In 1963, the Supreme Court held that the Sixth Amendment’s guarantee of counsel is a fundamental and essential right to a fair trial, stating:

“fair trials before impartial tribunals in which every defendant stands equal before the law... cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”


On March 18th of this year, we celebrated the 60th anniversary of the Court’s landmark decision in _Gideon_. The passage of time has fostered growth and progress within the nation. The Court has since expanded its holding in _Gideon_. Now, simply having counsel is not enough to satisfy the protections of the Sixth Amendment. In 1984, the Supreme Court established that a defendant is guaranteed the right to “effective assistance of counsel.” _Strickland v. Washington_, 466 U.S. 668 (1984). The discussion of “effective assistance of counsel” was further emphasized in _Cronic_, where the court held:

“...the constitutional right to effective assistance of counsel is the right of the accused to require that the Government’s case survive the crucible of meaningful adversarial testing.”


The Supreme Court has provided a roadmap for fair, just, and “meaningful” criminal representation. In light of the standards enumerated by the Supreme Court of the United States
and the Fair Defense Act of 2001, Bexar County has developed an indigent defense delivery system that aims to serve the community promptly and effectively. The requirements and principles of an effective system of indigent defense are ever evolving. These principles are enumerated in the ABA’s Ten Principles of a Public Defense Delivery System\(^1\). In response to the growing needs of the community, Bexar County elected to create a Managed Assigned Counsel Office in 2022.

The Bexar County Managed Assigned Counsel Office (MAC) was formed to provide and promote an independent assignment system of trained, proficient, and fairly compensated attorneys. The Managed Assigned Counsel Office’s vision is to promote equal justice for all. To reach the vision and realize the promise of *Gideon*, the MAC aims to bring positive change to the indigent delivery system in Bexar County by providing quality representation to indigent adults and juveniles facing loss of liberty. To obtain these goals and improve the quality of representation provided to the indigent population in this community, the county must address the inadequacies of the current compensation schedule for court appointed defenders. Ensuring fair compensation is a crucial step to promoting a sustainable working environment for the participating attorneys.

**Creation of the Managed Assigned Counsel Office:**

The MAC was created in response to a study conducted by the Texas A&M Public Policy Research Institute.\(^2\) The study evaluated the entire indigent defense system within Bexar County, with the main objective being a complete review of the processes and procedures associated with indigent defense in Bexar County. At the conclusion of this study, the A&M PPRI suggested the

---

\(^1\) ABA’s 10 Principles of a Public Defense Delivery System.
implementation of a managed assigned counsel office to increase accountability and supervision of court-appointed counsel.\(^3\)

The MAC, having been established for an entire year and having an opportunity to evaluate the indigent defense system in its current state, proposes the misdemeanor fee schedule be revised.\(^4\) What follows is a breakdown of the issues our office has encountered throughout our first year in existence, and why revisions to the fee schedule serve as a necessary step towards correcting the system.

**Issue One: Reduced Participation on the Misdemeanor Wheel.**

Data stemming back to 2017 indicates that the Bexar County Misdemeanor Wheel previously had two hundred forty-two participating attorneys. As of 2022, this number has decreased 68%, leaving roughly 77 participating attorneys on the wheel.\(^5\) Of the remaining seventy-seven attorneys, not all of them are actively in the assignment rotation. Many have requested a “pause” from assignments, leaving an even smaller number of available attorneys.

\(^3\) Id.

\(^4\) Article 26.05 (b), Code of Criminal Procedure provides: “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 commissioner’s court of the county.”

\(^5\) As of April 3, 2023 this number has decreased to 68 attorneys on the misdemeanor wheel.
The stark decrease in participation places the County and our justice system in a precarious legal position. The rate at which the attorneys are exiting the wheel signals a larger issue at hand; a potential exodus of those remaining is on the horizon. The county is teetering on a position of being unable to adequately provide counsel for its indigent arrestees.

Growing participation for the misdemeanor assignment system is a crucial element to improving these conditions and maintaining an effective indigent defense system.

