Public defender's office.pdf

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THE NEED FOR A PUBLIC DEFENDERS OFFICE IN HARRIS COUNTY
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Introduction

The right to counsel is a secured promise embedded in the Sixth Amendment of the United States Constitution. This promise ensures that everyone, rich or poor, has an equal standing before the law. The purpose of this paper is to address the need to maintain this secured promise to indigent defendants by providing for effective representation by competent attorneys. Specifically, this paper will determine whether indigent defendants in Harris County, (Houston) Texas, are adequately represented through its court-appointed system for indigent defense, or whether the county should consider some version of a public defender program in order to meet its constitutional mandate.

The right to counsel has three overlapping principles. First is the principle of fairness. Indigent defendants should be appointed counsel because without legal expertise, innocent defendants may face unfair proceedings, “rendering them more vulnerable to wrongful convictions.” The second principle stems from the concept of equality. Indigent defendants should not be unjustifiably disadvantaged simply because they cannot afford to hire an attorney. Every person, rich or poor, is entitled to attorney representation. Third is the principle of autonomy. A defendant needs legal assistance so that he can exercise his constitutional rights in a meaningful and effective way.

The Right To Counsel in the United States

The right to counsel originates from two constitutional sources – the Sixth Amendment’s guarantee of counsel and the Fourteenth Amendment’s guarantee of due process. The Sixth Amendment states, in relevant part, “[i]n all criminal prosecutions, the accused shall enjoy the
right to … have the Assistance of Counsel for his defense.”9 The Fourteenth Amendment ensures that a person cannot be deprived of his life or liberty without due process of law.10

Originally, the clause in the Sixth Amendment was not interpreted as requiring the state to appoint counsel where the defendant could not afford to do so. The United States Supreme Court began to expand the interpretation in Powell v. Alabama, in which it held, “in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel to him.”11 In Johnson v. Zerbst, the United States Supreme Court ruled that in all federal cases, an attorney would have to be appointed to a defendant who could not afford to hire his own.12 However, in Betts v. Brady, the Court declined to extend this requirement to the state courts under the Fourteenth Amendment unless the defendant demonstrated special circumstances requiring the assistance of counsel.13

While the role and specific duties of a defense attorney vary depending on the nature of the charges, they share key responsibilities.14 These responsibilities include: advising the defendant of his rights and defining the expectations of the criminal process; ensuring that the defendant’s constitutional rights are not violated; investigating facts and evidence; cross-examining witnesses; objecting to improper questions and evidence; and presenting any legal defenses.15

Essentially, the main role of a defense attorney is that of an assistant - someone who aids the accused in the presentment of his defense16. The Sixth Amendment recognizes the right to the assistance of counsel because “it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results.”17 In 1960, the Court extended the rule that applied in federal courts to state courts when it held that counsel had to be provided at no expense to the
defendant in a capital case when the defendant requested counsel. In *Gideon v. Wainwright*, the Court explicitly overruled *Betts v. Brady*, and found that counsel must be provided to indigent defendants in all felony cases.

**The Gideon Promise**

In 1961, Clarence Earl Gideon was charged with burglary with the intent to commit a misdemeanor for breaking into a poolroom. He was accused of taking beer, wine, and change from the vending machines. When he was arrested, he had wine in his possession and some change in his pockets. He appeared in court without an attorney because he could not afford one. The court denied him appointment of counsel because “under the laws of the State of Florida, the only time the Court could appoint counsel to represent a [d]efendant is when that person is charged with a capital offense.” Gideon was forced to represent himself, all the while emphasizing his innocence. The jury returned a guilty verdict and sentenced him to serve five years in the state penitentiary.

While in prison, Gideon prepared and petitioned for a writ of habeas corpus, arguing that his Sixth Amendment right, as applied to the states by the Fourteenth Amendment, had been violated. In 1963, the Supreme Court held that the Sixth Amendment’s guarantee of counsel for all defendants, including indigent defendants, was a fundamental right “made obligatory upon the States by the Fourteenth Amendment.” Justice Black, writing for the majority, stated:

> [I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth…. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.
The Court held that the Sixth Amendment recognized that counsel must be provided for defendants who are unable to employ counsel, unless the right is competently and intelligently waived. This decision overruled the holding in *Betts v. Brady*, which allowed state courts to selectively apply the Sixth Amendment’s right to counsel. Instead, the Supreme Court in *Gideon* held that the right to the assistance of counsel is a fundamental right – a right needed for a fair trial, thereby emphasizing the procedural safeguards required for due process of law. The basic assumption is that no one, regardless of wealth, education or class, should be charged with a crime and then be forced to face his accusers in court without the guidance of counsel.

**The Right to Counsel in Texas**

The Gideon court paved the way for the appointment of counsel to represent indigent defendants in state courts. This decision left the responsibility on state courts to determine how to establish and fund systems to provide representation to indigent defendants. Some states, including Texas, shifted that responsibility to individual counties. However, the Gideon decision did not have as dramatic impact on Texas as it did in many other states. Texas guaranteed indigent defendants the right to counsel in its Code of Criminal Procedure as early as 1857, which stated, “[w]hen the defendant is brought into Court, for the purpose of being arraigned, if it appears that he or she has no counsel, and is too poor to employ counsel, the Court shall appoint one or more practicing attorneys to defend him.”

Currently, section 10, Article 1 of the Bill of Rights of the Texas Constitution provides that in all criminal prosecutions the accused “shall have the right of being heard by himself or counsel.” This right is codified in Article 1.051 of the Texas Code of Criminal Procedure. Article 1.051(a) of the Code provides, “a defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by
counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.” 37 Article 1.051(c) provides, “[a]n indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interest of justice requires representation.” 38 If an indigent defendant is entitled to and requests appointed counsel the court shall appoint counsel to represent the defendant as soon as possible.

