



Travis County Commissioners Court Agenda Request

Meeting Date: July 1, 2014

Prepared By/Phone Number: Roger Jefferies, County Executive, Justice and Public Safety, 854-4759

Elected/Appointed Official/Dept. Head: Roger Jefferies, County Executive, Justice and Public Safety, 854-4759

Commissioners Court Sponsor: Samuel Biscoe, County Judge

A handwritten signature in blue ink, appearing to be "S. Biscoe", written over the name of the County Judge.

AGENDA LANGUAGE:

CONSIDER AND TAKE APPROPRIATE ACTION ON A REPORT ON THE COST DRIVERS OF CIVIL INDIGENT DEFENSE EXPENDITURES

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

In the FY 2014 budget process, the Justice and Public Safety Division, along with the Civil Courts, and the Planning and Budget Office committed to forming a study group to examine the cost drivers of civil indigent defense expenditures. Attached please find a report with the study group's findings. The report covers indigent legal expenditures on CPS cases, juvenile cases, mediations, and cases involving contempt of court ordered child support. Also attached is the presentation that will be provided on 7-1-14 to the Commissioners Court.

STAFF RECOMMENDATIONS:

The report offers two recommendations:

1. It is recommended that a paralegal be added to both OPR and OCR in FY 2015 through the regular budget process.
2. It is also recommended that an analysis be completed on the impact that taking OPR and OCR to scale would have on expenditures for CPS legal services.

ISSUES AND OPPORTUNITIES:

The increase in civil indigent defense expenditures which has occurred over the last six years has primarily been driven by expenditures on legal services for CPS cases. The data suggests that these cost drivers have been influenced by increases in population, increases in instances of child

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abuse and neglect, economic distress, changes in the child welfare law, complexity in lawsuits, and increases in CPS staffing and workload.

FISCAL IMPACT AND SOURCE OF FUNDING:

Among other things, the report analyzes the cost of providing indigent legal services on CPS cases. It compares the cost of private attorneys versus the cost of legal services provided by the Office of Child Representation and the Office of Parental Representation. The report concludes that these costs are roughly the same. If additional staff are added to OPR and OCR the costs can be spread across a greater number of attorney assignments within those departments. With an additional paralegal for each office, OPR and OCR can each take an additional 50 cases at a modestly lower cost than private attorneys. The annualized cost for the two paralegals would be \$132,259, plus \$9,894 in minor one time capital costs. A request for the paralegals is in the FY 2015 budget process.

ATTACHMENTS:

Report on the Cost Drivers of Civil Indigent Defense Expenditures – June 2014

PowerPresentation to Commissioners Court on Cost Drivers of Civil Indigent Defense Expenditures

REQUIRED AUTHORIZATIONS:

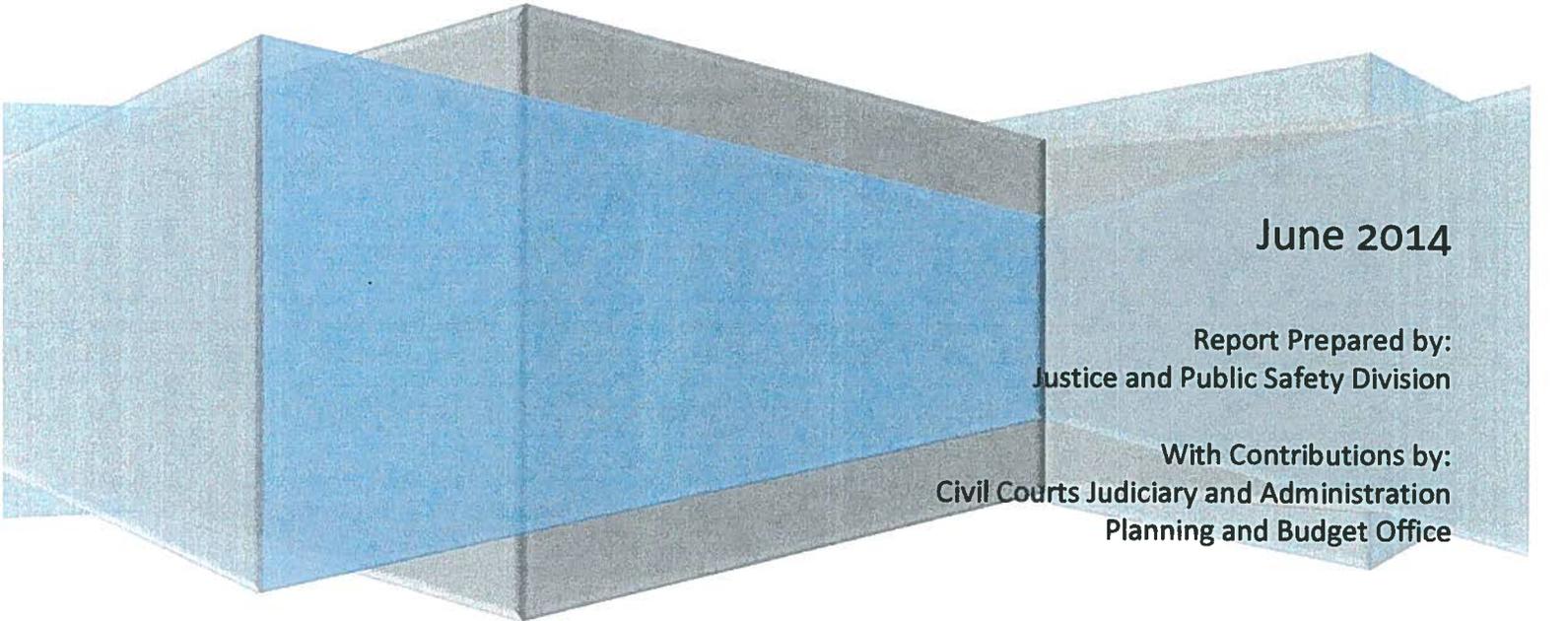
Commissioners Court
Civil Courts Administration
Civil Courts Judges
Juvenile Courts Judges
Planning and Budget Office

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Travis County, Texas

Report on the Cost Drivers of Civil Indigent Defense Expenditures

Parts A and B



June 2014

**Report Prepared by:
Justice and Public Safety Division**

**With Contributions by:
Civil Courts Judiciary and Administration
Planning and Budget Office**

REPORT ON COST DRIVERS OF CIVIL INDIGENT DEFENSE EXPENDITURES

Executive Summary

The Texas Family Code mandates that attorneys be appointed to represent the rights of indigent parties in civil matters of juvenile justice, termination of parental rights, and incarceration of contempt of court-ordered child support.

From FY 2008 to FY 2013, the expenditures for legal support for indigent parties in these types of cases have grown by 53% overall in Travis County.

In Travis County, the Juvenile Public Defender's Office provides 97% of the legal representation for indigent parties in juvenile justice. Private attorneys are utilized for a small number of juvenile cases. During the six-year period that was examined, juvenile petitions filed decreased almost 30%. Expenditures on juvenile indigent defense increased slightly at 3.6%.

For matters involving termination of parental rights (also known as Child Protective Services or CPS cases), the county funds two offices, the Office of Parental Representation (OPR) and the Office of Child Representation (OCR), to represent indigent parties for approximately 36% of CPS cases. The county also pays private attorneys to represent both children and parents in these CPS cases, which account for approximately 64% of the total. Total case filings for CPS cases increased by 62% in the six year period we examined. Total expenditures increased 57%, not including OPR and OCR. The impact of the two offices on civil indigent expenditures is examined in Part B of this report.

CPS cases may also utilize mediations to arrive at a settlement, which also require legal representation. The volume of mediations has increased 48.6% over six years. Concurrently, expenditures for legal representation rose 75.1%. While these increases are significant, mediations provide an alternative to much more costly jury trials.

Finally, the county pays private attorneys to represent indigent clients in cases involving contempt of court-ordered child support. The volume of these cases rose 2.2% from FY 2008 to FY 2012. Concurrently, expenditures rose 29% in the same time period.

While mediations and contempt cases experienced an increase in volume and cost in the time frame examined, these expenditures, along with expenditures on juvenile cases, comprise only approximately 18% of the total amount.

Part A of this report highlights possible reasons the main driver of civil indigent defense expenditures, CPS cases, has risen over the last six years. As the volume of cases filed increased, the county experienced a rise in the amount budgeted for legal services, funds expended, and attorneys assigned to cases, including a rise in the number of attorneys per case. While we don't have definitive correlations, the data we have collected suggest that increases in the county's population, increases in instances of abuse and neglect, economic distress since 2008, changes in child welfare laws, complexity in lawsuits, increases in cases opened for possible child removal throughout most large Texas counties, and

increases in CPS staffing and workload have had a definitive impact on the volume of case filings and expenditures on legal services for CPS cases.

Part B of this report highlights the establishment of OPR and OCR and the impact they have had on the overall expenditures on civil indigent defense in CPS cases. It is concluded that while the establishment of the two offices did not offset civil indigent defense expenditures for private attorneys as had been anticipated at the program's inception, this report has demonstrated that the two offices have operated over time at a cost roughly equal to or slightly more per assignment than the cost per assignment for private attorneys (when compared to OPR and OCR with the social work enhancement). The average composite cost per attorney assignment for OPR and OCR is \$3,560, while the cost per private attorney assignment is \$3,322.

As the capacity to take on new cases grows for OPR and OCR, this report has demonstrated that the per assignment cost decreases for those cases. It is anticipated that further augmentation of OPR and OCR staff levels would continue to drive down the cost per assignment on CPS cases they handled. If these offices were taken to full scale, meaning they were staffed to take all CPS cases in which there were no conflicts, it may be possible to decrease the overall cost of civil indigent defense, or in periods of increased workload, reduce the growth in those expenditures.

Based in the information provided in this report, it is recommended that a paralegal be added to both OPR and OCR in FY 2015 through the regular budget process. The annualized cost for two paralegals is \$132,259 including benefits and minor. In addition, one-time capital expenditures are \$9,484.

It is also recommended that an analysis be completed on the impact that taking OPR and OCR to scale would have on the expenditures for CPS legal services. The analysis would include revisiting the maximum caseload thresholds determined for OPR and OCR in 2011 to reflect more recent historical activity.