**Issue Two: Insurmountable Caseloads**

Without an adequate number of attorneys, the misdemeanor appointment system is in critical condition. The remaining attorneys on the wheel are quickly becoming overwhelmed with the volume of new case assignments. The attorneys still on the wheel are receiving at least one new case assignment every working day, with an average of 22.7 new assignments per month,

---

6 The PPRI Documents an increase of overburdened attorneys within the county well before the significant decline in participation. See Bexar County Indigent Defense System Evaluation, Texas A&M University, Public Policy and Research Institute. Sept. 2020. “The percentage of overburdened attorneys in Bexar County has increased over time, from 2.6% in 2014 to 9.5% in 2019. This steady increase should be monitored closely to ensure attorneys do not become further overburdened.”
compared to the pre-pandemic average of 7, representing an over 300% increase in new assignments per attorney per month.\textsuperscript{7}

Assignments at this rate place the remaining attorneys in an untenable position where they are unable to manage new client intake, while balancing the needs of their existing docket. New case assignments require an immediate jail visit and factual interview given by the client. Requests for discovery must be filed, and new discovery must be downloaded and reviewed before formal investigation and other legal work can be completed. The out of court work, taken in tandem with the requirements of court appearances and other necessary client communications, leave the attorneys with an impossible amount of work to be completed during an average work schedule, frustrating the ultimate goal of “meaningful, quality” representation. Many times, attorneys who push beyond a healthy work schedule face premature career burnout, their work product suffers, and ultimately the clients are placed at a disadvantage.

\textsuperscript{7} This data does not account for the appointments made out of rotation, which occur daily in independent courts.
The overwhelming demands of the ever-growing case load has caused many participant attorneys, both rookie and veteran, to remove themselves from the wheel entirely. Many of those who have taken a pause, or fully removed themselves, have done so to preserve their ability to adequately perform their professional duties, protect their law license, and preserve their mental wellness.

**Issue Three: Inadequate Compensation**

Article 26.05 of the Texas Code of Criminal Procedure states that all adopted fee schedules shall take into account “reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept appointments.” Overhead includes office space, utilities, office supplies, and staff. The current misdemeanor fee schedule adopted by Bexar County is directly in contravention with the requirements of the state statute. The current compensation rate is wholly inadequate to account for the complexity of work, time, and overhead expenses required to represent an indigent defendant charged with a misdemeanor offense. Without modification, the fee rates currently in place fail to incentivize meaningful participation in the indigent defense system.

**Financing Court Appointed Counsel**

In Texas, the local judges are responsible for establishing a schedule of fees to be paid to appointed attorneys. As a result indigent defense pay varies among the State, with each of Texas’

---

8 Tex. Crim. Proc. 26.05(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 commissioner’s court of the county.”
254 counties taking into account the population size, accessibility, and other nuances of each region. An analysis of Bexar County's compensation rate is best examined when compared with peer counties. The Texas Indigent Defense Commission (TIDC) tracks indigent defense expenditures annually based on the number of reported cases per county. Bexar County is the 4th largest county in Texas, with a population estimate of 2.028 million. The other large counties include, Harris, Dallas, Tarrant, and Travis Counties. When compared with the identified peer counties, Bexar County spends the least amount of money per criminal case.  