The Texas legislation mandates that counsel be provided to persons charged with: misdemeanors punishable by confinement, felonies, probation violations, contempt, cases involving child support; juveniles; persons seeking to appeal adverse rulings; habeas corpus proceedings; convicted sex offenders requesting DNA testing; and other criminal proceeding if the court finds that representation is required for the interest of justice. 39

However, despite the state’s lengthy history of requiring indigent defense in criminal matters, only recently have there been attempts to examine the appropriateness and effectiveness of the system in reaching its goal of competent legal representation. 40 Indigent defense practices in Texas have been under close scrutiny since the commencement of a nationwide movement to improve indigent defense. 41

**Pre-Texas Fair Defense Act**

A report commissioned by the Department of Justice in 2000 found that Texas ranked fortieth in the country in indigent defense expenditures. 42 This ranking has put Texas in a state of crisis, where, almost 45 years after the Supreme Court’s decision in *Gideon*, “constitutional safeguards for indigent criminal defendants remain illusory [in practice]”. 43
In 2001, the Texas Legislature enacted Senate Bill 7, more commonly known as the Fair Defense Act (FDA).\(^{44}\) The Fair Defense Act prompted key changes in the way indigent defense is provided in Texas.\(^{45}\) Its purpose is to conduct prompt access to appointed counsel; provide fair and neutral ways to select counsel; determine indigence based on a local indigent defense plan; set attorney fees and expenses for investigators and experts; and to establish minimum attorney qualifications.\(^{46}\)

However, prior to the enactment of the FDA, Texas “had no indigent defense system…. [i]ndigent defense in the state was a patchwork quilt of different procedures and informal practices which varied widely from one county to the next and often from one court to the next within the same county.”\(^{47}\) The system in Texas did not provide adequate compensation or support services to defense lawyers.\(^{48}\) Local officials had to fund their indigent defense system alone.\(^{49}\) It was a system that seemed to yield different standards of legal representation and justice depending on the economic situation of the defendant.”\(^{50}\) There were no “uniform standards and procedures, [and that] combined with a lack of State oversight, allowed indigent defense rules and the quality of representation to vary widely from county to county and even from courtroom to courtroom.”\(^{51}\) A substantial number of lawyers, prosecutors, and judges were dissatisfied with the appointment process.\(^{52}\) There were only five Texas counties operating public defender offices – Colorado, Dallas, El Paso, Webb, and Wichita.\(^{53}\)

The State Bar of Texas Committee on Legal Services to the Poor in Criminal Matters conducted a state-wide survey of criminal defense lawyers, prosecutors, and judges in the years leading up to the Fair Defense Act.\(^{54}\) The result was that Texas had a system that lacked appropriate resources and had different standards of justice for indigent defendants.\(^{55}\) Texas
counties were not required to have written criteria for determining representation. In some jurisdictions this meant that anyone who requested an attorney was given one, while other courts required proof of financial means. Typically, defendants were required to sign an affidavit explaining their inability to hire an attorney. However, verification of the defendant’s information in the affidavit was rarely conducted. In the survey, most judges admitted to not having formal procedures in place for the selection of counsel and less than a third of the defense attorneys and prosecutors surveyed were aware of provisions for monitoring the quality of representation provided by assigned counsel.

The Implementation of the Texas Fair Defense Act

The FDA was designed to correct the “ILLS that existed in the Texas indigent criminal defense system.” It established three foundational pieces needed for any criminal justice system: “a comprehensive mandate for new local rules and standards to improve indigent defense, a body to administer statewide indigent defense policies, and state funding dedicated to help counties improve indigent defense.” Some of the major requirements developed by the FDA include: every accused person must be brought before a magistrate within 48 hours of arrest for proceedings under Article 15.17 of the Code of Criminal Procedure; when a defendant submits the necessary documents for the appointment of counsel, the request and documents required is transmitted to the appointing authority within 24 hours of the request; for counties with population of 250,000 plus, counsel will be appointed for eligible defendants within one working day of receiving the request. For counties with a population under 250,000, counsel will be appointed within three working days.

The FDA sets forth five major legal requirements that counties must create in the new system: (1) procedures for providing prompt access to appointed counsel; (2) fair and neutral
methods for selecting appointed counsel; (3) qualifications for appointed counsel; (4) financial standards and procedures for determining when a person is indigent; and (5) procedures and fee schedules for appointed counsel, experts, and investigators.63

Section 6 of the Fair Defense Act details how lawyers are to be selected from a public appointment list, and these assignments are to be “allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.”64 The Act takes into consideration that public appointment lists may not be the best option for all districts, therefore, alternative selection programs are available, but must be approved by two-thirds of the judges within that county.65 The Act also creates a mechanism for the appointment of a public defender.66

The commissioners' courts will select a public defender after having received proposals from government entities and non-profit corporations.67 Such proposals must include a budget, descriptions of personnel positions, maximum allowable caseloads, training information, anticipated overhead, and policies concerning investigators and experts.68 The total cost of the proposal may not be the only consideration in awarding the public defender contract, and in order to be eligible, the entity awarded the contract must be headed up by a chief public defender who (1) is a member of the State Bar of Texas; (2) has practiced law for at least three years; and (3) has substantial experience in the practice of criminal law.69

The Fair Defense Act allows a public defender to be assigned any combination of cases, including cases assigned to a particular court, appeals, felonies, state jail felonies, capital felonies, sex offenses, murders, Class A and B misdemeanors, DWIs, juvenile delinquency cases, multiple-defendant cases, and cases involving a defendant with a severe mental disability.70

The Act established the Task Force on Indigent Defense that initiated a meaningful interaction between the State and local government.71 It was created as a standing committee of
the Texas Judicial Council.\textsuperscript{72} The Task Force is composed of eight ex officio members of the judicial council including the Chief Justice of the Texas Supreme Court and other members of the judiciary.\textsuperscript{73} The purpose of the Task Force was to create the first state body to administer statewide appropriations and policies for indigent defense. Its goal is to “improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to State, local judicial, county, and municipal officials.”\textsuperscript{74}

The Task Force ensures compliance with the Fair Defense Act’s standards by promoting justice and fairness to all indigent persons accused of criminal.\textsuperscript{75} The local judiciary is required to report its plan for delivering indigent defense services.\textsuperscript{76} Also, local county auditors are required to annually report county expenditures regarding criminal indigent defense services.\textsuperscript{77} The Task Force also funds research projects associated with indigent defense policies and organizes workshops to endorse responsible delivery of defense services to indigent defendants.\textsuperscript{78} Some of the policies include addressing: performance standards, qualification standards, appropriate caseloads, determining indigency, standards for operating an ad hoc assigned counsel program, standards for operating a public defender program consistent with recognized national policies, standards for operating a contract defender program, reasonable compensation.\textsuperscript{79}

Since the implementation of the Fair Defense Act, Texas has provided more indigent defendants with defense.\textsuperscript{80} The number of defendants receiving appointed counsel has increased approximately 40 percent.\textsuperscript{81} In the 2004 fiscal year, 371,167 adult defendants were appointed counsel compared to 278,479 adult defendants during 2001.\textsuperscript{82} Also, since the FDA, counties are given the opportunity and the responsibility to craft their own response to the law.\textsuperscript{83} This allows
for flexibility to implement indigent defense processes that fit the “unique values, needs, and resources of each Texas community.”

Costs for Texas counties indigent defense increased from approximately $91 million in 2001 to almost $161 million in 2007, however, because state funding has increased every biennium, it has offset a share of the indigent defense cost increase. The Act enables court and county officials to seek assistance, either by formulating effective plans for their system or obtaining financial assistance from the.