REPORT ON COST DRIVERS OF CIVIL INDIGENT DEFENSE EXPENDITURES

PART A

Overview of Civil Indigent Defense Expenditures in Travis County

The Texas Family Code mandates that attorneys be appointed to represent the rights of indigent parties in civil matters of juvenile justice, termination of parental rights, and incarceration of contempt of court-ordered child support. In Travis County, the Juvenile Public Defender's Office provides 97% of the legal representation for indigent parties in juvenile justice. Private attorneys are utilized for a small number of juvenile cases. For matters involving termination of parental rights (also known as Child Protective Services or CPS cases), the county funds two offices, the Office of Parental Representation and the Office of Child Representation, to represent indigent parties for approximately 36% of CPS cases. The county also pays private attorneys to represent both children and parents in these CPS cases, which account for approximately 64% of the total. These cases may also utilize mediations to arrive at a settlement, which also require legal representation. Finally, the county pays private attorneys to represent indigent clients in cases involving contempt of court-ordered child support.

From FY 2008 to FY 2013, the expenditures for legal support for indigent parties in these types of cases have grown by 53%. This report will explore the reasons for this growth and recommend some options going forward.

Civil Indigent Defense Workload and Expenditures

As indicated in tables 1-A through 3-A, the workloads for the various categories of work that generate the need for civil indigent attorney expenditures has steadily increased over the last six fiscal years, with the exception of juvenile cases:

Table 1-A

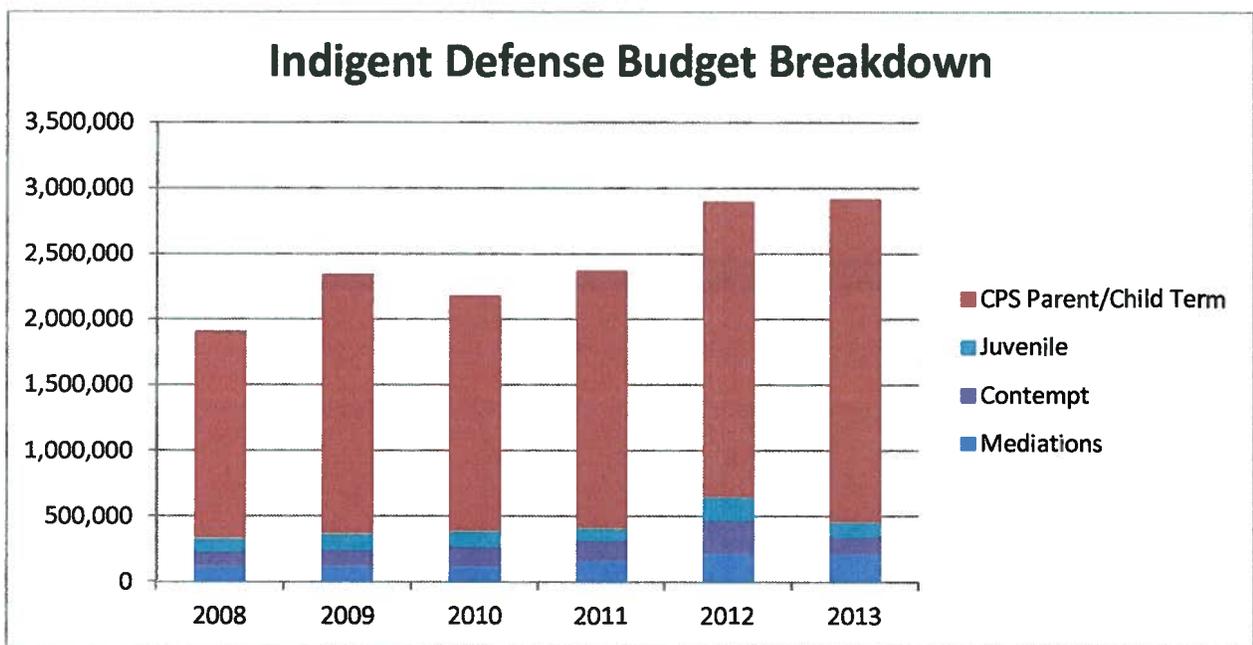
CASE WORKLOADS							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
CPS CASES FILED	287	293	328	434	457	464	61.7%
TOTAL MEDIATIONS (CPS)	144	137	127	170	231	214	48.6%
JUVENILE PETITIONS FILED	2,625	2,481	2,347	1,868	1,801	1,850	-29.5%
CONTEMPT OF CHILD SUPPORT	403	583	404	460	431	412	2.2%

Correspondingly, expenditures have grown, as well. The tables 2-A and 3-A summarize expenditures over the last six fiscal years.

Table 2-A

CIVIL INDIGENT EXPENDITURES							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY13	% Change from FY 08 to FY 13
CPS PARENT/CHILD TERM	\$1,572,326	\$1,980,557	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	56.9%
MEDIATIONS	\$120,946	\$118,801	\$111,534	\$162,873	\$216,383	\$211,765	75.1%
JUVENILE	\$114,343	\$132,141	\$127,441	\$105,963	\$185,832	\$118,503	3.6%
CONTEMPT	\$97,725	\$114,163	\$146,075	\$143,434	\$245,715	\$125,897	28.8%
TOTAL EXPENDITURES	\$1,905,340	\$2,345,662	\$2,180,184	\$2,373,569	\$2,905,325	\$2,922,460	53.4%

Table 3-A



Indigent Defense Budget

In recent years, expenditures on these legally mandated fees have exceeded the resources allotted. For example, in their FY 2014 budget submission, the Civil Courts requested \$120,000 in additional ongoing funds and \$400,000 in allocated reserves over their budgeted amount for the statutory payment of fees for court-appointed attorneys.

The expenditures on indigent attorney fees have increased each year since the creation of the Office of Parental Representation (OPR) and the Office of Child Representation (OCR), with the exception of FY 2010. The Planning and Budget Office (PBO) estimated in July 2013 that the Civil Courts would be \$400,000 short of the accrual needed to carry into FY 2014, based on departmental projections available at that time. Based on projected FY 2014 needs, the Adopted Budget includes an increase of \$300,000 for Civil Indigent Attorney Fees, plus an earmark of \$275,000. This increase was implemented based on

an estimate that the rolling 12 month average of expenditures would exceed the FY 2013 budget by approximately \$575,000.

Table 4-A illustrates the ongoing shortfall between the annual budget and actual expenditures. It also shows the amounts necessary to cover accruals from previous years. Initially, April 2013 projections showed that adjustments of \$400,000 to \$575,000 would be required to augment the FY 2013 budget for Civil Indigent Attorney Fees. These amounts were overestimated. Expenditure variations later in the fiscal year resulted in a reduction to the anticipated shortfall. Nearly \$400,000 was required to supplement attorney fees in September 2013; however, the Civil Courts were able to internally fund close to one-third of the needed adjustment.

Table 4-A

FY 10 to FY 13 Midyear Budget Augmentations for Civil Indigent Attorney Fees			
	<i>Allocated Reserve Amount</i>	<i>Civil Courts' Contribution (including Visiting Judge Salary Savings)</i>	<i>Total</i>
FY 10	\$1,333,487	\$140,891	\$1,474,378
FY 11	\$1,175,000	\$133,360	\$1,308,360
FY 12	\$427,924	\$82,000	\$509,924
FY 13	\$283,930	\$111,261	\$395,191

It should be noted that the rolling 12 month average for civil indigent attorney fees has exceeded the budget every month since March 2012. Further, indigent attorney fee expenditures have generally continued to increase even after the establishment of OPR and OCR. This has occurred as a result of a significant growth in the workload associated with CPS case filings. Part B of this report will explore the impact that OPR and OCR have had on the growth of civil indigent defense expenditures. It should also be noted that hourly attorney fees increased from \$60 per hour to \$75 per hour in FY 2009, also fueling growth in these expenditures.

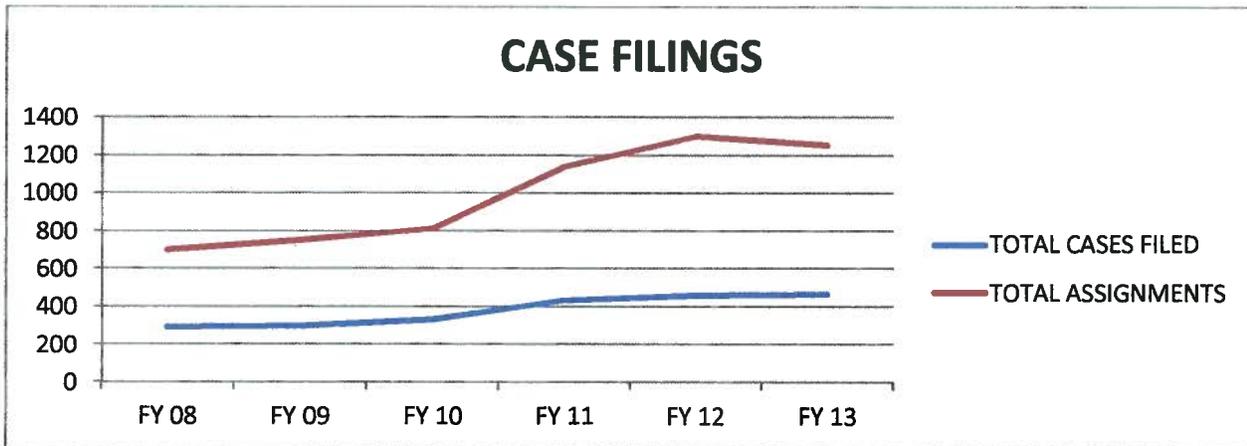
CPS Cases

CPS cases have generated the largest percentage of civil indigent expenditures each year. They have also been the most significant driver in the six-year rise in these expenditures. The volume of cases and number of attorneys assigned to each case has grown over the period. Tables 5-A and 6-A highlight the number of CPS cases filed and the number of attorney appointments on cases since FY 2008.

Table 5-A

CPS CASE FILINGS							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
TOTAL CASES FILED	287	293	328	434	457	464	61.7%
TOTAL ASSIGNMENTS	696	748	811	1,138	1,299	1,253	80.0%
ASSIGNMENTS PER CASE	2.43	2.55	2.47	2.62	2.84	2.70	11.4%

Table 6-A



As indicated in the tables above, total CPS cases filed have increased by almost 62%, from 287 in FY 2008 to 464 in FY 2013. Attorney assignments on those cases have grown by 80%, from 696 in FY 2008 to 1,253 in FY 2013. The assignments per case have gone from 2.43 attorneys per case to 2.70 attorneys per case over the six-year period.

Correspondingly, expenditures have increased with the increase in filings and attorney assignments. Notably, in 2009, Travis County established two new offices, the Office of Child Representation and the Office of Parental Representation, to represent children and parents respectively in CPS cases. Table 7-A includes expenditures for private attorneys, OPR, and OCR over the last six fiscal years.