<table>
<thead>
<tr>
<th></th>
<th>Bexar</th>
<th>Tarrant</th>
<th>Dallas</th>
<th>Harris</th>
<th>Travis</th>
<th>Collin</th>
<th>Lubbock</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population Estimate</td>
<td>2,006,193</td>
<td>2,063,496</td>
<td>2,647,627</td>
<td>4,703,708</td>
<td>1,285,526</td>
<td>1,047,901</td>
<td>309,880</td>
</tr>
<tr>
<td>Total Indigent Defense Costs</td>
<td>$10,059,177.06</td>
<td>$15,951,307.71</td>
<td>$31,666,238.03</td>
<td>$69,252,849.77</td>
<td>$13,177,425.30</td>
<td>$6,795,129.99</td>
<td>$4,547,470.53</td>
</tr>
<tr>
<td>Formula-Based Grant Amount</td>
<td>$1,050,983.00</td>
<td>$1,358,760.00</td>
<td>$2,036,348.00</td>
<td>$3,549,847.00</td>
<td>$5,993,980.00</td>
<td>$863,980.00</td>
<td>$276,402.00</td>
</tr>
<tr>
<td>Improvement Grant Amount</td>
<td>0</td>
<td>0</td>
<td>172501.64</td>
<td>0</td>
<td>$2,281,230.74</td>
<td>0</td>
<td>$997,731.13</td>
</tr>
<tr>
<td>Non-Capital Felony Trial-Level Cases Paid</td>
<td>13,100</td>
<td>14,060</td>
<td>21,935</td>
<td>23,823</td>
<td>9,863</td>
<td>4,484</td>
<td>3,574</td>
</tr>
<tr>
<td>Misd. Trial-Level Cases Paid</td>
<td>11,994</td>
<td>10,726</td>
<td>16,605</td>
<td>14,776</td>
<td>8,903</td>
<td>3,523</td>
<td>3,002</td>
</tr>
<tr>
<td>Juvenile Trial-Level Cases Paid</td>
<td>1,395</td>
<td>1,529</td>
<td>5,812</td>
<td>1,496</td>
<td>680</td>
<td>752</td>
<td>312</td>
</tr>
<tr>
<td>Appeals Cases Paid</td>
<td>43</td>
<td>126</td>
<td>158</td>
<td>249</td>
<td>24</td>
<td>14</td>
<td>20</td>
</tr>
<tr>
<td>Capital Cases Paid</td>
<td>0</td>
<td>0</td>
<td>25</td>
<td>0</td>
<td>5</td>
<td>15</td>
<td>0</td>
</tr>
<tr>
<td>All Cases Paid</td>
<td>26,587</td>
<td>26,555</td>
<td>44,596</td>
<td>40,369</td>
<td>10,485</td>
<td>8,320</td>
<td>6,900</td>
</tr>
<tr>
<td>Average Cost per Case</td>
<td>$78.63</td>
<td>$600.46</td>
<td>$710.07</td>
<td>$1,715.50</td>
<td>$676.29</td>
<td>$766.87</td>
<td>$658.29</td>
</tr>
<tr>
<td>Case Percentage of Population</td>
<td>1.32%</td>
<td>1.29%</td>
<td>1.68%</td>
<td>0.86%</td>
<td>0%</td>
<td>0%</td>
<td>2.23%</td>
</tr>
</tbody>
</table>

The data in the graph above is a total evaluation of how the five largest counties in Texas allocate their resources for indigent defense. The graph also includes Collin and Lubbock counties due to their similar defense delivery structure. All data collected stems from the 2021/2022 reporting cycle to the Texas Indigent Defense Commission. Thus, this data includes the most recent pay increase for court appointed counsel in Bexar County, which occurred in 2019. Following the 2019 approval, payments to misdemeanor attorneys increased by forty dollars, going from a flat fee of $140 to $180 for all cases disposed prior to trial. To date, no further pay

---

9 https://www.census.gov/quickfacts/bexarcountytexas.
10 Texas Indigent Defense Commission (TIDC) Reporting Data from Fiscal Year 2021.
11 Fee Schedules of Identified Peer Counties. Appendix 1.
12 2019 Signed Order.
increase has been approved, leaving Bexar County in last place for fees paid to appointed counsel compared to the identified peer counties.  

The issue of inadequate compensation is not new for Bexar County. During the most recent system evaluation, researchers recommended a system-wide conversion to hourly pay. The study reported that a move to hourly pay satisfies two needs for the county: 1) it aligns attorney incentives with the quality of defense, and 2) the movement to hourly pay ensures access to a pool of qualified attorneys for indigent defendants by incentivizing participation on the wheel.

*Inadequate Compensation Fails to Recruit and Retain Quality Defense Practitioners*

Increased pay has been shown to incentivize higher quality representation. When a fee schedule is set too low, attorneys are less likely to spend the time necessary working the case and fighting for a just resolution. This occurs because the attorney may need to accept a higher volume of cases to make a living wage, or because the pay is too low to justify the time and effort required to adequately perform the job. By adopting the suggested fee schedule, participating attorneys have an opportunity to focus on a smaller number of cases and perform at a higher level. The amended fee schedule also serves as a recruitment tool by making the wages more competitive. Adequate compensation promotes high performance and is likely to aid in keeping quality defense attorneys on the wheel. Beyond growing participation, retention of tenured attorneys allows indigent defendants to have meaningful access to experienced, quality, representation.

