



Travis County Commissioners Court Agenda Request

Meeting Date: April 15, 2014

Prepared By/Phone Number: Debra Hale, 512-854-9432

Elected/Appointed Official/Dept. Head: Judge Julie Kocurek, 512-854-4885

Commissioners Court Sponsor: Judge Samuel T. Biscoe

AGENDA LANGUAGE:

Receive update and discuss the Managed Assigned Counsel (MAC) program proposal and the Texas Indigent Defense Commission (TIDC) grant opportunity for the improvement of indigent defense representation in the Travis County Criminal Courts.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

Please see attached memo and presentations prepared by the Criminal Courts and members of the Austin Criminal Defense Lawyers Association (ACDLA) and the Austin Bar Association (ABA).

STAFF RECOMMENDATIONS:

N/A

ISSUES AND OPPORTUNITIES:

It is the goal of the MAC program to improve the quality of representation to indigent adult defendants charged with a felony or misdemeanor in Travis County.

FISCAL IMPACT AND SOURCE OF FUNDING:

The Texas Indigent Defense Commission is accepting grant applications for Multi-Year Discretionary Grants for programs that represent indigent defendants, requiring a cash match from receiving counties. The multi-year discretionary grant fund will pay up to a rate of 80% of total project costs the first year; 60% the second year; 40% the third year; and 20% the fourth year. Following the grant period, Travis County would be responsible for the costs of the MAC.

REQUIRED AUTHORIZATIONS:

N/A

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials should be submitted as a pdf to the County Judge's office, agenda@co.travis.tx.us by Tuesdays at 5:00 p.m. for the next week's meeting.

TRAVIS COUNTY
DISTRICT AND COUNTY
CRIMINAL COURTS

DEBRA HALE
DIRECTOR OF COURT
MANAGEMENT



BLACKWELL-THURMAN
CRIMINAL JUSTICE CENTER
P. O. BOX 1748
AUSTIN, TX. 78767
(512) 854-9244
FAX: (512) 854-4464

Date: April 8, 2014

To: Samuel T. Biscoe, Travis County Judge
Ron Davis, Commissioner, Precinct 1
Bruce Todd, Commissioner, Precinct 2
Gerald Daugherty, Commissioner, Precinct 3
Margaret Gómez, Commissioner, Precinct 4

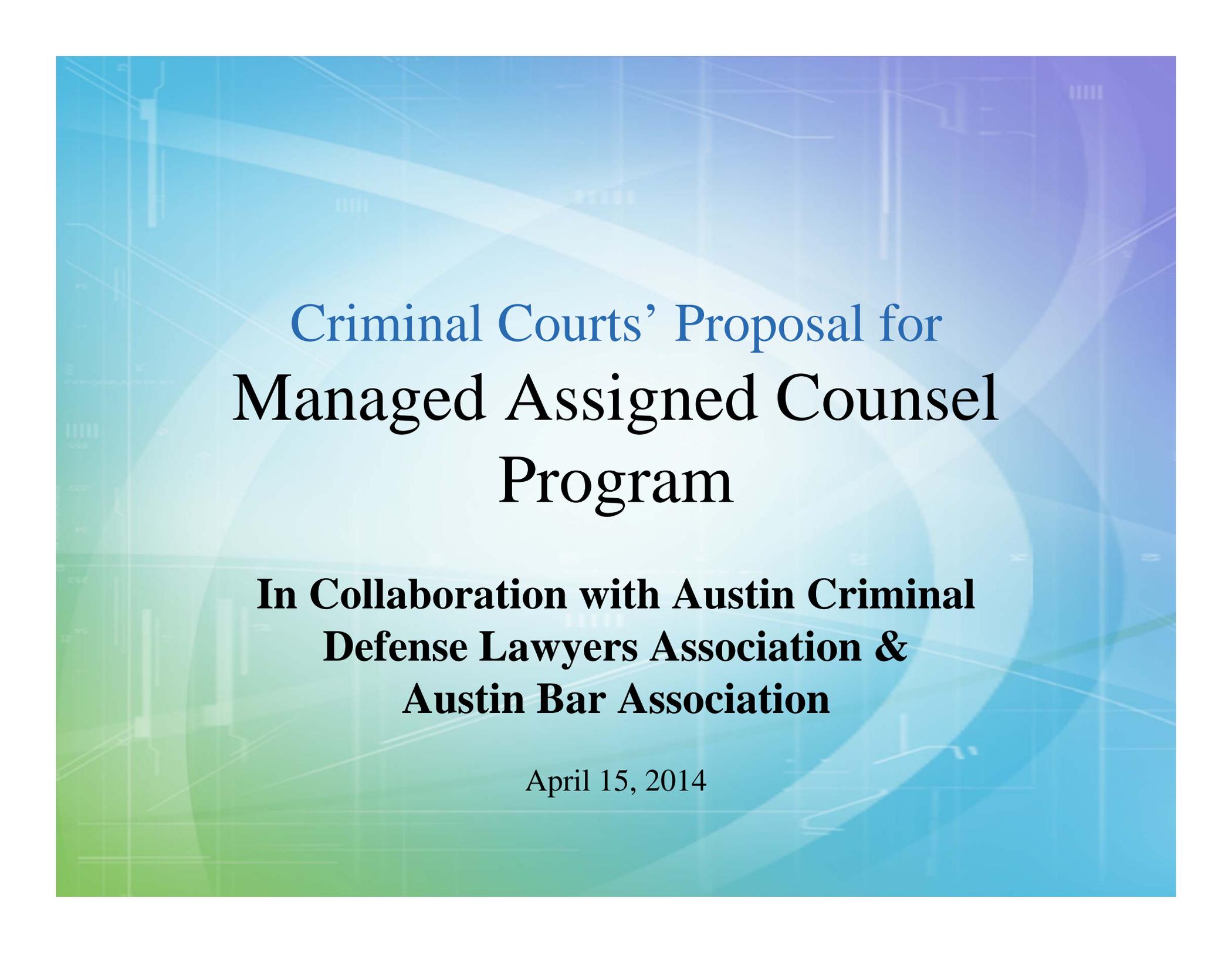
From: Debra Hale, Director of Court Management *DH*