Table 7-A

CPS EXPENDITURES						
	FY 08	FY 09*	FY 10*	FY 11*	FY 12	FY 13
PRIVATE ATTORNEY EXPENDITURES	\$1,572,326	\$1,980,557	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295
OPR EXPENDITURES	NA	\$333,510	\$631,679	\$648,155	\$770,026	\$774,653
OCR EXPENDITURES	NA	\$252,118	\$596,074	\$665,163	\$786,588	\$807,889
TOTAL EXPENDITURES	\$1,572,326	\$2,566,185	\$3,022,887	\$3,274,617	\$3,814,009	\$4,048,837

**OPR and OCR were partially funded by funds received under a state grant from FY 09 through FY 11. OPR received \$211,214 in FY 09, \$92,809 in FY 10 and \$48,154 in FY 11. OCR received \$161,692 in FY 09, \$87,529 in FY 10 and \$49,418 in FY 11.*

Total expenditures for civil indigent legal expenditures for CPS cases, including the two county specialty offices, has increased from \$1.6 million in FY 2008 to \$4.0 million in FY 2013.

Over the last several fiscal years, a number of significant policy and programmatic changes, as well as economic and demographic changes, have occurred in Texas and Travis County, which may have influenced the workload associated with CPS cases. While we don't have definitive correlations, the data we have collected suggest that increases in the county's population, increases in instances of abuse and neglect, economic distress since 2008, changes in child welfare laws, complexity in lawsuits, increases in cases opened for possible child removal throughout most large Texas counties, and increases in CPS staffing and workload have had a definitive impact on the volume of case filings and expenditures on legal services for CPS cases. A detailed listing of the possible influences caused by changes in the child welfare law and some background on each change is included in Appendix 1 of this report.

Table 8-A also demonstrates the growth in abuse and neglect incidents reported by CPS in the multi-county region, as well as in Travis County over the last 6 years. These reported incidents often result in cases that are filed in the civil courts. As reported by the Texas Department of Family and Protective Services incidents of abuse and neglect have increased by 18% in the multi-county region surrounding Travis County since FY 2009. Incidents reported in Travis County, though, have increased from 1,947 in FY 2009 to 2,897 in FY 2013, a 49% increase. This large increase is in line with the 58% increase in CPS cases filed in Travis County's civil courts. Appendix 5 in this report includes data from the six largest counties in Texas provided by the Texas Department of Family and Protective Services (DFPS). The data represent the number of completed investigations resulting in substitute care and the number cases opened as a result of those investigations from 2008 to 2013. All of the major urban counties, with the exception of Harris, show a significant increase in the number of cases opened by DFPS for possible removal of children from the home, which could be a proxy for the number of CPS cases filed in each county.

Table 8-A

	FY09			FY10			FY11			FY12			FY13			FY14 (YTD)*		
	Travis	Region	% of Region	Travis	Region	% of Region												
Total Confirmed Types of Abuse or Neglect	1,947	7,383	26%	1,920	6,982	27%	2,769	8,320	33%	3,361	8,803	38%	2,897	8,590	34%	1,011	3,298	31%
Total Confirmed Victims	1,777	6,485	27%	1,735	6,377	27%	2,483	7,375	34%	3,045	7,831	39%	2,645	7,663	35%	940	2,983	32%

**FY14 (YTD) is data as of 02/07/14 and subject to change.*

Finally, the growth in the Travis County's youthful population, those under 18 years of age, may also be a factor in the increase in reported incidents and CPS case filings in the civil courts. Table 9-A demonstrates the growth in population among those under 18, which has increased 3% since 2008.

Table 9-A

Year	All Population	Under-18 Population (#)	Under-18 Population (%)
2008	998,543	253,195	25.4%
2009	1,026,158	246,455	24.0%
2010	1,030,806	246,559	23.9%
2011	1,063,130	254,110	23.9%
2012	1,095,584	260,108	23.7%

Mediations

As indicated in Table 10-A, mediations have increased by almost 49%, from 144 in FY 2008 to 214 in FY 2013. Correspondingly, expenditures have increased by over 75%, from \$120,946 in FY 2008 to \$211,765 in FY 2013.

Table 10-A

MEDIATIONS							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
TOTAL MEDIATIONS	144	137	127	170	231	214	48.6%
TOTAL EXPENDITURES	\$120,946	\$118,801	\$111,534	\$162,873	\$216,383	\$211,765	75.1%

Note that the reimbursement rate by the county per mediation increased from \$900 to \$1,050 in FY 2011.

Successful mediations in indigent CPS cases save the county from expending money on lengthy trials. Even partial settlements in a case save the county money by shortening trials or limiting the number of parties and issues. For instance, with three court appointed attorneys, *every day* in trial costs the county over \$2,000. With two court appointed attorneys, *every day* in trial costs the county over \$1,500. A weeklong trial costs Travis County at a minimum between \$7,500 and \$11,250 and these numbers do not take into account the time/cost of the judiciary, District Attorney, and other court staff or the costs of appeals. Since 2007, of the over 300 CPS cases that were mediated, over 200 were successfully resolved without trial and taken off the docket.

In addition to the fiscal benefits to Travis County, CPS cases resolved at mediation in indigent cases also benefit the families and children involved by shortening the length of the case, diminishing the conflict between the parties, and achieving permanency more quickly for the children.

Civil Indigent Defense Expenditures on Juvenile Cases

While 97% of indigent juveniles are provided legal representation by the Travis County’s Juvenile Public Defender Office, a small percentage of cases are represented by private attorneys. Private attorneys are necessary in cases that have a conflict.

The Juvenile Public Defender provides legal representation to juveniles accused of committing criminal offenses when proceedings are initiated in juvenile court. The goals of the Juvenile Public Defender are threefold: first, to fully protect and safeguard the legal and constitutional rights of individuals accused of committing offenses by providing superior legal and ethical representation; second, to serve the community by being a resource and advocate in the juvenile justice system; and third, to serve as a resource for governmental and non-governmental organizations in the specialized area of juvenile law. Travis County’s Juvenile Public Defender Office has been in existence for over 30 years.

In tables 11-A through 13-A, the workload, expenditures, and cost per case are compared between private attorneys and the Juvenile Public Defender. As indicated in the tables, the Juvenile Public Defender is assigned to most of the cases requiring indigent legal services at a cost per assignment which is significantly lower than the cost per assignment for private attorneys who handle indigent juvenile cases. For example, in FY 2013, the Juvenile Public Defender was assigned 96% of the indigent juvenile cases at a cost that is 54% lower than the cost per assignment for private attorneys.

Table 11-A

ASSIGNMENT BREAKDOWN				
	FY 10	FY 11	FY 12	FY13
ASSIGNED TO PRIVATE ATTORNEY	118	122	134	111
ASSIGNED TO JUVENILE PUBLIC DEFENDER	2,649	2,575	2,754	2,555
TOTAL ASSIGNMENTS	2,767	2,697	2,888	2,666

Table 12-A

EXPENDITURES					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES	\$127,441	\$105,963	\$185,832	\$118,503	\$134,435
JUVENILE PUBLIC DEFENDER EXPENDITURES	\$1,281,172	\$1,347,680	\$1,325,239	\$1,426,110	\$1,345,050
TOTAL EXPENDITURES	\$1,408,613	\$1,453,643	\$1,511,071	\$1,544,613	\$1,479,485

Table 13-A

COST PER CASE					
	FY 10	FY 11	FY 12	FY13	AVG: FY10- FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$1,139	\$1,102	\$1,003	\$1,211	\$1,114
JPD EXPENDITURES / JPD ASSIGNMENTS	\$508	\$522	\$488	\$526	\$511

Contempt of Court Ordered Child Support

The Texas Family Code mandates that attorneys be appointed by the Court to represent the rights of indigent parties in matters of juvenile justice, termination of parental rights, and incarceration of contempt of court ordered child support.

Contempt cases generally involve litigants in Court concerning child support and child visitation issues. Most contempt expenditures are for indigent fathers who are not paying child support and have ignored warnings from the Court. These contempt proceedings involve jail time or the threat of jail time. As indicated in Table 14-A, Attorney General motions of contempt of court ordered child support cases have increased by 2.2% from 403 in FY 2008 to 412 in FY 2013 with significant fluctuation between FY 2010 and FY 2013. Corresponding expenditures have increased by almost 30% in the six year period, from \$97,725 in FY 2008 to \$125,897 in FY 2013.

Table 14-A

CONTEMPT OF CHILD SUPPORT							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY13	% Change from FY 08 to FY 13
CONTEMPT OF CHILD SUPPORT	403	583	404	460	431	412	2.2%
TOTAL EXPENDITURES	\$97,725	\$114,163	\$146,075	\$143,434	\$245,715	\$125,897	28.8%
COST PER MOTION	\$242	\$196	\$362	\$312	\$570	\$306	26.0%

Also note that the Travis County Domestic Relations Office has entered into a contract with the Office of the Attorney General (OAG) to create an integrated child support system for Travis County. All divorces and other suits affecting the parent child relationship that contain court ordered child and medical support automatically go into a monitoring program at the Domestic Relations Office. Domestic Relations will monitor these cases from their inception and if they go delinquent take actions to help bring them back into paying status. Table 15-A demonstrates the volume of cases handled by the DRO and expenditures related to them. These expenditures were not included in the overall analysis of civil indigent defense expenditures.

Table 15-A

DRO							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
# of Cases	542	401	339	272	298	292	-46.1%
Expenditures	\$1,638,702	\$1,654,135	\$1,360,188	\$1,464,117	\$1,346,374	\$1,390,561	-15.1%

Conclusions

The 57% increase in Travis County’s civil indigent defense expenditures over the last six fiscal years is primarily driven by the increase in expenditures for CPS cases. The workload and costs for legal representation for mediations, contempt of child support, and juvenile cases have also escalated, but those cost drivers make up 16% of the total civil indigent expenditures.

Expenditures for CPS cases have been driven by the volume of CPS cases, which has risen significantly over the last six fiscal years. Concurrently, the number of attorneys assigned to these cases has increased, as well. While we don’t have definitive correlations, the data we have collected suggest that increases in the county’s population, increases in instances of abuse and neglect, economic distress since 2008, changes in child welfare laws, complexity in lawsuits, increases in cases opened for possible child removal throughout most large Texas counties, and increases in CPS staffing and workload have led to significant impacts on expenditures for CPS cases over the last six fiscal years.