---

13 *Id.* TIDC Data from FY 2021.
15 *Id.*
The Existing Fee Schedule Fails to Account for Increased Cost of Living

The existing fee schedule was adopted before the nation was impacted by the COVID-19 pandemic which wreaked havoc on our criminal justice system. Courts across the state are still recovering from the ramifications of the global shut downs. Since 2019, San Antonio’s population has grown significantly.\textsuperscript{17} Housing costs have increased 23%, and interest rates across the nation are at an all-time high.\textsuperscript{18} Many governmental programs have acknowledged hardship within the economy, placing a temporary pause on student loan repayments and enforcing an 8.7% cost of living adjustment to social security payments.\textsuperscript{19} Looking specifically to the group impacted by these fee structures, 71% of law students graduate in debt. The average amount of money borrowed to attend law school is $118,000.\textsuperscript{20}

Locally, Bexar County employees received a 10% pay raise to account for increased living expenses. This raise took effect in July 2022, but the attorney’s accepting court appointments received no similar accommodation. Defense delivery systems around the country have acknowledged a need to restructure pay to court appointed attorneys, as the current pay often leaves law graduates unable to afford necessary expenses to maintain a professional practice.\textsuperscript{21} The approved compensation increase in 2019 was inadequate at its inception. The nominal increase was a bandage on a fractured system, which is now crashing under the weight of the local and national economic crisis.

\textsuperscript{17} San Antonio Report: \textit{San Antonio added more residents than any other city from 2020-2021}. ("San Antonio’s population increased by .9% from July 2020 to 2021, according to U.S. Census Bureau Data").
\textsuperscript{18} Compare Today's Current Mortgage Rates – Forbes Advisor
\textsuperscript{19} Social Security Administration Approves 8.7% COLA as of January 2023.
\textsuperscript{20} https://educationdata.org
\textsuperscript{21} See The Indiana Lawyer, \textit{Study: Public Defenders get $5.16 an hour after overhead}. 

At a rate of $180 dollars per case, the County leaves participating defense attorneys with a Hobsons choice: either take an unsustainable case load to afford to practice criminal defense, or take a lower case load and sacrifice many of the necessities of professional and personal life in order to ethically and effectively perform their job duties.

Recommendations:

Recommendation 1: Conversion to Hourly Pay for Family Violence and DWI Offenses.

As discussed supra, the latest evaluation of the Bexar County Indigent Defense Delivery System recommended a full conversion to hourly pay. 22 As an initial step towards that goal, the Managed Assigned Counsel Office proposes to amend the fee schedule to allow for hourly billing on Family Violence and Driving While Intoxicated offenses. These offense types were specifically selected because they require the greatest level of investigation, carry the most severe collateral consequences, are the type of case most commonly tried to a jury, and they make up slightly more than half of the entire misdemeanor caseload within the county. By shifting to hourly pay for these offense types, the County has an opportunity to make a significant impact for the current appointment system.

---

22 Bexar County Indigent Defense System Evaluation, Texas A&M University, Public Policy and Research Institute. Sept. 2020. (Pg. 75)
Recommended Fee Breakdown

The newly adopted fee amendment would allow for the following:

All DWI and Family Violence cases filed after May 1, 2023 may be billed at an hourly rate of $75 per hour, with a “soft cap” of 8 hours.\(^{23}\)

- The existing $750 dollar trial fee to stay in effect for flat fee and hourly cases.
- The existing $50 flat fee for initial jail visits to stay in effect for flat fee and hourly cases.
- Bond modification hearings shall be paid at a flat fee rate of $100 for all cases.
- Attorneys who are assigned a case which is eligible for itemized billing may continue to submit vouchers adhering to the flat fee schedule if they wish.
- Attorneys who receive a dismissal the day of trial, but before a jury is empaneled, will receive an increased dismissal fee of $500 to account for trial preparation.
- Additionally, attorneys who have cases that are ineligible for hourly billing may contact the Trial Division Chief for special permission in certain cases of qualifying complexity.

Why it works?

As of November 2022, the District Attorney’s Office filed 15,150 misdemeanor cases. Of those cases, 4,186 were DWI offenses, 3,346 were Family Violence offenses, and the remaining 7,628 cases were other types of misdemeanor offenses.

\(^{23}\) Guidelines for Indigent Defense Caseloads. *Texas A&M University, Public Policy and Research Institute*. Jan. 2015; All requests to exceed the cap must be submitted in advance to the Trial Division Chief of the MAC for approval. Further, all cases filed prior to the fee amendment must be billed at the existing fee schedule.
Using these numbers, one may conclude that nearly half of the misdemeanor cases will continue to be billed on a flat fee schedule solely due to offense type. Of those remaining, most cases will be resolved at or below the eight hour billing cap and the case will be disposed by way of dismissal, plea, or some other diversion program. Using the trial rates from the November 2022 statistics, less than 2% of these cases will be brought to trial.  