In 2004, the Task Force funded a study by Texas A&M's Public Policy Research Institute to examine how the Fair Defense Act requirements have affected indigent service delivery and how county implementation strategies have affected counties' effectiveness in meeting these requirements. Some of the results from the study include a 50% increase in state spending, access to local practices and expenditures has increased, there has been 100% compliance with state reporting requirements on indigent defense plans, since the adoption of the FDA, Texas has provided more defendants with indigent defense services.

During the fiscal year of 2003, Texas spent $131,168,430 on indigent defense, of which 9.4% or $12,298,611 came from the state. This equates to a total per-capita expenditure of $6.29. However, compared to other states, Texas ranks low in terms of the percent of funds provided to fund indigent defense: Florida 80.2%, Georgia 17.4%, North Carolina 100%, Missouri 100%, Louisiana 24.6%, Alabama 100%, Kentucky 83.4%, South Carolina 67.4%, Oklahoma 66.2%, and Arkansas 100%. Overall, there has been enormous progress made since the passage of the FDA.
Harris County and the Texas Fair Defense Act

In a 1996 study of felony cases in Harris County, 58% of defendants with appointed counsel were sentenced to prison compared to 29% of defendants with hired attorneys.92 Similarly, a first-time possession of less than one gram of cocaine, 75% of defendants with hired counsel received probation instead of incarceration, compared to 43% of defendants who had counsel appointed to their case.93 Harris County’s District Attorney's office spent $26 million in 1999 for criminal defendants, compared with $11.6 million for indigent criminal defense.94 In the absence of recent data, this provides a glimpse of indigent criminal defense expenditure in Harris County prior to the Fair Defense Act. Unfortunately, Harris County has not updated these statistics.

In 2003, in response to the Texas Fair Defense Act, the Office of Court Management in Harris County prepared a policy entitled ‘Standards and Procedures Related to Appointment of Counsel for Indigent Defendants’ to properly and systematically determine if a defendant is indigent.95 The indigency standard applies equally to each defendant, regardless if the defendant is in custody or released on bail.96 Factors that are taken into account included the defendant’s income, spousal income (if applicable), defendant’s ownership or interest in property or other assets, defendant’s financial resources, outstanding debt, dependants that may be supported by the defendant, and other necessary expenses.97 An estimated fee set by an area attorney qualified to represent the defendant is also taken into consideration.98

In Harris County, an indigent defendant is entitled to have an attorney appointed to represent him in ‘any adversarial judicial proceeding that may result in punishment by confinement and any other criminal proceeding if the judge concludes that the interests of justice require representation.” The standard for determining whether a defendant is indigent is set out
in subsection D of the alternative plan. It states that “a person is indigent if the person is not financially able to employ counsel,” an adoption of the Texas Code of Criminal Procedure definition. Harris County is to apply the indigence standards equally to each defendant, regardless of whether the defendant is held in custody or is released on bail.

The general qualifications for an attorney are set out in subsection G of the plan. The attorney must submit a completed application form and must meet the following criteria:

a) Licensed and in good standing with the State Bar of Texas for three consecutive years prior to submitting an application;

b) A history of consistently exhibiting proficiency and commitment to providing quality representation to clients charged with criminal offenses;

c) A history of consistently exhibiting professionalism and reliability while zealously representing clients;

d) Represented a party, as first-chair, not less than 50 cases punishable as a Class “A” or Class “B” misdemeanor;

e) Possess the following litigation experience in cases punishable as a Class “A” or Class “B” misdemeanor;
   i. Tried to verdict, as first-chair, not less than five (5) trials before a judge or jury;
   ii. Acted as second-chair not less than ten (10) trials before a judge or jury; or
   iii. A combination of first-chair and second-chair experience equal to five (5) trials punishable be confinement in the county jail or imprisonment in the Texas Department of Criminal Justice.

f) Possess a telephone number, fax number, and a physical location, other than a public building, in which the attorney can confer with a client, witness, investigator, or others to ensure the confidences of the defendant will be preserved;

g) Completed 10 hours a year of continuing legal education, including one hour of ethics pertaining to criminal law matters, for the three consecutive years prior to filing an application;

h) Agree to complete and report 10 hours annually of continuing legal education pertaining to criminal law including one hour of ethics as provided by this Plan;
i) Agree to complete continuing legal education programs as directed by the Presiding Judge of these Courts; and

j) Sign the attorney acknowledgment.\textsuperscript{101}

Additionally, an attorney must be approved by a majority of judges.\textsuperscript{102}

**Appointing Counsel to Indigent Defendants**

The day-to-day implementation of the requirements of *Gideon* occurs through a number of systems.\textsuperscript{103} There are three common methods used in the United States when appointing counsel in indigent criminal matters.\textsuperscript{104} Some jurisdictions implement an indigent defense contract system, where the court ‘contracts’ with an individual attorney or group of attorneys to provide legal representation in all indigent matters.\textsuperscript{105} This method is similar to taking bids for road construction in that the judge takes bids for the provision of legal services.\textsuperscript{106} Other jurisdictions use a judge-assigned counsel system, whereby the judge appoints private counsel to represent indigent clients.\textsuperscript{107} The third method is the public defenders system.\textsuperscript{108} A public defender’s office is an independent advocate for indigent defendants and are usually funded and staffed at a level similar to the district attorney’s office.\textsuperscript{109} Public defenders are typically engaged in private practice but are considered public employees.\textsuperscript{110} These systems are discussed in further detail below.

At least one report found that Texas “has one of the least fair and least efficient approaches to indigent defense in the nation.”\textsuperscript{111} A single indigent defense system does not exist in Texas, instead, its legal representation for indigent defendants is provided via independent systems in each county, “with little oversight or guidance from the state.”\textsuperscript{112}

Appointed counsel and attorneys that contract with the state are often paid a flat fee, whereas public defenders are usually paid from a budget. Most states use a hybrid system that
involves public defenders and court-assigned counsel, where public defenders populate urban areas and assigned counsels are in more rural areas.\textsuperscript{113} The system for providing counsel to represent indigent defendants in Texas is a local responsibility.\textsuperscript{114} Each county is free to choose the system that will best represent indigent defendants.\textsuperscript{115} Every major urban area in the state, except for Harris County, uses a public defender system.\textsuperscript{116} To date, El Paso County and Dallas County have the largest public defender systems in Texas, having approximately 32 and 90 attorneys, respectively.\textsuperscript{117}

The Contract System – This system is the least utilized system of the three methods for appointing counsel for indigent defendants.\textsuperscript{118} In the contract system, the jurisdiction enters into a contract with private attorneys, group of attorneys, bar associations, or private non-profit organizations to provide legal services to indigent defendants.\textsuperscript{119} The contract is designed to implement a specific purpose for indigent defendants.\textsuperscript{120}