In 2009, Travis County established the Office of Child Representation and the Office of Parental Representation to increase the quality of legal representation in CPS cases, but also to partially offset the rising cost of providing indigent legal services. A partial offset of cost did occur in FY 2010, the first full year of operation of OPR and OCR. However, as the volume and complexity of the cases climbed, so did the need for more private attorneys in addition to those provided by OCR and OPR. A deeper look at the impact that OPR, OCR, and private attorneys have had on county expenditures for legal services is provided in Part B of this report.

The rise in expenditures for CPS cases have been partially offset by cost avoidances achieved through an increased use of mediations in cases that may have been settled by much more costly jury trials. It should also be noted that the Juvenile Public Defender Office, which takes almost all indigent juvenile cases, and has been for over 30 years, has developed efficiencies that result in a significantly lower cost per assignment than would exist if these cases were assigned to private attorneys. While this report did not quantify the cost avoidances experienced by the county over the life of the Juvenile Public Defender Office, it is evident that those cost avoidances have been significant.

REPORT ON COST DRIVERS OF CIVIL INDIGENT DEFENSE EXPENDITURES

PART B

Private Attorneys, OPR and OCR and Their Effect on Civil Indigent Defense Expenditures

In 2009, Travis County, with financial assistance from the Texas Supreme Court Commission on Children Youth and Families, established the county's first Office of Parental Representation and Office of Child Representation. These two offices were designed to represent indigent parents and children in CPS cases brought by the State of Texas. There were two primary purposes for establishing these offices. One was to increase the quality of representation and service provided to the primary custodial parent, as well as to increase the quality of representation of the children involved in civil cases alleging abuse and neglect by their parents or caretaker. The second purpose was to decrease the number of private attorney appointments in these cases, by which some measure of control could be gained over the ongoing growth of the indigent attorney fees expenditure budget.

The Office of Child Representation opened in February 2009 with eight FTE positions. As the caseload of the office increased, an attorney position was added by the Commissioners Court in July 2011. OCR was asked to take part in an interagency drug court grant in 2012, and a grant-funded staff attorney position was added in December 2012 as part of that initiative. OCR currently has 10 FTE positions, including one managing attorney, five staff attorneys, one paralegal, one social worker and two legal secretaries. In order to ensure quality legal representation in the face of growing CPS case filings, OCR instituted a case cap in 2013 that allows the office to take approximately 25 cases per month. As part of the FY14 budget process, the Commissioners Court approved an earmark in reserve for an additional paralegal pending the recommendations that arise from this Indigent Defense Study. If this paralegal position is added, OCR estimates that it will be able to handle an additional 50 cases per year.

The Office of Parental Representation also opened in February 2009 with eight FTE positions. As the caseload of the office increased, an additional attorney position was added by the Commissioners Court in July 2011. OPR currently has one managing attorney, four staff attorneys, two paralegals, one social worker, and one administrative position. Like OCR, to help manage the case load for each attorney, OPR has adopted a case cap that allows the office to take approximately 25 cases per month. Also like OCR, as part of the FY14 budget process, the Commissioners Court approved an earmark in reserve for an additional paralegal pending the recommendations that arise from this Indigent Defense Study. If this paralegal position is added, OPR estimates that it will be able to handle an additional 50 cases per year.

For the first time in March 2011, and in subsequent updates presented to the Commissioners Court (last in July 2013), OCR and OPR have demonstrated they had achieved targeted outcomes around the quality of representation in CPS cases as evidenced through surveys provided to the Judges, CPS, and other relevant parties within the family court system. Additionally, case closure outcomes indicated that there were a significant percentage of cases closed with family reunification where the child was placed with a parent or relative. A copy of the recent presentation on case outcomes is included in Appendix 2.

OPR/OCR Case Loads

It was also in March 2011 that caseload limits were established for OPR and OCR. The caseload considered the number of attorneys in each office, the number of hours available in a year to perform legal work, and the average number of hours spent by the attorneys on each case. For OPR with five attorneys, the caseload limit, or maximum threshold, was determined to be 211 open cases at that time. For OCR with five attorneys, that limit was determined to be 273 open cases at that time. (OCR's sixth attorney is grant funded and assigned to the family drug court.)

As was noted in Report A, the county has not experienced a significant reduction in private attorney appointments and resulting expenditures as a result of the establishment of OPR and OCR. Please refer to Tables 5-A and 7-A above. While OPR and OCR continue to take cases up to their caseload limits established in FY 2011, private attorney appointments have increased, as well. There are several possible reasons that CPS case filings and attorney assignments have increased in such numbers that, in addition to the two new offices, the courts have had to continue to rely on private attorneys in increasing numbers to address the workload associated with CPS cases.

In Tables 5-A and 7-A above, this report reviewed the growth in cases filed and the corresponding attorney assignments for each case, regardless of the source of the attorney assignment. Appendix 3, which was originally written for the March 2011 report, provides a detailed explanation of the appointment process for CPS cases.

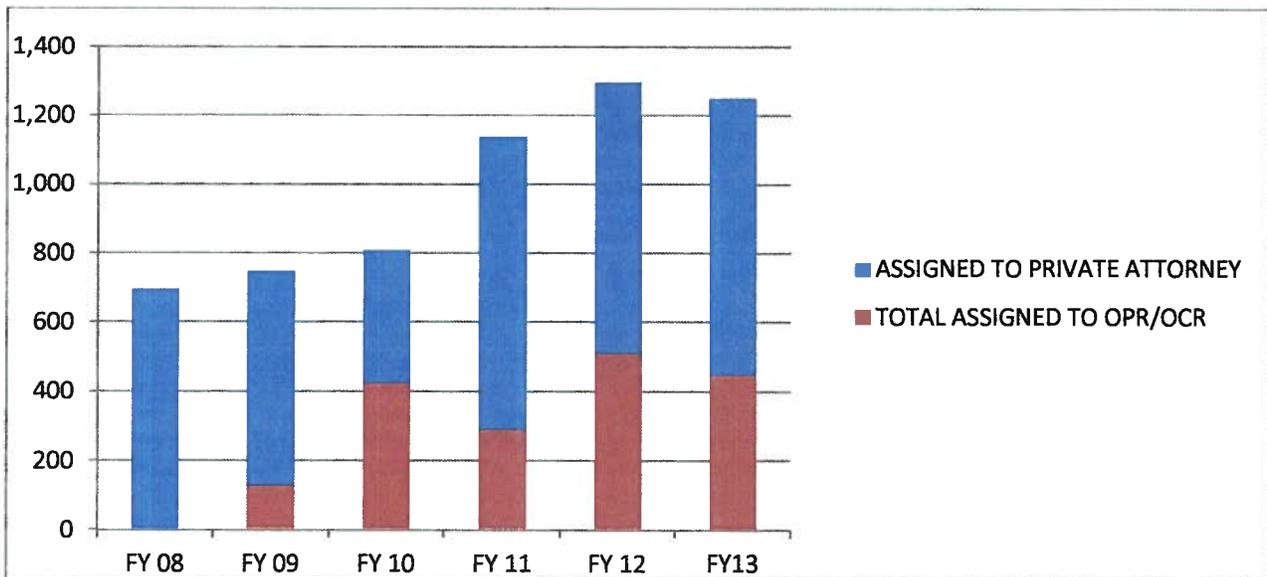
Attorney Assignments Breakdown

In Table 1-B and 2-B, the attorney assignments within cases are broken out by who it is assigned to – OPR, OCR, or private attorneys. For cases assigned to OPR and OCR, one case filing equals one assignment. For private attorneys, one case may have multiple attorneys assigned on one case, which are then counted as multiple assignments. Private attorney assignments have increased from 696 in FY 2008 to 806 in FY 2013, experiencing various upturns and downturns over the six year period. Similarly, OCR and OPR have experienced various increases and decreases in assignments by year since their first full year of operation in FY 2010. The two offices' ability to take cases is largely influenced by the number of open cases they have on hand at the time of the need by the courts for an attorney assignment as explained above. It should be noted that OPR experienced unanticipated turnover among two attorney positions, which limited its ability to take full caseloads during periods in FY 2010 and FY 2011.

Table 1-B

ASSIGNMENT BREAKDOWN						
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
ASSIGNED TO PRIVATE ATTORNEY	696	622	387	850	789	806
ASSIGNED TO OPR	0	74	176	133	227	222
ASSIGNED TO OCR	0	52	248	155	283	225
TOTAL ASSIGNMENTS	696	748	811	1,138	1,299	1,253

Table 2-B



Costs per Assignment

For the purposes of this report, we are utilizing historical data over four fiscal years to analyze the expenditures per assignment to compare the cost of a private attorney assignment to the assignment costs associated with both OPR and OCR. Table 3-B outlines civil indigent defense expenditures for CPS cases over the last four full fiscal years broken out by destination of assignment. The expenditures for private attorneys, OCR, and OPR were averaged over four fiscal years to determine a more realistic annual expenditure within each fiscal year for individual assignments. Averaging was necessary due to receipt of invoices from private attorneys in fiscal years subsequent to the fiscal year that the work is performed, and due to the fact that cases may span several fiscal years for all legal service providers, including OPR and OCR. Dividing the number of assignments per fiscal year into the average annual expenditure estimate for each of the four fiscal years being analyzed provides a metric that allows for comparison of per assignment cost for private attorneys, OPR, and OCR. This per assignment cost is illustrated in Tables 4-B and 5-B.