Re: Backup for Managed Assigned Counsel Program Proposal - Criminal
Courts Work Session on April 15, 2014 @ 1:30 pm

The Criminal Courts have a work session scheduled next week to address the proposal by the Austin Criminal Defense Lawyers Association (ACDLA) and the Austin Bar Association (ABA) to implement a Managed Assigned Counsel (MAC) Program. The intent of the program is to improve the quality of indigent defense representation in Travis County. Since the fall of 2012, the Criminal Judges have been collaborating with these organizations and have conducted extensive research into the feasibility of a MAC program in Travis County. Similar programs were visited in Lubbock, TX and San Mateo, CA and assistance was enlisted from the Texas Indigence Defense Commission (TIDC) during this process.

For your review, please find attached an introduction by the Criminal Court Judges as well as the MAC proposal from the ACDLA and the ABA. We have also attached the Texas Code of Criminal Procedure Statute authorizing the MAC program, as well as a letter of support from leaders in the criminal defense community and the Travis County District Attorney. We look forward to meeting with you regarding this topic during the work session. Please feel free to contact me at (512) 854-9432 if you have any questions.

Judges' Introduction and History of Request



Criminal Courts' Proposal for Managed Assigned Counsel Program

**In Collaboration with Austin Criminal
Defense Lawyers Association &
Austin Bar Association**

April 15, 2014



The Sixth Amendment to the U.S. Constitution

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to **have the Assistance of Counsel for his defence.**”

What is Our History of Indigent Defense Representation?

1963 Gideon Decision

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

1980's Travis Leads

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

2001 S.B. 7

Modeled after
Travis County

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

2011 New Option: CCP Art. 26.047 (a)

Managed
Assigned
Counsel Program

CURRENT REQUEST

Current Process

- 1. Judges review attorney applications and approve for appropriate list.**
- 2. Judges appoint attorneys from a public appointment list using a system of rotation.**
- 3. Judges set the attorney fee schedule and approve all payment vouchers.**
- 4. Judges conduct annual review of attorneys and require annual verification of CLE.**

ABA Ten Principles of a Public Defense Delivery System

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

Concerns We Face

- **Judiciary is not independent from the indigent defense system (ABA Principle 1).**
- **Current system lacks sufficient resources to thoroughly verify attorney qualifications (ABA Principle 6).**
- **Current system lacks sufficient resources to ensure proper oversight and mentoring of appointed attorneys (ABA Principle 10).**

Benefits of the MAC Solution



What Steps Were Taken to Explore a MAC Program?