The Judge-Assigned Counsel System – Texas relies on the judge-assigned/appointment system of private attorneys to represent indigent defendants. However, Texas does not have statewide standards for the qualification for appointed counsel.\textsuperscript{121} In 1995 the Texas Legislature passed a law that, for the first time, mandated the development of regional standards for the qualifications of appointed attorneys in Texas. However, the law failed to establish a statewide standard to guide the regions.\textsuperscript{122} Perhaps in response to that oversight, Harris County judges passed a local rule that prohibits the county auditor from paying an uncertified appointed attorney.\textsuperscript{123}

Some judges assign attorneys from a list of all the licensed attorneys in the county, while other judges only assign attorneys from a pool of volunteers.\textsuperscript{124} Still other judges restrict their assignments to the attorneys who have met specific standards, which include: years of practice,
minimum trial experience or proof of continuing legal education.\textsuperscript{125} Harris County has the most ‘rigorous’ formal requirements for assignments. \textsuperscript{126} An attorney must first be certified as competent before being assigned to an indigent defendant.\textsuperscript{127} Certification occurs by either passing an exam, showing proof of his or her trial or appellate experience, attendance at continuing legal education programs, or the attorney can be Board certified by the State Bar of Texas.\textsuperscript{128}

Normally for assigned counsel, “neither experience nor qualification beyond admission to the bar [is] reviewed and participation in training programs is not required. Recertification is not necessary” so once the attorney is qualified, “membership lasts forever.”\textsuperscript{129} Only a few states or counties have assigned counsel who undergo continuing legal education requirements or take other steps to supervise evaluate their work.\textsuperscript{130}

Harris County employs three methods of assigning counsel: an Individual Case Appointment method, a Term Assignment method, and a Limited Term Assignment method.\textsuperscript{131} Courts may also use a combination of these methods to assign attorneys to an indigent case.\textsuperscript{132} In all three methods, the attorney acts as an independent contractor and is compensated with public funds. However, the three methods differ in that under the Individual Case Appointment method, the attorney is appointed to legally represent an indigent defendant\textsuperscript{133} Under the Term Assignment method, the attorney is appointed to legally represent indigent defendants who appear before the court for a period of more than one week, but not more than one year.\textsuperscript{134} This method requires the courts to specify the applicable qualification criteria.\textsuperscript{135} The third method, Limited Term Assignment method, appoints the attorney to legally represent indigent defendants who appear before the court for one day or one week.\textsuperscript{136}
Harris County utilizes the judge-assigned counsel system and the contract system. Harris County has a flat fee arrangement with its appointed counsel. Effective 2007, an attorney, under an Individual Case Appointment method (see below), has a flat fee of $250 per day for a non-trial, first degree case, with a maximum amount of $1250 for the case. For a first degree case that goes to trial, the appointed counsel receives a flat fee of $500 per day, with no maximum amount allotted.

For out-of-court hours in a first degree felony case, an appointed counsel receives $100 per hour, with a maximum of $2,000 for the case. An attorney filing a death penalty writ receives a rate of $100 per hour. If the writ requires a hearing with testimony, the appointed attorney receives a rate of $350 per day, with the presumptive maximum of $25,000 for all the death penalty fees. A frequently-cited article in the Houston Chronicle stated that indigent cases pay little and “that a court-appointed attorney needs a lot of cases to make a living … [T]he only way for attorneys to handle a large number of cases is to plead out as many clients as they can as fast as they can.”

The Public Defender System – This system involves a public or private non-profit organization with full or part-time attorneys. The defining characteristic of a public defender system is its employment of staffed attorneys who provide representation to indigent defendants. The first public defender system was established in Los Angeles, in 1913, about 50 years before Gideon v. Wainwright.

This system serves as “a clearinghouse to disseminate different types of essential information for appointed counsel, such as recent developments in the law or references for appropriately qualified experts and investigators.” This system also enables young attorneys to develop their skills so they are better qualified to handle criminal defense cases.
jurisdictions outside of Texas, once a public defender is assigned to a client, investigation begins immediately.\textsuperscript{148} To the contrary, judge-assigned attorneys have extreme difficulty in obtaining full access to the same investigative services.\textsuperscript{149}

While a public defenders office may have a high start-up cost and few caseloads are large enough to make a public defenders office cost effective, its advantages outweigh. Public defenders offer quality, cost, and administrative advantages.\textsuperscript{150} They operate for the defense team in the same manner that the district and county attorneys operate for the prosecution.\textsuperscript{151} A public defenders office incorporates a group law practice, similar to how civil attorneys function.\textsuperscript{152} This group function allows attorneys to share office space, library space, and administrative operations.\textsuperscript{153} Attorneys can eliminate inefficient travel and overhead expenses by sharing offices. It also encourages attorneys to learn from one another and to match experience with work demands.\textsuperscript{154}

Public defenders are able to draw additional resources that private attorneys cannot, including grants, fellowships and law-student assistance.\textsuperscript{155} These additional resources enable attorneys to develop an adequate defense for indigent defendants. Budgeting for a public defenders office is said to be “simpler and more predictable than budgeting for payment of private attorneys whose identity, work practices, billing practices, and caseloads fluctuate every month of every year.”\textsuperscript{156} Public defenders can improve the dependability and efficiency of indigent defense budgeting by having judges focusing on the budget annually as opposed to reviewing the budget each time a case is concluded.\textsuperscript{157}

There are three basic reasons for having a public defenders office: it is a cost-effective method in representing indigent defendants, it improves the reliability of the services available to
indigent defendants, and it creates “an institutional resource that is valuable to the bench, the bar, the commissioner’s court and the community at large.”\textsuperscript{158}

Studies have shown that large urban counties spend more on indigent defense than do small rural counties.\textsuperscript{159} Having a public defender system provides quality legal services at a cost less than other indigent defense systems. This system can decrease administrative costs by reducing the time it takes for court personnel to spend notifying individual attorneys of their appointments or any scheduling conflicts.\textsuperscript{160} Public defenders can seek grants from federal and state governments, legal organizations, and private foundations; grants that are unavailable to private assigned counsel.\textsuperscript{161}

Public defender offices offer valuable quality controls that the other two systems do not have, including office policies, in-house training, and attorney and staff supervision.\textsuperscript{162} One of the most important quality control advantages is that the caseload volume allows the hiring of full-time investigators and other social workers.\textsuperscript{163} Having investigators and social workers at the public defender’s reach is imperative for an indigent defendant’s criminal case.