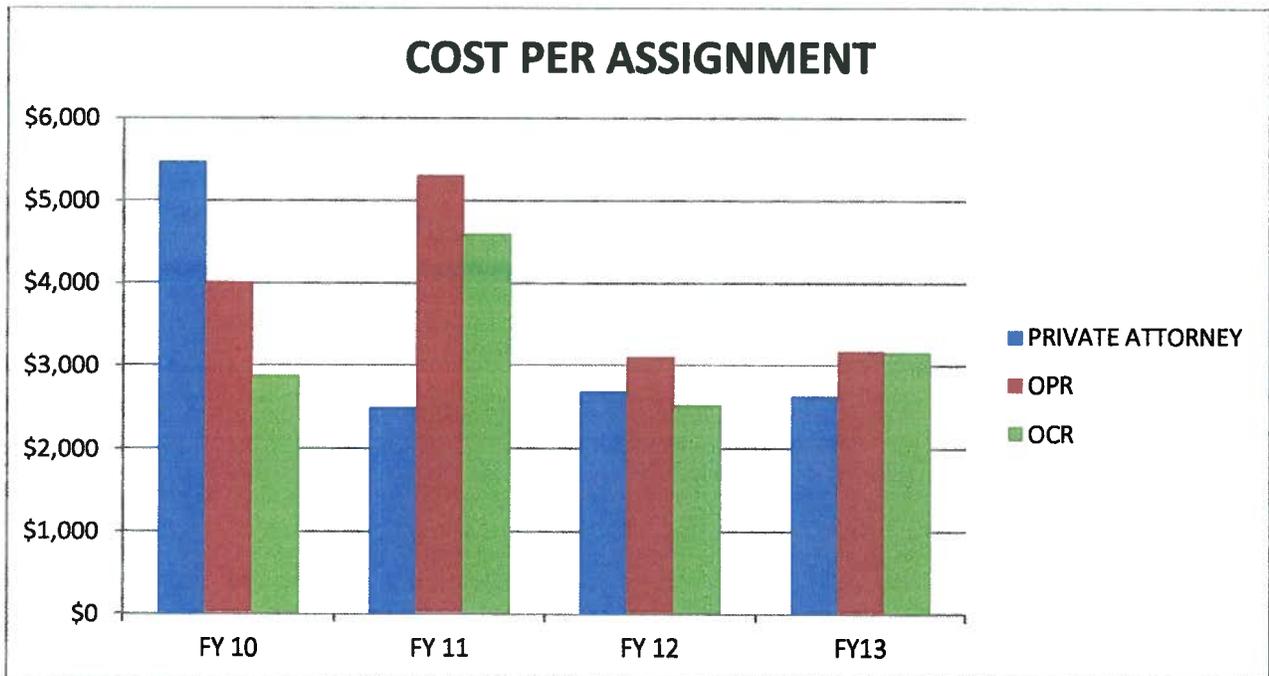
Table 3-B

EXPENDITURES					
	FY 10	FY 11	FY 12	FY13	AVG: FY10- FY13
PRIVATE ATTORNEY EXPENDITURES (EXCLUDES MEDIATION, JUVENILE AND CONTEMPT)	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	\$2,120,031
OPR EXPENDITURES	\$631,679	\$648,155	\$770,026	\$774,653	\$706,128
OCR EXPENDITURES	\$596,074	\$665,163	\$786,588	\$807,889	\$713,929
TOTAL EXPENDITURES	\$3,022,887	\$3,274,617	\$3,814,009	\$4,048,837	\$3,540,088

Table 4-B

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10- FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$4,012	\$5,309	\$3,111	\$3,181	\$3,903
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,879	\$4,606	\$2,523	\$3,173	\$3,295
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$3,349	\$4,931	\$2,784	\$3,177	\$3,560

Table 5-B



With the averaging methodology to help account for expenditures invoiced and paid in years subsequent to the work being performed, and to account for cases that have expenditures over multiple years, OCR's average cost per assignment is calculated at \$3,295. OPR's average cost per assignment is \$3,903. Also indicated in Table 4-B, the combined cost per assignment for OPR and OCR of \$3,560. The similar composite average cost per assignment for private attorneys who represent both children and parents is \$3,322 – a difference of \$238 less per assignment for private attorneys. Please note that these numbers represent full costs associated with OPR and OCR, including one social worker in each office. Private attorneys cannot bill for social work. Social workers are an enhancement to legal services provided by OCR and OPR.

In Table 6-B and 7-B a scenario is priced that compares the cost of private attorneys to OPR and OCR without the cost of a social worker in each of the two county offices. We excluded the social worker to make the expenditures more comparative. In this scenario the composite cost of OPR and OCR is considerably less, at \$3,247 per assignment, than the composite cost of private attorneys at \$3,322 per assignment. The difference is \$75 less per assignment for OPR and OCR. Again, though, it is important to highlight the non-monetary value a social worker adds to achieve the outcomes sought by OPR and OCR.

Cost Per Assignment (Excluding Social Worker)

Table 6-B

EXPENDITURES					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES (EXCLUDES MEDIATION, JUVENILE AND CONTEMPT)	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	\$2,120,031
OPR EXPENDITURES EXCLUDING SOCIAL WORKER	\$631,679	\$648,155	\$770,026	\$774,653	\$706,128
LESS SOCIAL WORKER	(\$64,580)	(\$64,580)	(\$64,580)	(\$64,580)	(\$64,580)
OCR EXPENDITURES EXCLUDING SOCIAL WORKER	\$596,074	\$665,163	\$786,588	\$807,889	\$713,929
LESS SOCIAL WORKER	(\$60,354)	(\$60,354)	(\$60,354)	(\$60,354)	(\$60,354)
TOTAL EXPENDITURES	\$2,897,953	\$3,149,683	\$3,689,075	\$3,923,903	\$3,415,154

Table 7-B

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$3,645	\$4,824	\$2,826	\$2,890	\$3,546
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,635	\$4,217	\$2,309	\$2,905	\$3,017
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$3,055	\$4,497	\$2,539	\$2,897	\$3,247

Adding a Paralegal to OPR and OCR

In the FY 2014 budget process, both OPR and OCR requested an additional paralegal each. The Commissioners Court voted to put in allocated reserve an earmark for those positions pending the outcome of this report. In Tables 8-B and 9-B is an analysis demonstrating the potential cost avoidances of adding the paralegals who could help the offices take on an estimated 50 cases each.

Cost Per Assignment (Including Paralegal)

Table 8-B

EXPENDITURES					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES (EXCLUDES MEDIATION, JUVENILE AND CONTEMPT)	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	\$2,120,031
OPR EXPENDITURES	\$631,679	\$648,155	\$770,026	\$774,653	\$706,128
ADDITIONAL PARALEGAL	\$60,098	\$60,098	\$60,098	\$60,098	\$60,098
OCR EXPENDITURES	\$596,074	\$665,163	\$786,588	\$807,889	\$713,929
ADDITIONAL PARALEGAL	\$60,098	\$60,098	\$60,098	\$60,098	\$60,098
TOTAL EXPENDITURES	\$3,143,083	\$3,394,813	\$3,934,205	\$4,169,033	\$3,660,284

Table 9-B

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$3,390	\$4,187	\$2,766	\$2,817	\$3,290
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,597	\$3,776	\$2,324	\$2,815	\$2,878
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$2,939	\$3,970	\$2,525	\$2,816	\$3,062

It is anticipated that adding a paralegal to both OPR and OCR would allow them to take an additional 50 cases each. Because the incremental cost of the additional paralegal can be spread among the increase in cases taken on by OPR and OCR, the cost per assignment is reduced to \$3,062 per assignment, compared to \$3,322 for private attorneys. Travis County could avoid a modest \$26,000 annually by providing these additional staff. Note that this scenario includes the social work in each office. Private attorneys do not bill the county for social work.

Again, in Tables 10-B and 11-B, the social worker is excluded in each office to make the comparisons between the private attorneys, and OCR and OPR more level.

Cost Per Assignment (Excluding Social Worker and Including Paralegal)

Table 10-B

EXPENDITURES					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES (EXCLUDES MEDIATION, JUVENILE AND CONTEMPT)	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	\$2,120,031
OPR EXPENDITURES EXCLUDING SOCIAL WORKER	\$631,679	\$648,155	\$770,026	\$774,653	\$706,128
ADDITIONAL PARALEGAL	\$60,098	\$60,098	\$60,098	\$60,098	\$60,098
LESS SOCIAL WORKER	(\$64,580)	(\$64,580)	(\$64,580)	(\$64,580)	(\$64,580)
OCR EXPENDITURES EXCLUDING SOCIAL WORKER	\$596,074	\$665,163	\$786,588	\$807,889	\$713,929
ADDITIONAL PARALEGAL	\$60,098	\$60,098	\$60,098	\$60,098	\$60,098
LESS SOCIAL WORKER	(\$60,354)	(\$60,354)	(\$60,354)	(\$60,354)	(\$60,354)
TOTAL EXPENDITURES	\$3,018,149	\$3,269,879	\$3,809,271	\$4,044,099	\$3,535,350

Table 11-B

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$3,105	\$3,834	\$2,533	\$2,580	\$3,013
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,395	\$3,481	\$2,143	\$2,595	\$2,654
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$2,701	\$3,648	\$2,320	\$2,587	\$2,814

The composite cost per assignment for OPR and OCR is less than the composite cost of private attorney assignments by \$508 per assignment with the addition of the paralegal and the exclusion of the social worker in each office. The result would be a greater, but again modest, annual cost avoidance of \$50,800.

Children's Rights Clinic

The Children's Rights Clinic is a program in the University of Texas, School of Law in which students represent children in Travis County District Court as student attorneys *ad litem* in cases in which the state seeks custody or termination of parental rights based on allegations of abuse and neglect. Although the supervising attorneys sign pleadings drafted by the students and accompany the students to formal proceedings, the student attorneys sit "first chair" at hearings, depositions, mediations, and trial appearances, and they research and prepare cases as the primary attorneys. These clinics occur twice a year. Legal services by the Children's Rights Clinic are provided through a contract with the county and are reimbursed on a different scale than private attorneys. These cases and related

expenditures are not included in the analysis of overall expenditures in Part B, and are highlighted in Table 12-B.

Table 12-B

Children's Rights Clinic							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
# of Appointments	77	54	61	100	34	79	2.6%
Expenditures	\$63,732	\$64,121	\$78,355	\$142,413	\$104,708	\$125,195	96.4%

Conclusions and Recommendations

As indicated in Part A, the 57% increase in Travis County’s civil indigent defense expenditures over the last six fiscal years is primarily driven by the increase in expenditures for CPS cases, which makes up 84% of the total of those expenditures.

While the establishment of OPR and OCR in FY 2009 did not offset civil indigent defense expenditures for private attorneys as had been anticipated at the program’s inception, this report has demonstrated that the two offices have operated over time at a cost roughly equal to or slightly less per assignment than the cost per assignment for private attorneys (when compared to OPR and OCR without the social work enhancement). The surge in civil indigent costs have come about primarily due to a large increase in workload as measured by CPS cases filed and the number of attorneys assigned to these cases. Considering this increase in workload, it is unlikely that the county would have experienced any less demand on the civil indigent defense budget had OPR and OCR not been established. The monies would have been expended on private attorneys at roughly the same amount as has been expended on the two county offices.