Fall 2012

Judges vote to explore MAC option

Jan 2013 - Mar 2014

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

May 2013

Site visit to Lubbock, TX to observe MAC

Oct. 2013

Site visit to San Mateo, CA to observe MAC

Nov. 2013

Meeting w/ ABA to review space and staff resources

Mar. 2014

Judges unanimously vote to pursue MAC via grant proposal

Mar. 2014

Letter of Intent submitted to Commission on Indigent Defense for potential grant funding

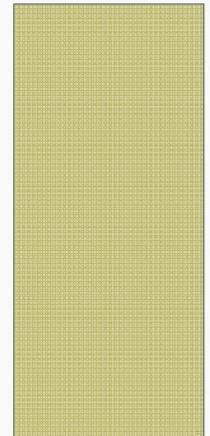
Funding Opportunity

- **TIDC FY15 Grant (funding begins October 1, 2014).**
- **Multi-year grant reimbursement rates are 80%-60%-40%-20% for 4 years. 5th year 100% funded by Travis County.**
- **Funding contingent upon meeting performance measures.**
- ***Grant application due May 9, 2014***

MAC PROPOSAL PRESENTED BY
ACDLA AND ABA

TRAVIS COUNTY PRIVATE DEFENDER

A MANAGED ASSIGNED COUNSEL OFFICE



STRUCTURE

A NEW NON-PROFIT

TRAVIS COUNTY PRIVATE DEFENDER

The MAC will be a joint venture of:

- ACDLA (Austin Criminal Defense Attorneys Assoc.)
- Austin Bar Association
- Oversight by County Leadership

ORGANIZATION STRUCTURE



LEADERSHIP

- Board of Directors ("BOD")
 - 7 voting members
 - 3 ex officio members (non-voting members)
- Oversight Committee
 - County leadership
- Review Board
 - Panel of experienced and respected attorneys

OVERSIGHT COMMITTEE

Membership

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

Function

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

BOARD OF DIRECTORS

Voting Membership

- 2 ACDLA Board Members
 - 1 elected by membership
 - 1 elected by ACDLA BOD
- 2 ABA Board Members
 - 1 must be active in criminal defense
- 1 Selected by Oversight Committee (retired senior criminal judge)
- 2 non-practicing attorneys with fiduciary/business experience