Throughout the United States, state and county public defender programs have developed caseload and workload standards for their public defender attorneys to assure that they are working at maximum capacity but are not undertaking a workload that jeopardizes their ability to provide adequate representation to each of their clients. An assigned counsel, on the other hand, often works alone and is faced with the pressure of increasing clientele. This is usually done by completing assigned cases quickly and “with minimum investment of time and effort.”\textsuperscript{164}

Traditionally, support for a strong public defense system arises from the idea that indigent defendants cannot be tried fairly in the U.S. court system without adequate defense.\textsuperscript{165} Supreme Court Justice Black stated in \textit{Gideon}, the “right of one charged with crime to counsel
may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”¹⁶⁶

Therefore, to achieve justice in an adversarial system that is structured to search for the truth, capable counsel is needed for the state and for the defendant. A strong public defense system can be a central component for states to shield indigent defendants, while allowing courts to respond effectively to growing caseloads.¹⁶⁷ A strong public defense system “promotes the legitimacy of the justice system – legitimacy necessary to maintain public support.”¹⁶⁸

Dallas County Public Defenders Office

Dallas County has an estimated population of 2,304,909 and a poverty rate of 11.30%.¹⁶⁹ Dallas established a public defenders office (PDO) in 1983.¹⁷⁰ Currently, there are 90 attorneys, 9 administrative staff, and 7 investigators working in the office.¹⁷¹ The public defenders are assigned to 37 courts within the county.¹⁷² They are assigned to all 15 Criminal District Courts with felony jurisdiction, in 12 out of the 13 County Criminal Courts with misdemeanor jurisdiction, two District Juvenile Courts handling delinquency and child welfare matters, seven District Family Courts, and one Probate Court that hears civil commitments of mentally ill patients.¹⁷³

The District Court determines whether a defendant is indigent and then decides either to appoint a public defender or a private attorney.¹⁷⁴ Once an indigent defendant is appointed to the public defense office, the PDO provides effective representation to their clients at all levels of the trial proceedings.¹⁷⁵ While providing “zealous legal defense,”¹⁷⁶ the PDO is cost effective by hiring and training only competent attorneys who provide meaningful investigation.¹⁷⁷

In fiscal year 2003, the indigent defense expenditure for all of Dallas County was $18,326,945; approximately $5,086,667 of the total was from the public defense office, with an average cost per case of $184. The number of cases the PDO had was 27,693 from a total of
51,237 cases in Dallas County. The PDO controls about 50% of the indigent criminal cases in the county, which accounts for approximately 28% of the overall defense expenditures in the county.178

Public Defenders and the Community

Public defenders are trained to be responsive to their clients’ wishes and to maximize their clients’ liberty.179 Due to their involvement with each client, public defense attorneys provide important information, advice and counseling to their clients. As opposed to court-appointed attorneys who most often speak to the defendant weeks after arrest or at pre-trials, public defenders build a relationship with their client. They help their clients “face up to the reality of the charges against them.”180 A public defenders office can provide indigent defendants with a number of resources, such as social workers and abuse prevention programs.181 These resources help in keeping recidivism rates low and to ensure that defendants are taken care of in and out of the criminal courts.182

Justice Brandeis once said, “[public defenders] take … great opportunity of the American bar … to stand again as it did in the past, ready to protect the interests of the people.” The role of public defense is inherently a community-oriented job that is designed to serve the people.183 They see their role broadly and recognize that protecting the interests of the community means much more than zealous courtroom advocacy.184

Public defenders are thinking strategically about their new roles in an evolving legal system.185 New partnerships are being developed, as well as, sharing information and openly discussing the need to engage in multidisciplinary practices, such as hiring staff social workers or partnering with mental health experts.186 Some are even initiating projects with police, prosecutors, and corrections officials in hopes to address specific problems facing
communities. Their main goals are to ensure that their client's rights are protected and human dignity is preserved before, during, and after a trial or plea; ensure that new criminal justice procedures and programs are fair; engage in public policy formation; and think of ways to further social welfare in the community.

**Effective Counseling**

The right to counsel is a right embedded in the Sixth Amendment that has been expanded in *Gideon v. Wainwright*. In 1972, the right to counsel was broadened in *Argersinger v. Hamlin*, where the Supreme Court ruled that a person may not be incarcerated for an offense if the defendant is not represented by counsel at trial, unless the defendant knowingly and willfully waived this right. However, the ‘right to counsel’ does not specify particular requirements for effective counseling.

In *Powell v. Alabama*, the United States Supreme Court, early on, recognized that the outcome of criminal cases involving indigent defendants was considerably different from those cases in which defendants had effective counsel. The defendants in *Powell* pled not guilty to rape charges. The defendants were not represented until the day of their trial. Prior to trial, the defendants were appointed counsel only for the purpose of their arraignment. They were found guilty and were sentenced to death. Their convictions were affirmed by the state supreme court, while Chief Justice Anderson strongly dissented, stating that the defendants were not given a fair trial. The United States Supreme Court reversed the convictions and remanded the matter to state court, holding that the defendants were denied their right to counsel, a violation of the Fourteenth Amendment.

The court held that “from the time of [the defendants’] arraignment until the beginning of their trial, when consultation, investigation and preparation were vitally important, the
defendants did not have the aid of counsel in any real sense.” The defendants’ age, illiteracy, and public hostility towards the defendants made the necessity of counsel imperative that the trial court’s failure to make an effective appointment of counsel was a denial of due process.  

Similarly, Justice O’Connor, in Strickland v. Washington, stated:

Counsel’s function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest… From counsel’s function as assistant to the defendant derive the overarching duty to advocate the defendant’s cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.

In Strickland, the respondent pled guilty in a Florida trial court to three charges of murder. In his plea colloquy, the respondent told the trial judge, that although he committed a number of burglaries, he did not have a significant prior criminal record. Respondent claimed to be under extreme stress, because of his inability to support his family, at the time of the crimes were committed. While preparing for the sentencing hearing, the defense counsel requested information about respondent’s background, but he did not seek out character witnesses or request a psychiatric examination. Defense counsel’s decision not to present evidence regarding the respondent’s character and emotional state was based on the reliance of the plea colloquy as the required evidence. This prevented respondent from cross-examination by the State, and the State’s own psychiatric report. The trial judge sentenced the respondent to death on each of the murder charges. The Florida Supreme Court upheld the convictions and sentences.