As the capacity to take on new cases grows for OPR and OCR, this report has demonstrated that the per assignment cost decreases for those cases. For example, in the scenario which adds a paralegal to each office, the composite rate per assignment for OPR and OCR drops from \$3,560 to \$3,062, which is lower than the per assignment cost of \$3,322 for private attorneys. The incremental cost increase is controlled and the increase is spread over a larger number of cases handled by OCR and OPR. Alternately, those cases assigned to private attorneys would likely cost more per assignment based on historical averages.

It is anticipated that further augmentation of OPR and OCR staff levels would continue to drive down the cost per assignment on CPS cases they handled. If these offices were taken to full scale, meaning they were staffed to take all CPS cases in which there were no conflicts, it may be possible to decrease the overall cost of civil indigent defense, or in periods of increased workload, reduce the growth in those expenditures.

Based in the information provided in this report, it is recommended that a paralegal be added to both OPR and OCR in FY 2015 funded by the Commissioners Court through the regular budget process. The annualized cost for two paralegals is \$141,743 including benefits. In addition, minor one time capital expenditures are \$9,484.

It is also recommended that an analysis be completed on the impact that taking OPR and OCR to scale would have on the expenditures for CPS legal services. The analysis would include revisiting the maximum caseload thresholds determined for OPR and OCR in 2011 to reflect more recent historical activity.

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Appendix 1 – HISTORY OF RECENT LEGISLATIVE AND POLICY CHANGES IN CPS CASE PROCESSES

- From 2004 to 2007, DFPS staffing levels, as measured by the average number of caseworkers statewide, increased from 3,139 employees in fiscal year 2004 to 4,104 employees in fiscal year 2007, a 31 percent increase. Statewide, caseloads for CPS caseworkers who perform investigations significantly decreased from a daily average of 42.8 cases per investigator in fiscal year 2005 to a daily average of 25.3 cases per investigator in fiscal year 2007. (*Source – SAO Report No. 09-021 – Staffing and Caseloads at the Department of Family and Protective Services, pg. 1*) The increase in investigation workers and decrease in investigation caseloads may have resulted in an increase in CPS cases filed with the court.
- Legislature 80(R) – 2007 – SB 758 amended Chapter 102 of the Family Code to expand the range of persons who could intervene in SAPCR suits. In CPS cases, additional interventions appear to have resulted in increased complexity of cases, more frequent and lengthier hearings, and increased billing to the County associated with attorney work made necessary by the interventions.
- February, 2007 – Travis County Family Drug Treatment Court starts.
- June/October, 2007 – Travis County CPS Standing Order and First Amended Standing Order signed – Prohibits placement in CPS Offices and contains specific provisions related to modification of placements. Impact on attorney fees unknown but, in some cases, might have increased attorney work and associated billings.
- December, 2007 – U.S. Economic Recession Starts (*Source: National Bureau of Economic Research*) – increase in unemployment, family stress, and possible contributor to increase in child abuse and neglect and related increase in filing of CPS cases.
- July 28, 2008 – *Gates v. the Texas Department of Family and Protective Services* (DFPS). 2008 U S App (5th) 1675 – Ruling results in more frequent obtaining of a court order by DFPS prior to removal of children, as well as occasionally obtaining orders in furtherance of investigation, such as orders allowing entrance to home or transportation of children for interview.
- October 7, 2008 - Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) – Among other changes, required title IV-E agencies to identify and notify all adult relatives of a child, within 30 days of the child's removal, of the relatives' options to become a placement resource for the child. In CPS cases, increased relative involvement has resulted in increased complexity of cases and may have increased attorney fee billing to the County.
- Legislature 81(R) – 2009 – HB 704 amended the Family Code to authorize the extension of a court's jurisdiction over a young adult between 18 and 21 years of age who resides in foster care or receives transitional living services from the Department of Family and Protective Services at the request of the young adult or the guardian appointed for the young adult, or on the court's own motion to determine guardianship if the court believes the young adult may be incapacitated. The bill also provided for the continued or renewed appointment of an attorney ad litem, guardian ad litem, or volunteer advocate, and periodic service review hearings for a

young adult who remains in foster care. The continued appointment of attorney ad litem (AAL) could result in increased billing of associated attorney fees.

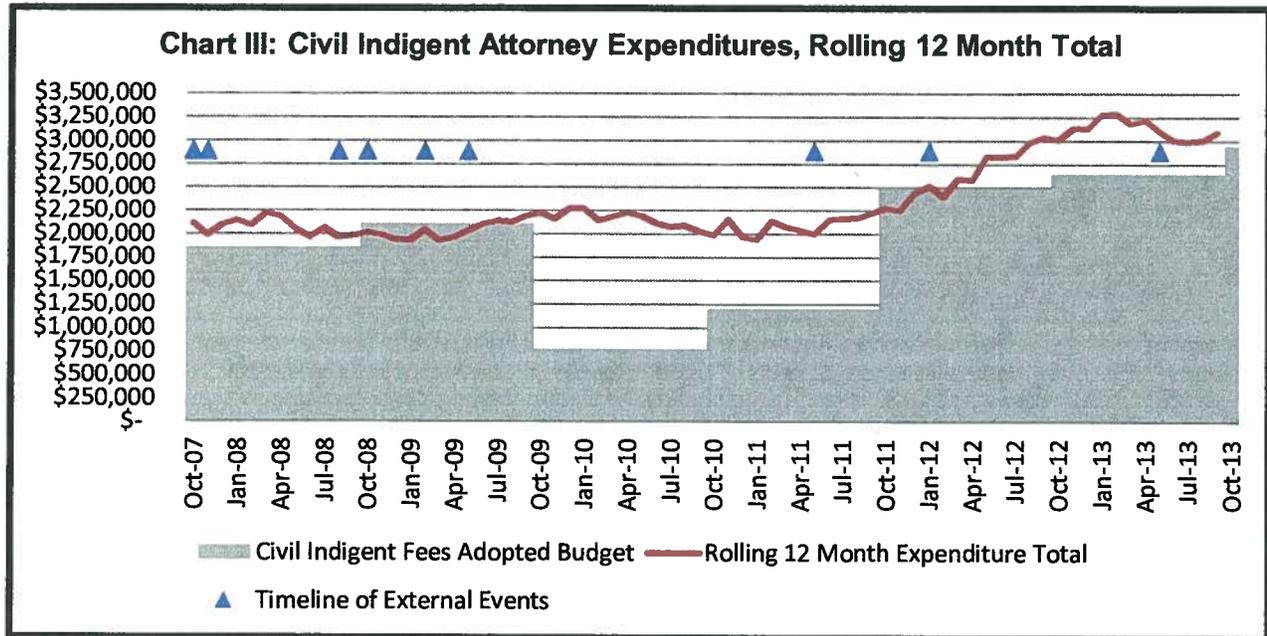
- Legislature 82(R) – 2011 - HB 906 amended Sec. 107.013 provide that a parent found to be indigent and entitled to appointed counsel is presumed to remain indigent throughout the suit and any appeals of the suit, unless the court determines otherwise following a challenge by one of the parties. Further, Sec. 107.016 was amended to provide that the appointment of an attorney to represent an indigent parent or alleged father continues until the suit is dismissed, all appeals are exhausted, or the court affirmatively dismisses or replaces the attorney. Further, HB 906 repealed TFC Section 263.405 and its requirement that courts make a ruling in a post-judgment hearing regarding whether an appeal in the case would be frivolous. The automatic continued appointment of parent attorneys into appeals and possible increase in frivolous appeals could result in increased billing of associated attorney fees.
- Legislature 82(R) – 2011 - HB 3311 amends Sec. 107.004, which sets forth the duties of the attorney ad litem (AAL) for a child in a proceeding under Chapter 262 or 263, including the duty to meet before each court hearing with the child if the child is at least 4 years of age or, if the child is younger than 4, the individual with whom the child ordinarily resides, including the child's parent, conservator, guardian, caretaker, or custodian. Sec. 107.004 is amended by adding subsection (d-1) to specify that the meeting required above:
 - (1) must take place a sufficient amount of time before the hearing to allow the AAL to prepare for the hearing in accordance with the child's expressed objectives of representation, and
 - (2) must take place in a private setting that allows for confidential communications between the AAL and the child or individual with whom the child ordinarily resides, as applicable.
- Legislature 82(R) – 2011 - HB 3314 - This bill amends Sec. 107.004 of the Texas Family Code, which sets forth the duties of an attorney ad litem (AAL) appointed to represent a child in a proceeding under Chapter 262 or 263, including the duty to meet before each court hearing with the child, if the child is at least 4 years of age or, if the child is younger than 4, the individual with whom the child ordinarily resides. As amended, Sec. 107.004 requires that if the child or individual with whom the AAL is required to meet before a court hearing is not present at the hearing, the AAL must file a written statement with the court indicating that the AAL complied with the duty of meeting with the child or individual. The time associated with preparing and submitting written court statements may result in additional attorney fees.
- Legislature 82(R) – 2011 - SB 1026 - Adds Sections 107.0131-107.0133, Family Code, to establish mandatory and discretionary duties for an attorney ad litem (AAL) appointed to represent a parent or alleged father in a CPS case. Though most of the duties would already be required of any attorney representing any client under the Texas Disciplinary Rules of Professional Conduct, some duties that might not otherwise be required are made mandatory, including the duties to obtain and review copies of all court files and meet with the client in person prior to each scheduled hearing unless excused for good cause. Attorneys who fail to comply with these provisions are subject to disciplinary action. The additional statutory duties could result in increased billing of associated attorney fees.
- 2007-2011 – In Travis County, the Total Population increased from 947,215 in 2007 to 1,049,785 in 2011 (approximately a 10% increase). During the same time, the child population in Travis

County increased from 222,986 in 2007 to 252,478 in 2011 (approximately a 13% increase) and Child Poverty increased from 43,806 (18.3%) to 60,565 (24.1%). (Source: Texas Kids Count Online Data Book)