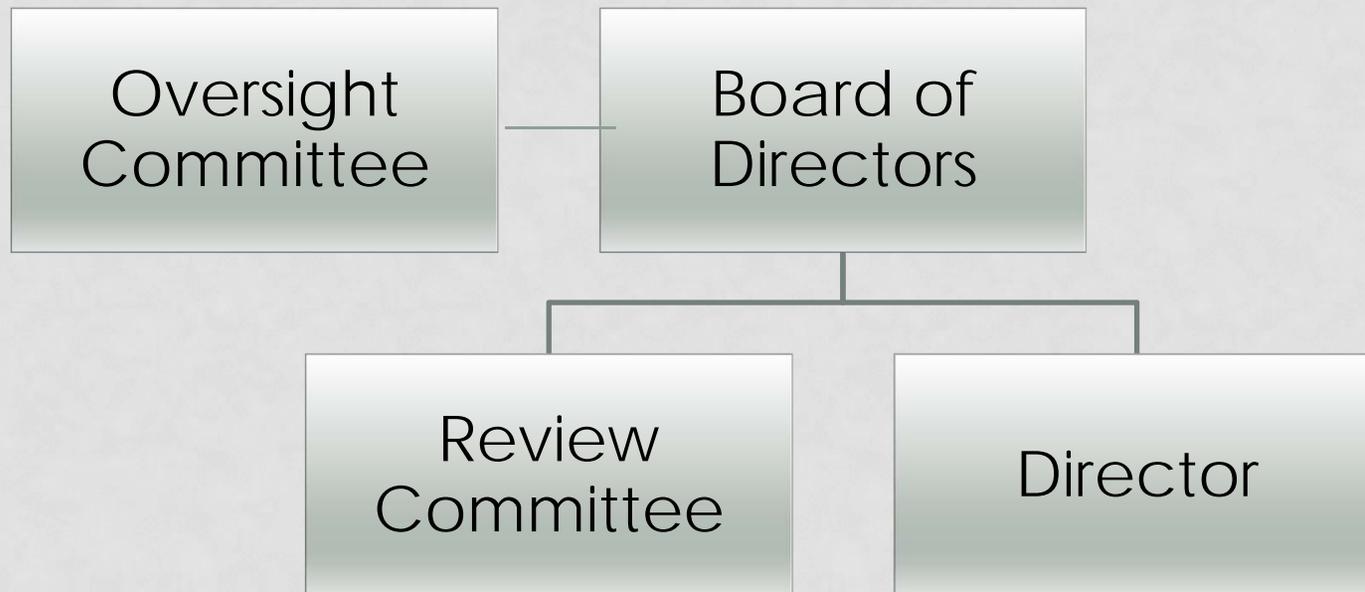
Function

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

NON-VOTING BOARD MEMBERS

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

ORGANIZATION STRUCTURE



REVIEW COMMITTEE

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

REVIEW COMMITTEE

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

FINANCIAL OVERVIEW

A COST BREAKDOWN

STAFFING

Lubbock

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

San Mateo

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

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

FULLY PRIVATE VS. HYBRID MODEL

Lubbock and San Mateo

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

Travis County

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

TRAVIS COUNTY MAC STAFFING

- 25,000 cases (current case load)
- 250 attorney list (current list size)
 - Future list size is not determined
- 8.3 million budget (to allocate for individual services)
- Staff
 - 1 Director
 - 1 - 1st Assistant Director
 - 1 - 2nd Assistant Director
 - 1 Full time investigator
 - 1 Full time administrative staff member
 - 1 Part time financial analyst

STAFFING BREAKDOWN

- Attorney Director - \$140,000 to \$160,000
 - Salary Comparison
 - District Attorney 1st Assistant - \$133,996 to \$214,399
 - District Attorney Division Director - \$109,380 to \$175,009
 - District Attorney VII - \$95,524 to \$152,828
- 1st Assistant Director - \$110,000 to \$130,000
- 2nd Assistant Director - \$90,000 to \$110,000
- Full time investigator - \$60,000 to \$80,000
- Administrative Assistant - \$30,000 to \$50,000
- Part time Financial Analyst- \$25,000 to \$35,000

- Benefits – up to \$104,060
- Taxes – up to \$38,434
- **Total Cost – up to \$707,494**

OPERATIONAL COSTS

• Office Space*	\$48,000
• Mentorship Program	\$30,000
• IDA Software Maintenance*	\$13,200
• Training and Prof. Membership	\$10,500
• Office Supplies	\$ 3,000
• CPA Prof. Services (taxes)	\$ 5,000
• Prof. Liability Insurance	\$ 4,000
• Legal Research Subscriptions	\$ 2,100
• Moving Expenses*	\$ 2,000
• IT/Computer Maintenance	\$ 1,500
• Copier Service Agreement	\$ 1,000
• Telephone Service	\$ 600
• Bank Fees	\$ 500
• Web Hosting	\$ 200
• <u>Postage</u>	<u>\$ 200</u>
• Total	\$121,800
• Capital Equipment (Software, office equipment, phones, furniture, etc.)	\$111,215 (one time cost)
• 2% Indirect Cost for Grant	\$14,406

*Will not incur this expense in year 1, but included is a placeholder for budget years 2-4

TOTAL ONGOING COST OF MAC OFFICE

- Total Ongoing Cost \$829,294
- Grant available for 50% matching over 4 years.
- First year cost to county up to \$188,102 to be paid internally by Texas Indigent Defense Commission (TIDC) Formula Grant.

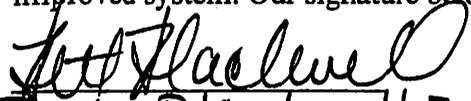
KEY FEATURE OF MAC

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

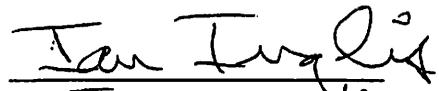
LETTER OF SUPPORT AND
STATUTE AUTHORIZING
MAC

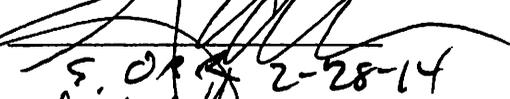
TO THE JUDGES OF TRAVIS COUNTY:

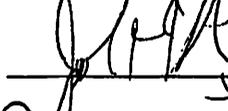
WE, the undersigned attorneys wish to express our support for the Managed Assigned Counsel(MAC) Program. Having worked under the current system for many years we are well aware of the issues and limitations with the court appointed system in Travis County. The MAC will allow Travis county to implement a program to raise the quality of representation to the indigent accused in Travis County while at the same time bringing our court appointed system into compliance with the American Bar Association's guidelines for court appointed counsel. This is a unique opportunity to bring so many groups together to create a new and improved system. Our signature below indicates our support for this much needed change.