Subsequently, the respondent sought collateral relief in state court on the ground that counsel had rendered ineffective assistance at the sentencing proceeding in several respects, including his failure to request a psychiatric report, to investigate and present character
witnesses, and to seek a presentence report.\textsuperscript{208} Respondent was denied relief by the trial court and then by the Florida Supreme Court.\textsuperscript{209} A habeas corpus petition was filed in Federal District Court claiming numerous grounds for relief, including the claim of ineffective assistance of counsel.\textsuperscript{210} The District Court denied relief, but the decision was overturned by the Court of Appeals.\textsuperscript{211} The Court of Appeals stated that the Sixth Amendment accorded criminal defendants a right to counsel rendering “reasonably effective assistance given the totality of the circumstances.”\textsuperscript{212} The Court of Appeals remanded the case after outlining standards for effective counseling.\textsuperscript{213}

The Sixth Amendment imposes a duty on counsel to investigate every case presented so that professional decisions and informed legal choices can be made.\textsuperscript{214} The Supreme Court in \textit{Strickland} took a step forward by requiring a defendant to show two components when claiming his counsel's assistance was ineffective.\textsuperscript{215} First, the defendant must show that his attorney’s performance was deficient.\textsuperscript{216} Thus, the defendant must show that counsel’s errors were so serious that he or she was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.\textsuperscript{217} Second, the defendant must show that the deficient performance prejudiced the defense, to which counsel’s errors were so serious that it deprived the defendant of a fair trial.\textsuperscript{218} Rather than requiring defenders of the indigent to meet professional standards, the \textit{Strickland} test for ineffective assistance sets the standard far lower, and permits and encourages deficient lawyering.\textsuperscript{219}

Not surprisingly, the \textit{Strickland} test has been widely criticized “as betraying the promise of Gideon … [and] the test is nearly impossible to meet.”\textsuperscript{220} As Supreme Court Justice Thurgood Marshall, the only dissenter in \textit{Strickland}, observed,

[T]he performance standard adopted by the Court is … so malleable that, in practice, it will either have no grip at all or will yield excessive variation in the
manner in which the Sixth Amendment is interpreted and applied by different courts. To tell lawyers and the lower courts that counsel for a criminal defendant must behave ‘reasonably’ and must act like ‘a reasonably competent attorney,’ ... is to tell them almost nothing…. [T]he majority has instructed judges called upon to assess claims of ineffective assistance of counsel to advert to their own intuitions regarding what constitutes ‘professional’ representation, and has discouraged them from trying to develop more detailed standards governing the performance of defense counsel…. [T]he Court has thereby not only abdicated its own responsibility to interpret the Constitution, but also impaired the ability of the lower courts to exercise theirs.\textsuperscript{221}

Therefore, effective counseling means more than just assigning an attorney to represent an indigent defendant. Counsel must have sufficient experience so that he can make the proper preliminary investigations and successfully handle the tactical work required. Representing a criminal defendant entails certain basic duties.\textsuperscript{222} Attorneys owe their client a duty of loyalty and to keep the defendant informed of important developments in the course of the prosecution.\textsuperscript{223} The purpose is to ensure that criminal defendants receive a fair trial.

The first step to ensure attorney competence is to assign attorneys to cases for which they have the experience and qualifications. The importance of matching an attorney's qualifications with the difficulty of the case has long been recognized in death penalty cases, because of the complexity and demands of capital defense.\textsuperscript{224} It is also inappropriate to assign a rape case where the defendant is facing a life sentence to an attorney who has never handled such a case before.\textsuperscript{225}

It has been recognized that there is more to competent representation than merely having an assigned lawyer.\textsuperscript{226} Meaningful access to justice includes the "raw materials integral to the building of an effective defense," and a criminal trial is fundamentally unfair where access is denied.\textsuperscript{227} The legal representation plan should provide for investigative, expert, and other services necessary to quality legal representation. These should include not only those services
and facilities needed for an effective defense at trial “but also those that are required for effective defense participation in every phase of the process.”

A lack of supervision of appointed counsel impairs the quality of representation afforded to poor defendants, as well as the failure to evaluate counsel to ensure that his or her training, experience, and ability appropriately match the complexity of the cases assigned. Continuous training and supervision are essential in ensuring that defense attorneys develop and maintain their skills, particularly in specialized areas. This also makes certain that the attorneys are held accountable for the level of representation they provide to their clients.

Even where an attorney's knowledge and experience are appropriately matched to case assignments, counsel's performance must be appropriately monitored and evaluated to guarantee quality indigent representation. Generally, a public defender system has a hierarchy of management in place that can respond and correct inferior performance. There is no doubt that supervising public defenders in an office can be problematic, like any other office. However, “holding appointed counsel and contract attorneys accountable for their performance presents an even greater difficulty.” Without an independent supervisory check, “incompetent lawyers can be appointed repeatedly, even in the face of multiple bar suspensions or disbarments.”

The federal defender system, under the Criminal Justice Act, created a model for the delivery of training for attorneys in indigent defense cases. The Act recognizes the critical role that training plays in maintaining expertise and competence in criminal practice. Regardless of their experience, federal defenders have a variety of training opportunities. New attorneys are scheduled for a two-week course, which instructs them on the key aspects of their new role as a federal defender. The course includes instruction on litigation and sentencing guidelines. Attorneys subsequently receive training at the National Criminal Defense College,
as a follow-up to their initial training. The topics covered at the Defense College include trial advocacy, client interaction, investigation, motion practice, and use of experts.239

Like the federal training methods, some states have been developing their own training methods for state attorneys. A recent evaluation of the impact of standards found that 37% of county-funded systems and 50% of state public defense systems with some or all state funding reported use of training methods.240 In addition, recent state reform efforts have included recommendations or provisions for education and training for defenders, recognizing the need for and importance of training.241 There is no doubt that “public defenders need access to training resources to the same degree that Federal, State and local prosecutors have the same.”242

In 2002, the American Bar Association adopted Ten Principles of a Public Defense Delivery System, which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”243 These principles were formulated to emphasize the importance of providing proper indigent defense. The Ten Principles refine the existing voluminous national standards pertaining to indigent defense systems down to their most basic elements, in a concise form that attorneys can readily review and apply.

The sixth principle of the ABA's Ten Principles states, “[d]efense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.”244 The ninth principle of the ABA’s Ten Principles states, “[d]efense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have
systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.”

Texas law requires that, in order for an attorney to be appointed to represent an indigent defendant, the attorney must be licensed. However, many counties have no minimum eligibility criteria for attorneys who want to accept court-appointed cases. While they do make appointments and assign attorneys on a rotational basis, judges often give cases to the new attorneys to provide them with the experience. In some counties, like Smith County, new attorneys are assigned to “only relatively uncomplicated misdemeanor cases so they can gain experience before getting assigned to more serious cases.” While in Travis County, no new attorneys are appointed misdemeanor cases unless they have at least one year of criminal law experience “and have served as lead counsel in a minimum of three trials.”