- January, 2012 – Crossover Docket with the Juvenile Courts begins.
- 2011-2013 – In Region 7 (Austin and surrounding area), caseloads for CPS caseworkers who perform investigations significantly decreased from a daily average of 46 cases per investigator in Q2 of FY 2011 to a daily average of 23.8 cases per investigator in Q1 of FY 2013. (Source – SAO Report No. 13-036 – An Audit Report on Caseload and Staffing Analysis for DFPS, Appendix 3, Table 7) The decrease in investigation caseloads may have resulted in an increase in CPS cases filed with the court.
- Legislature 83(R) – 2013 - SB 1 –General Appropriations Bill – Increases spending for CPS Direct Delivery staff. We understand there was enough money appropriated to add 1000 new workers in investigations and conservatorship which may increase court workload, including new CPS case filings and attorney appointments. If CPS also implements differential response and puts money in family based safety services, however, the impact may be a wash.
- Legislature 83(R) – 2013 - SB 534 – Requires the department to hold a permanency planning meeting for each child for whom the department is appointed temporary managing conservator not later than: (1) the 45th day after the date the department is named temporary managing conservator of the child; and (2) five months after the date the department is named temporary managing conservator of the child. Requires the department to make reasonable efforts to include the attorney ad litem & guardian ad litem for the child and attorneys for the parents in these permanency planning meetings and notify them of the meetings. Participation by court appointed attorneys in these meetings may result in higher attorney fee bills for time spent.
- Legislature 83(R) – 2013 - SB 1759 – Includes numerous provisions related to the appointment procedures for, qualifications of, and powers & duties of attorneys for parents and children in CPS cases. Changes include a list of powers and duties for attorneys appointed to represent unknown parents. Also, changes include mandatory statements to unrepresented parents regarding their rights to be represented by an attorney and an option for the Judge to postpone a full adversary hearing to allow a newly appointed attorney time to respond to the petition and prepare for the hearing. The financial impact of these changes, if any, is unknown, but may increase attorney fees.
- Legislature 83(R) – 2013 -HB 915 – Requires the attorney ad litem for the child to review the medical care provided to the child and, in a developmentally appropriate manner, seek to elicit the child’s opinion on the medical care provided. If the child is 16 years or older, the AAL must advise the child of the child’s right to seek court authorization to consent to the child’s own medical care. These additional duties on court appointed attorneys may result in higher attorney fee bills for time spent.
- Legislature 83(R) – 2013 -HB 2619 – Requires the attorney ad litem for the child to, before each hearing under Chapter 263, determine whether the child’s educational needs and goals have

been identified and addressed. These additional duties on court appointed attorneys may result in higher attorney fee bills for time spent.

Table 16-A



Appendix 2 - CASE OUTCOMES PRESENTATION

Office of Child Representation

Office of Child Representation

- Established in 2009
- Began with seed money from the Texas Supreme Court Children’s Commission (FY 2009 – FY 2011)
- Includes 6 attorneys, 1 paralegal, 1 social worker, 2 legal secretaries
- FY 2013 Budget - \$930,390 (includes 1 grant funded attorney)

Table 1 – OCR Case Closures

	FY 10	FY 11	FY 12	FY 13*
# New CPS Case Filings	328	434	457	301
% Change From Previous FY	12%	32%	5%	
Total OCR Appointments	248	155	283	124
Appointments as % of all CPS Case Filings	76%	36%	62%	41%
Cases with Conflict	33	24	51	21
Successful Closures	55	114	158	102
Other Closures	4	1	8	18
Total Closures	59	115	166	120
% Change From Previous FY	NA	95%	44%	
% of Successful Closures	93%	99%	95%	85%

Goal: To increase the quality of representation and legal services provided to children and youth in CPS cases, and to decrease the number of private attorney appointments.

*FY 13 is Oct 2012 through May 2013 only

Table 2 – OCR Closure Breakdown

	FY 10	FY 11	FY 12	FY 13*
Family Reunification	46	87	119	91
Adoption/Termination	9	27	39	11
Total Successful Closures	55	114	158	102
Dept. Awarded PMC w/o Termination	1	1	0	3
Aged Out of Care	1	0	4	11
Dept. Awarded PMC/Termination	0	0	2	4
Miscellaneous Closures	2	0	2	0
Total Other Closures	4	1	8	18
TOTAL CLOSURES	59	115	166	120

Social Services

- In FY 12, OCR’s social worker had 982 client referrals
- Held over 140 Case Service Planning Meetings
- Serves on the Education Committee of the Model Court and conducts community outreach to area schools, hospitals, child placing agencies, and other related entities

*FY 13 is Oct 2012 through May 2013 only

Office of Parental Representation

Office of Parental Representation

- Established in 2009
- Began with seed money from the Texas Supreme Court Children’s Commission (FY 2009 – FY 2011)
- Includes 5 attorneys, 2 paralegal, 1 social worker, 1 administrative assistant
- FY 2013 Budget - \$820,062

Goal: To increase the quality of representation and legal services provided to the primary custodial parent, and to decrease the number of private attorney appointments

Table 1 – OPR Case Closures

	FY 10	FY 11	FY 12	FY 13*
# New CPS Case Filings	328	434	457	301
% Change From Previous FY	12%	32%	5%	
Total OPR Appointments	176	133	227	134
Appointments as % of all CPS Case Filings	54%	31%	50%	45%
Cases transferred/withdrawn/conflict	19	22	16	16
Successful Closures	64	109	127	116
Other Closures	13	12	15	20
Total Closures	77	121	142	136
% Change From Previous FY	NA	49%	11%	
% of Successful Closures	85%	90%	89%	85%

*FY 13 is Oct 2012 through May 2013 only

Table 2 – OPR Closure Breakdown

	FY 10	FY 11	FY 12	FY 13*
Case Dismissed	6	7	4	3
Completed COS/Home	28	30	27	28
TMC-Completed/Home	6	27	46	44
TMC-No Termination/Final Order	8	21	24	18
TMC-Termination/Relative	16	24	26	23
Total Successful Closures	64	109	127	116
TMC-Termination	13	12	15	20
Total Other Closures	13	12	15	20
TOTAL CLOSURES	77	121	142	136

*FY 13 is Oct 2012 through May 2013 only

Social Services

- In FY 12, OPR's social worker logged 1,289 direct client hours (22% increase over FY 11)
- During FY 12, 619 hours were spent in 206 separate community outreach, training, intern activities
- In FY 13*, OPR's social worker logged 738 direct client hours
- During FY 13*, 475 hours have been spent in 176 separate community outreach, training, intern activities

*FY 13 is Oct 2012 through May 2013 only

Appendix 3 - OVERVIEW OF THE APPOINTMENT PROCESS

Just as an indigent criminal defendant is entitled to a court-appointed attorney, an indigent person who is facing termination of his or her parental rights in a CPS case or facing CPS taking conservatorship of their child is legally entitled to an attorney appointed by the court. Parents who are not opposed to the lawsuit filed, they are not contesting the CPS action, are not appointed an attorney. To request a court- appointed attorney, a parent must submit an “Affidavit of Indigence and Request for Court Appointed Attorney” to the court and, based on this and any relevant information presented at a hearing on the matter, the judge makes a determination about whether the parent qualifies for appointed counsel. In general, the local practice in the civil and criminal courts is that, to qualify for indigent status a parent’s income must be within 150% of the federal poverty guidelines. If a parent is alleged to have the “inability to care for the child/ren” due to a mental or emotional illness or mental deficiency, the parent is automatically appointed an attorney by the court in accordance with statutory requirements. Additionally, if a parent is a minor, they are presumed indigent and are automatically appointed an attorney by the court.

Children who are the subjects of a CPS case are legally entitled to a court-appointed attorney without having to establish indigence.

In CPS cases, the presiding judge may, as appropriate, appoint:

- Office of Child Representation (OCR),
- Office of Parental Representation (OPR),
- The University of Texas School of Law’s Children’s Rights Clinic (CRC) ,
- Private Attorneys, and/or
- Disability Rights Texas (formerly Advocacy, Inc.)

CPS cases usually require multiple attorney appointments. Here are the initial appointments for a typical case:

- Child/ren: OCR or CRC is appointed, depending on whether the CRC is accepting cases at the time. If OCR or CRC has a legal conflict at the time of appointment, a private attorney is appointed. If a conflict arises between the legal interests of the children in a case, a private attorney will be appointed.
- Primary parent: OPR is appointed. If OPR has a legal conflict at the time of appointment, a private attorney is appointed.
- Additional parent: A private attorney is appointed for each indigent parent who legally qualifies for an attorney.

Types of cases:

Court Ordered Services (COS) – CPS begins working with families, in most cases, without court involvement. Services to families may be provided through the Family Based Safety Services (FBSS) division of CPS. If this FBSS intervention is not successful, formal court orders for compliance with services may be sought by CPS and authorized by the presiding judge. When services are ordered in this manner (known as a “Court Ordered Services” case), attorney appointments are always made for the children and often made for the indigent parents depending on the circumstances of the case and whether CPS has pled alternate grounds seeking conservatorship and/or termination of

parental rights. During the COS case, if issues are not resolved or if at any point a child is believed to be in danger, CPS may ask the judge to award temporary managing conservatorship (TMC) of the children to CPS.

Temporary Managing Conservatorship (TMC) These cases typically begin with an ex-parte application to remove a child or when a COS case leads to non-emergency removal. TMC cases are statutorily limited in duration to 365 days except under specific circumstances provided by law. During a TMC case, hearings must be held at specific intervals, including Status Hearings and Permanency Hearings.

Permanent Managing Conservatorship (PMC) – If CPS (DFPS) is named as the managing conservator of a child at the time a final order is entered, this case becomes known as a PMC case. Children in the PMC of the DFPS are often referred to as being in long term foster care because they have not yet achieved a legal permanency outcome such as adoption. Hearings in PMC cases are typically held every four months. In some cases, the attorney who represented the children in the TMC case will be appointed to remain on the case during the PMC phase due to ongoing legal issues. More frequently, the TMC attorney is dismissed during the TMC phase at the time of final order. If a child does not have an attorney in a PMC case, specific legal issues may arise that require the appointment of an attorney. As a result of appointments in PMC cases, attorneys may bill on cases that were opened years before. Appointments made during the PMC phase are typically for the purpose of representing children and parents rarely have attorneys in PMC. Primarily, PMC appointments are made to OCR, CRC, and private attorneys.

Appendix 4 – SOURCES OF DATA

Sources – Part A

Table 1-A Case Workload

Sources: Travis County Juvenile Public Defender (Access Database), the Travis County Civil Courts (FACTS data), and the Travis County Court Administrator’s Office (Texas Child Protective Services Cases).

Table 2-A Civil Indigent Expenditures

Source: Travis County Planning and Budget Office (SAP data).

- a. Note: From FY 2008 to FY 2010 expenditures were not broken out by categories in SAP. In this case, we used the data from the Travis County Juvenile Public Defender’s office to compute these figures. The total expenditures are comparable to Travis County Planning and Budget Office’s recorded expenditures.

Table 3-A Indigent Defense Budget Breakdown

Source: Travis County Planning and Budget Office – SAP data.

