smoothing functions before people make it to magistration, too, such as knowing if a person is about to hit the time limit allowed by law between arrest and magistration and identifying people who have been mistakenly delayed in the process flow at the JPC, e.g. the person has posted bond but has not started the process to leave.

### Extrapolation of a Year of Hearings

Table A-9 shows the distribution presented in Table 4 above now extrapolated to the full FY 2019. This extrapolation is for getting a general sense of what the patterns observed here will mean over a year. Note that these observations were not part of a random study designed to draw conclusions on the impact of the process overall. Therefore, caution should be exercised in the presentation of this table as we are assuming that the patterns shown in Table 4 reflects the pattern over a year.

If 41,202 of the total 49,050 magistrated in fiscal year 2019 would have qualified for and wanted personal bond (84%) then the DA supports personal bond for only 1 percent, or 412 of that group and the HCPDO supports on all. Given the patterns observed in this limited study, 54 percent or 18,953 would have been released on personal bond.

Table A-9: Information Presented to the Magistrate for Persons Not Qualifying for PR Bond

<b>FY 2019 Total Magistrated</b>	<b>Percent</b>	<b>49,050</b>
<b>Arrestees Magistrated and Qualified for Personal Bond</b>	84%	41,202
<b>HCPDO Supports Personal Bond</b>	100%	41,202
<b>District Attorney Supports</b>	1%	1,236
<b>District Attorney Supports with Conditions</b>	3%	2,060
<b>District Attorney – No Position</b>	5%	37,082
<b>Released on Personal Bond</b>	54%	18,953
<b>Not Released on Personal Bond</b>	46%	41,202