Harris County and Travis County have established qualification requirements for newly-retained counsel. Harris County had the most rigorous formal requirements for appointing counsel than any other Texas county. Any attorney who wished to be appointed to represent indigents in criminal cases had to be certified as competent by passing an exam and by showing proof of his or her trial or appellate experience, attendance at continuing legal education programs or Board Certification by the State Bar of Texas. The Harris County judges limited their appointments to certified lawyers and the county auditor was instructed not to pay any voucher submitted for a lawyer who was not on the approved list. For non-capital cases, the certification program requires attorneys to attend a three-day seminar (while also receiving continuing legal education credits) and attorneys must attend a half-day seminar, once every two years, which reviews changes in common and statutory law. For capital cases, the
certification program requires attorneys to pass a 100 multiple choice questions, with a passing score of 70 or higher. See above for Harris County’s current attorney qualifications.

**Indigents and the Death Penalty**

It is widely understood that the demands upon defense counsel in a death penalty case “are uniquely heavy, both in the legal expertise which counsel must possess and in the extra-legal subjects she must master.” In every step, counsel needs to be aware of technical legal principles and how sudden and frequent these principles change.

In most counties in the United States, indigent defendants are usually the ones who end up on death row. These indigent defendants are not represented by skilled public defenders, but instead, they are represented by court-appointed lawyers, sometimes from law firms that have contracted with the county to represent these indigents. Some of these lawyers have little criminal law experience and often no capital murder experience at all, and “they are paid so little by the county or state that they lack either the incentive or the ability to zealously represent their clients as they are ethically obligated to do.”

If prosecutors believe that the government can prove its case on the strength of the testimony of the victim or other witnesses, the government would be under no obligation to submit biological evidence for DNA testing. Not surprisingly, in an effort to preclude post-conviction DNA testing requests, prosecutors try to have defendants waive the preservation of biological evidence as a prerequisite of getting a favorable plea. Since these defendants often are not represented or are inadequately represented, they do not realize the importance of the biological evidence, and thus waive their right so that they are not incarcerated. While DNA testing is available pre-trial, unfortunately, it is still out of reach for many indigent defendants who are represented by grossly under-funded court-appointed counsel.
Texas has earned a reputation for its high number in executions.\textsuperscript{263} Particularly, Harris County has the reputation of being “the capital of capital punishment.”\textsuperscript{264} If Harris County were a state, it would rank second in executions after Texas, recently passing Virginia.\textsuperscript{265} It has executed more offenders than all other major urban counties in Texas combined.\textsuperscript{266} From 1976 to 1991, Texas’ death row had an average of six offenders per year from Harris County; the number doubled to 11 offenders per year from 1992-1999.\textsuperscript{267} However, from 2000 to 2007, the average dropped to 5 offenders per year.\textsuperscript{268} Interestingly, the average dropped at a time when the Texas Fair Defense Act was implemented.

In 1972, the United States Supreme Court held all existing death penalty statutes unconstitutional in \textit{Furman v. Georgia}.\textsuperscript{269} However, \textit{Furman} did not constitute an absolute ban on capital punishment; instead, the court approved the use of the death penalty so long as states could provide certain procedural safeguards at trial.\textsuperscript{270} States began to amend their respective death penalty statutes to follow the \textit{Furman} decision. Texas’ current death penalty statute was upheld by the Supreme Court in 1976.\textsuperscript{271} At present, Texas leads the country in the number of executions with 408 total executions, three in 2008 and 26 in 2007.\textsuperscript{272} Virginia follows in second with a total of 102 executions to date.\textsuperscript{273} Many of those sentenced to death experienced ineffective counsel at the trial level.\textsuperscript{274}

Under Texas Code of Criminal Procedure, Article 26.052(e), the district court judge presiding over a capital case must appoint counsel for any indigent defendant.\textsuperscript{275} The attorney appointed at trial can represent the defendant throughout the entire litigation process.\textsuperscript{276} This right to have counsel appointed to an indigent defendant must also encompass the right to effective assistance.\textsuperscript{277} Unfortunately, Texas has been notorious for the poor quality of defense representation provided to indigent capital defendants at trial and on appeal, although the Fair
Defense Act has made an effort to improve this situation.\textsuperscript{278} Frequently, court-appointed attorneys have been inexperienced, under-resourced, or unmotivated.\textsuperscript{279} One appointed-counsel, in particular was caught sleeping in two separate Harris County trials.\textsuperscript{280}

In 1979, Carl Johnson was tried for capital murder in the death of Ed Thompson.\textsuperscript{281} Johnson and his co-defendant, Carl Baltimore, robbed a small grocery store in Houston.\textsuperscript{282} Baltimore held a gun to the store’s owner, when Thompson, the security guard, walked in and shot at the two defendants. In self-defense, Johnson fired back.\textsuperscript{283} Thompson was shot in the head.\textsuperscript{284} Johnson, who was indigent, had two attorneys appointed to represent him.\textsuperscript{285} One attorney had been out of law school for not even a year and never tried a capital case.\textsuperscript{286} The other attorney, had tried many capital cases, with all of them ending up on death row.\textsuperscript{287} This attorney slept during jury selection and portions of witness testimony. He also neglected to interview witnesses before putting them on the stand.\textsuperscript{288} Johnson was convicted and sentenced to death.\textsuperscript{289}

Calvin Burdine, who was also indigent, was represented by the same attorney.\textsuperscript{290} In 1983, Burdine was tried in the 183rd District Court, Harris County, Texas for the offense of capital murder in connection with the death of W.T. Wise, during the course of a robbery committed by Burdine and his friend.\textsuperscript{291} In 1984, Burdine was convicted of capital murder. He was sentenced to death by lethal injection.\textsuperscript{292} On direct appeal, the Texas Court of Criminal Appeals affirmed the conviction and sentence. After numerous appeals and habeas corpus writs, the 5\textsuperscript{th} Circuit found that because Burdine was “plainly guilty of capital murder” and because he volunteered a confession, Burdine should not receive the benefit of presumed prejudice for his lawyer’s sleeping.\textsuperscript{293} Judge Jolly, in his opinion, indicated that Burdine’s attorney did not sleep at a critical period in the trial, nor did his sleeping affect the trial’s outcome.\textsuperscript{294} One Harris
County trial judge commented that the “Constitution doesn’t say the lawyer has to be awake.”\textsuperscript{295} While another Harris County judge said, “a sleeping counsel is unprepared to present evidence, to cross-examine witnesses, and to present any coordinated effort to evaluate evidence and present a defense.”\textsuperscript{296}

Although the above-noted cases were decided before the implementation of the Fair Defense Act, the current judge-assigned system in Harris County still does not rise to the same level as public defender systems in other urban counties in Texas. The judge-assigned system leads to situations where ineffective attorneys represent defendants who are most in need of effective assistance. A public defender system that will provide representation at the trial and appellate level will help to solve the deficiency in representation currently infecting Harris County. A public defender system can help to ensure that an indigent capital and non-capital defendants have access to adequate resources and competent, experienced trial attorneys.\textsuperscript{297} This system will create a unified and fair approach to court appointment in Harris County. Today, the right to effective assistance of counsel often gets overlooked in death penalty cases.\textsuperscript{298}