Table 4-A FY 10 to FY 13 Midyear Budget Augmentations for Civil Indigent Attorney Fees

Source: Travis County Planning and Budget Office – SAP data.

Table 5-A Texas Child Protective Service Case Filings

Source: Travis County Court Administrator’s Office, “Historical Information-Court Appointment” from the Travis County Civil Courts.

Table 6-A Case Filings

Source: Travis County Court Administrator’s Office, “Historical Information-Court Appointment” from the Travis County Civil Courts.

Table 7-A Child Protective Services Expenditures

Source: Travis County Planning and Budget Office – SAP data.

- a. Note: OCR and OPR expenditures from FY 2008 to FY 2013 are from Travis County Planning and Budget Office – SAP data.

Table 8-A Reported Victims of Abuse and Neglect

Source: Texas Department of Family and Protective Services.

Table 9-A Travis County's Youthful Population

Source: Travis County Health and Human Services, and Veterans Service (HHS/VS) - Research and Planning Division. The source data they used for these figures are derived from the American Community Survey 1-Year Estimates.

- a. Note: According to HHS/VS: 'The American Community Survey replaces the long form of the 10-year U.S. Census and collects information on an ongoing basis rather than once every ten years' (p. 36, 2012).

Table 10-A Mediations

Source: Travis County Civil Courts.

Table 11-A Assignment

Source: Travis County Juvenile Public Defender.

Table 12-A Expenditures

Sources: Travis County Planning and Budget Office – SAP data and the Travis County Juvenile Public Defender.

Table 13-A Cost Per Case

Sources: Travis County Planning and Budget Office – SAP data and the Travis County Juvenile Public Defender.

Table 14-A Contempt of Child Support

Sources: Travis County Planning and Budget Office (SAP data) and Travis County Civil Courts (FACTS data).

Table 15-A DRO

Sources: Travis County Planning and Budget Office (SAP data) and Travis County Civil Courts (FACTS data).

Table 16-A Civil Indigent Attorney Expenditures, Rolling 12 Month Total

Sources: Information provided in Appendix 1.

Sources – Part B

Table 1-B Assignment Breakdown

Sources: “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 2-B Assignment Breakdown

Sources: “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 3-B Expenditures

Source: Travis County Planning and Budget Office (SAP data).

Table 4-B Cost Per Assignment

Sources: Travis County Planning and Budget Office (SAP data) and “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 5-B Cost Per Assignment

Sources: Travis County Planning and Budget Office (SAP data) and “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 6-B Expenditures (Excluding Social Worker)

Source: Travis County Planning and Budget Office (SAP data).

Table 7-B Cost Per Assignment (Excluding Social Worker)

Sources: Travis County Planning and Budget Office (SAP data) and “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 8-B Expenditures (Including Paralegal)

Source: Travis County Planning and Budget Office (SAP data).

Table 9-B Cost Per Assignment (Including Paralegal)

Sources: Travis County Planning and Budget Office (SAP data) and “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 10-B Expenditures (Excluding Social Worker and Including Paralegal)

Source: Travis County Planning and Budget Office (SAP data).

Table 11-B Cost per Assignment (Excluding Social Worker and Including Paralegal)

Source: Travis County Planning and Budget Office (SAP data) and “Historical Information-Court Appointment” derived from Travis County Civil Courts, Travis County Office of Parental Representation, and the Travis County Office of Child Representation (Agency Dashboard data).

Table 12-B Children’s Rights Clinic

Sources: Travis County Planning and Budget Office (SAP data) and Travis County Civil Courts (FACTS data).

Appendix 5 – TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (DFPS) DATA
2008 - 2010

Number of Completed Investigations Resulting in Substitute Care*							
Region	County	2008		2009		2010	
		Total Completed Investigations	Opened for Sub	Total Completed Investigations	Opened for Sub	Total Completed Investigations	Opened for Sub
3	Dallas	12,923	587	13,560	485	14,386	590
3	Tarrant	11,896	355	12,476	283	13,046	453
6	Harris	21,547	947	20,671	808	21,727	1,193
7	Travis	6,399	202	6,341	172	5,529	177
8	Bexar	14,361	610	13,964	485	14,735	534
10	El Paso	4,180	91	4,342	57	4,411	99
State		165,010	6,764	165,444	5,491	169,583	6,994

2011 - 2013

Number of Completed Investigations Resulting in Substitute Care*							
Region	County	2011		2012		2013	
		Total Completed Investigations	Opened for Sub	Total Completed Investigations	Opened for Sub	Total Completed Investigations	Opened for Sub
3	Dallas	13,846	581	14,450	595	13,953	694
3	Tarrant	13,620	428	13,089	411	12,284	453
6	Harris	22,097	1,079	20,612	868	19,996	951
7	Travis	6,348	278	7,991	294	7,283	334
8	Bexar	15,375	764	14,472	865	13,163	781
10	El Paso	5,173	108	4,462	113	4,315	105
State		175,421	7,409	166,211	7,699	160,240	7,886

*Number of completed investigations resulting in one or more children being removed.

Source: DFPS Data Warehouse report: inv_cps_03

REPORT ON THE COST DRIVERS OF CIVIL INDIGENT DEFENSE EXPENDITURES

Parts A and B
July 2014

Part A Growth in Civil Caseloads

CASE WORKLOADS							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
CPS CASES FILED	287	293	328	434	457	464	61.7%
TOTAL MEDIATIONS (CPS)	144	137	127	170	231	214	48.6%
JUVENILE PETITIONS FILED	2,625	2,481	2,347	1,868	1,801	1,850	-29.5%
CONTEMPT OF CHILD SUPPORT	403	583	404	460	431	412	2.2%

Growth in Expenditures

CIVIL INDIGENT EXPENDITURES							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY13	% Change from FY 08 to FY 13
CPS PARENT/CHILD TERM	\$1,572,326	\$1,980,557	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	56.9%
MEDIATIONS	\$120,946	\$118,801	\$111,534	\$162,873	\$216,383	\$211,765	75.1%
JUVENILE	\$114,343	\$132,141	\$127,441	\$105,963	\$185,832	\$118,503	3.6%
CONTEMPT	\$97,725	\$114,163	\$146,075	\$143,434	\$245,715	\$125,897	28.8%
TOTAL EXPENDITURES	\$1,905,340	\$2,345,662	\$2,180,184	\$2,373,569	\$2,905,325	\$2,922,460	53.4%

Growth in Attorney Assignments

CPS CASE FILINGS							
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13	% Change from FY 08 to FY 13
TOTAL CASES FILED	287	293	328	434	457	464	61.7%
TOTAL ASSIGNMENTS	696	748	811	1,138	1,299	1,253	80.0%
ASSIGNMENTS PER CASE	2.43	2.55	2.47	2.62	2.84	2.70	11.4%

Why?

- Increases in population, both overall and youth
- Increase instances of abuse and neglect
- Economic distress since FY 2008
- Changes in child welfare laws
- Complexity in lawsuits
- Increase in cases opened for possible child removal throughout most large Texas counties
- Staffing increases in CPS

Other Civil Indigent Expenditures

- Mediations
- Juvenile
- Contempt of Court Ordered Child Support

Part B – Impact of OPR and OCR Workload

ASSIGNMENT BREAKDOWN						
	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
ASSIGNED TO PRIVATE ATTORNEY	696	622	387	850	789	806
ASSIGNED TO OPR	0	74	176	133	227	222
ASSIGNED TO OCR	0	52	248	155	283	225
TOTAL ASSIGNMENTS	696	748	811	1,138	1,299	1,253

Impact of OPR and OCR Expenditures

EXPENDITURES					
	FY 10	FY 11	FY 12	FY 13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES (EXCLUDES MEDIATION, JUVENILE AND CONTEMPT)	\$1,795,134	\$1,961,299	\$2,257,395	\$2,466,295	\$2,120,031
OPR EXPENDITURES	\$631,679	\$648,155	\$770,026	\$774,653	\$706,128
OCR EXPENDITURES	\$596,074	\$665,163	\$786,588	\$807,889	\$713,929
TOTAL EXPENDITURES	\$3,022,887	\$3,274,617	\$3,814,009	\$4,048,837	\$3,540,088

Impact of OCR and OPR Cost per Attorney Assignment

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$4,012	\$5,309	\$3,111	\$3,181	\$3,903
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,879	\$4,606	\$2,523	\$3,173	\$3,295
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$3,349	\$4,931	\$2,784	\$3,177	\$3,560

Cost per Attorney Assignment w/o Social Worker

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$3,645	\$4,824	\$2,826	\$2,890	\$3,546
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,635	\$4,217	\$2,309	\$2,905	\$3,017
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$3,055	\$4,497	\$2,539	\$2,897	\$3,247

Cost per Assignment w/ Paralegal

COST PER ASSIGNMENT					
	FY 10	FY 11	FY 12	FY13	AVG: FY10-FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$5,478	\$2,494	\$2,687	\$2,630	\$3,322
OPR EXPENDITURES / OPR ASSIGNMENTS	\$3,390	\$4,187	\$2,766	\$2,817	\$3,290
OCR EXPENDITURES / OCR ASSIGNMENTS	\$2,597	\$3,776	\$2,324	\$2,815	\$2,878
COMPOSITE OF OPR AND OCR COST PER ASSIGNMENT	\$2,939	\$3,970	\$2,525	\$2,816	\$3,062

Conclusions

- Increase in civil indigent defense expenditures largely driven by increase in CPS cases and attorney assignments.
- OPR and OCR did not offset expenditures on private attorneys as anticipated at program inception.
- However, due to the increase in volume of cases and assignments, the county would not have experienced a decrease in demand on the civil indigent defense budget had OPR and OCR not been established.
- Cost per assignment for OPR and OCR is roughly equal to private attorneys, depending on inclusion of social workers.
- Adding additional staff to OPR and OCR would drive down the cost per assignment and result in modest cost avoidances.

Recommendations

- Add 1 Paralegal to each office for a total annual cost of \$132,259 (plus minor one-time capital costs of \$9,894).
- Complete study in FY 2015 on taking OPR and OCR to scale, including a review of caseload capacity.

Cost of JPD Assignment vs. Private Attorney

COST PER CASE					
	FY 10	FY 11	FY 12	FY 13	AVG: FY10- FY13
PRIVATE ATTORNEY EXPENDITURES / PRIVATE ATTORNEY ASSIGNMENTS	\$1,139	\$1,102	\$1,003	\$1,211	\$1,114
JPD EXPENDITURES / JPD ASSIGNMENTS	\$508	\$522	\$488	\$526	\$511