Betty Blackwell 2-28-14

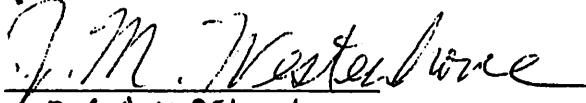

DAVID A SHEPARD 2/28/14


Ian Inglis 2/28/14


S. O'NEIL 2-28-14


John C. Kuh 2-28-14

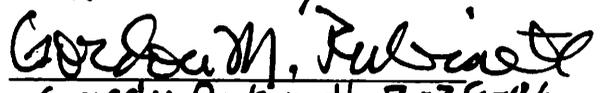

Pamela Lancaster 2-28-14


mark westenhover


Keith Laurman

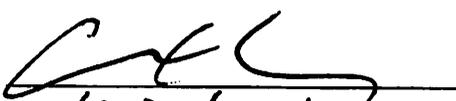

Rand Cavitt

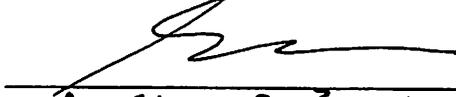

Andrew Forsythe 2-28-14

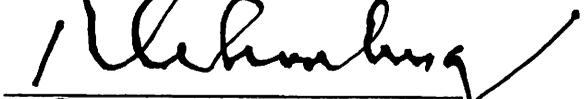

Gordon M. Fulbright 2-28-14

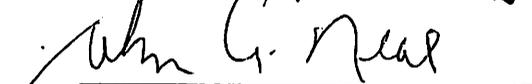

Linda S. Cantor 2-28-14


Robert Icehauer
Robert Icehauer. Ramirez

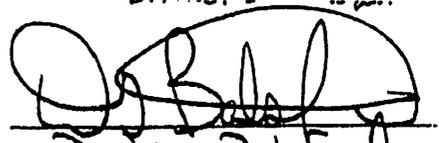

Chris Gunter


Samuel E. Bassett


Rosemary Lehberg


John Neal


Gerry Morris


David L. Botsford


Warren L. "Rip" Collins Jr.


Steve Brittain

Art. 26.047. MANAGED ASSIGNED COUNSEL PROGRAM. (a) In this article:

(1) "Governmental entity" has the meaning assigned by Article 26.044.

(2) "Managed assigned counsel program" or "program" means a program operated with public funds:

(A) by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B) for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code.

(b) The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1) the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2) the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c) The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

(1) a budget for the program, including salaries;

(2) a description of each personnel position, including the program's director;

(3) the maximum allowable caseload for each attorney appointed by the program;

(4) provisions for training personnel of the program and attorneys appointed under the program;

(5) a description of anticipated overhead costs for the program;

(6) a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8) a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d) A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person 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.

(e) The governmental entity, nonprofit corporation, or bar association operating the program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list described by Subsection (f). Each member of the committee:

- (1) must meet the requirements described by Subsection (d);
- (2) may not be employed as a prosecutor; and
- (3) may not be included on or apply for inclusion on the public appointment list

described by Subsection (f).

(f) The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Texas Indigent Defense Commission; and
- (3) is approved by the program director or review committee, as applicable.

(g) A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h) A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i) A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

Added by Acts 2011, 82nd Leg., R.S., Ch. 984, Sec. 11, eff. September 1, 2011.

Art. 26.05. COMPENSATION OF COUNSEL APPOINTED TO DEFEND. (a) A counsel, other than an attorney with a public defender's office or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

- (1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

- (2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a noncapital case, other than an attorney with a public defender's office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(i) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 984, Sec. 15(1), eff. September 1, 2011.

Acts 1965, 59th Leg., p. 317, ch. 722, Sec. 1, eff. Jan. 1, 1966. Amended by Acts 1969, 61st Leg., p. 1054, ch. 347, Sec. 1, eff. May 27, 1969; Acts 1971, 62nd Leg., p. 1777, ch. 520, Sec. 1, eff. Aug. 30, 1971; Acts 1973, 63rd Leg., p. 1126, ch. 426, art. 3, Sec. 3, eff. June 14, 1973; Acts 1981, 67th Leg., p. 803, ch. 291, Sec. 106, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 979, Sec. 3, eff. Sept. 1, 1987.

Subsec. (f) added by Acts 1999, 76th Leg., ch. 837, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 906, Sec. 8, eff. Jan. 1, 2002; Subsec. (f) amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.734, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1014, Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 781, Sec. 9, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 984, Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 984, Sec. 15(1), eff. September 1, 2011.