**Conclusion**

The Texas Task Force, in their most updated report, stated that the public defenders system “is working in Texas.”\textsuperscript{299} Public defenders offices have operated for years in Texas. Studies have shown that the cost per case for public defenders has been lower than costs for assigned counsel in the same county.\textsuperscript{300} It has been found that less administrative work is necessary to oversee indigent defense under a public defender system than under the other two systems.\textsuperscript{301}

Justice works best when all players within the system are competent and have access to adequate resources. When the system includes well-trained attorneys, cases move faster and the
system tends to generate and implement innovative programs. Public defenders assist in the fight against crime and contribute to the effective operation of programs that may help reduce recidivism, which aids in increasing the effectiveness of the U.S. justice system. In 2006, data collected from the Texas Task Force revealed that costs of indigent counsel statewide could be $13.7 million lower if mature public defender services were available.\textsuperscript{302} Public defender offices have the “greatest potential to achieve quality standards and cost benefits where implementation is uniform.”\textsuperscript{303}

The problem with the current court appointment system in Texas is exemplified by both the number of people either on death row or executed in Texas as a result of ineffective counsel\textsuperscript{304} and the number of under-compensated judge-assigned attorneys who plead out indigent defendants so that they can minimize their time in court. These assigned attorneys do not serve the defendants with “diligence and thoroughness, conduct adequate preparation, or give matters the required attention.”\textsuperscript{305} Harris County must carefully formulate a public defender system to avoid continuous problems with ineffective counsel and the under-funding of indigent defense. Otherwise, the systemic neglect of indigent defendants by their judge-assigned attorneys will continue.
A person is indigent if the person is not financially able to employ an attorney for representation. http://www.ccl.hctx.net/attorneys/FDA/FDA%20Alt%20Plan.pdf, Section D, subsection 1; TEX. CODE CRIM. P. ART. 1.051(b).


2 Id.

3 Id.

4 Id.

5 Id.

6 Id.

7 Id.

8 Id.

9 U.S. CONST. amend. VI.

10 U.S. CONST. amend. XIV, §1.


13 Betts v. Brady, 316 U.S. 455 (1942). The inmate was indicted for robbery. He requested that counsel be appointed. The state court judge advised him that it was not the local practice to appoint counsel for indigent defendants except in prosecutions for rape and murder. He was found guilty in a bench trial and sought relief. The court determined that the Fourteenth Amendment did not strictly require that a defendant be appointed counsel at a trial for every criminal offense. Therefore, he was not deprived of his liberty without due process of law because the Sixth Amendment guarantee of counsel only applied to trials in federal courts, and the Fourteenth Amendment did not incorporate that guarantee. There was no right to state-appointed counsel in every case in which a defendant, charged with a crime, was unable to obtain counsel. In most states, appointment of counsel was not a fundamental right, but was deemed a matter of legislative policy. The court affirmed the denial of habeas corpus relief for the inmate.

14 www.nlada.org

15 Id.


20 Id. at 336


22 Gideon, 372 U.S. at 337.

23 Id.

24 Id.

25 Id. at 338.


27 Id. at 372

28 Gideon, 372 U.S. at 340.

29 Betts v. Brady, 316 U.S. 455.

30 Gideon, 372 U.S. at 341.

31 Id.


37 Id.

38 Id.


43 Id.

44 SB7 bill text – See Appendix A


48 Id.


55 Id.

56 Id.


58 Id.


60 Id.

63 TEX. CODE CRIM. PROC. ANN. art. 26.04 (Vernon 2002).
65 Id. at 1104.
66 TEX. CODE CRIM. PROC. ANN. art. 26.044 (a) (Vernon 2002).
67 TEX. CODE CRIM. PROC. ANN. art. 26.044 (b) (Vernon 2002).
68 TEX. CODE CRIM. PROC. ANN. art. 26.044 (c) (Vernon 2002).
69 TEX. CODE CRIM. PROC. ANN. art. 26.044 (f) (Vernon 2002).
71 http://www.courts.state.tx.us/tfid/tfidhome.asp.
73 Id.
74 Id.
75 Id.
76 Id.
77 Id.
81 Id.
82 Id.
83 Id.
84 Id.
87 DOTTIE CARMICHAEL, MICHAEL VOLOUKADIS, TONY FABELO, STUDY TO ASSESS THE IMPACTS OF THE FAIR DEFENSE ACT ON TEXAS COUNTIES (2005), http://www.courts.state.tx.us/oca/tfid/Study%20to%20Assess%20the%20Impacts%20of%20the%20Fair%20Defendere%20Act%20on%20Texas%20Counties%20Version.pdf.
88 Id.
90 Id.
93 Id.


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132 Id.
133 Id.
134 Id.
135 Id.
136 Id.
138 Id.
140 Id.
141 Id.
142 Id.
145 Id.
146 Id.
147 Id.
148 Id.
149 Id.
151 Id.
152 Id.
153 Id.
154 Id.
155 Id.
156 Id.
157 Id.
160 Id.
161 Id.
162 Id.
163 Id.
168 Id.
ROBERT SPANGENBERG, BLUEPRINT FOR creating a PUBLIC DEFENDER OFFICE in TEXAS – TEXAS TASK FORCE on INDIGENT DEFENSE, SECOND EDITION (2008),

170 Id.
171 Id.
172 Id.
173 Id.
174 Id.
175 Id.
176 Id.
177 Id.


178 Id.

180 Id.
181 Id.

Cait Clarke, Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor, 14 GEO. J. LEGAL ETHICS 401, 420 (2001).

182 Id.
183 Id.


184 Id.
185 Id.
186 Id.
187 Id.
188 Id.


189 Id. at 50.


191 Id. at 45 (1932).

192 Id. at 49.

193 Id.
194 Id.
195 Id.
196 Id.
197 Id.
198 Id. at 59-60.
199 Id. at 71.


201 Id. at 672.
202 Id.
203 Id.
204 Id.
205 Id. at 677.
206 Id. at 676.
207 Id. at 675.
208 Id.
209 Id. at 676.
210 Id. at 678.
211 Id. at 679.
212 Id. at 680.
213 Id. at 685.
214 Id. at 680.
215 Id. at 686.
216 Id. at 687.
dors does not by itself assure a proper functioning of the adversary process."


Id. at 1090.

Id.

Id.


Id. at 1090.

Id.

Id.


in Texas and Proposal for Statewide Public Defender System


Id.


*Id.* at 1269.


*Id.*

*Id.*

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*Id.*

*Id.*

*Id.*

*Id.*

*Id.*

*Id.*

*Id.*

*Id.* at 711


*Id.*