---

24 This graph represents all misdemeanor cases filed in Bexar County as of November 2022.
25 It is important to note that at the time this data was collected, the courts were fully open and the impact courts were being utilized to assist with the misdemeanor docket. As such, even if more cases are set for trial, the rate will be unable to drastically rise due to limited capacity to acquire a jury panel and/or an available judge.
Of the 16,667 Family Violence cases filed, 11,959 cases were dismissed, 4,579 cases were disposed of by plea, and only 129 cases were taken to trial. Similarly, of the 11,103 Driving While Intoxicated cases filed, 2,731 were dismissed, 8,285 were disposed by plea, and 89 cases were taken to trial.  

---

26 This data was collected by the Bexar County Court Administration.
By utilizing the numbers provided by Bexar County Court Administration, the MAC proposes the fee scheduled detailed in the table below. These numbers, when calculated using the newly suggest fee rate, increase the existing budget by an estimated 3.1 million dollars.

<table>
<thead>
<tr>
<th>Caseload by Type (11/30/2022)</th>
<th>Cases</th>
<th>% of Total</th>
<th>Trial Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWI</td>
<td>4186</td>
<td>28%</td>
<td>0.8%</td>
</tr>
<tr>
<td>FV</td>
<td>3346</td>
<td>22%</td>
<td>0.8%</td>
</tr>
<tr>
<td>Other</td>
<td>7628</td>
<td>50%</td>
<td>0.1%</td>
</tr>
<tr>
<td>Total</td>
<td>15160</td>
<td>100%</td>
<td>1.7%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Caseload by Affected Type</th>
<th>Cases</th>
<th>% of Total</th>
<th>Cost per Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWI + FV</td>
<td>7532</td>
<td>50%</td>
<td>300</td>
</tr>
<tr>
<td>Other</td>
<td>7628</td>
<td>50%</td>
<td>300</td>
</tr>
<tr>
<td>Total</td>
<td>15160</td>
<td>100%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Projected Court Costs</th>
<th>Cases</th>
<th>Cost per case</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>DWI + FV Cases</td>
<td>7532</td>
<td>300.00</td>
<td>$1,016,820.00</td>
</tr>
<tr>
<td>Projected Flat Rate (%) @ $300/case</td>
<td>45%</td>
<td>$300.00</td>
<td>$1,016,820.00</td>
</tr>
<tr>
<td>Projected Itemized (%) @ $600/case</td>
<td>53%</td>
<td>$600.00</td>
<td>$2,395,176.00</td>
</tr>
<tr>
<td>Projected Itemized (%) @ $1350/case</td>
<td>2%</td>
<td>$1,350.00</td>
<td>$152,523.00</td>
</tr>
<tr>
<td>Other @ $300/case</td>
<td>7628</td>
<td>300.00</td>
<td>$2,288,400.00</td>
</tr>
<tr>
<td>Total</td>
<td>15160</td>
<td></td>
<td>$5,852,919.00</td>
</tr>
</tbody>
</table>

Other Consideration for Fee Modification: Companion Case Theory

The appropriate mechanism to track spending is to consider how many people, not criminal offenses, go through the Bexar county system annually. This distinction is critical to these calculations as companion cases will continue to be paid at the reduced fee set forth in the 2019 agreed order. Understanding that many arrestees within the county are charged with multiple offenses at arrest is essential to cost calculation of providing representation. Currently, of those defendants who receive court appointed counsel for misdemeanor offenses, there is an average of 1.26 cases per defendant.  

---

27 *Id.* Signed Judges Order.
28 Data Provided by County Court Administration.
Recommendation 2: Increase Flat Fee Rate

As indicated by the data above, the current fee schedule in place is inadequate for all misdemeanors charged in Bexar County. Although hourly billing will only be available for family violence and driving while intoxicated offenses initially, the county must take action on the other misdemeanor cases as well. Using an average of the flat fee schedules adopted in peer counties throughout the State, the Managed Assigned Counsel Office Recommends the flat fee rate be increased from $180 to $300 on all other misdemeanor cases. This adjustment will better align the county with the state standards.

Recommendation 3: Increase Mental Health Flat Fee Rate

The Managed Assigned Counsel Office originated out of a need and desire to improve the overall delivery of defense services for Bexar County defendants who cannot afford counsel. Those living with mental illness make up a percentage of that population who are significantly more at risk and require a more specialized understanding of the intricacies of mental illness symptomology. The MAC strives to compensate these specialized attorneys in a way that reflects the training and time it takes to work on a mental health client’s case. The cases on the Mental Health wheel will require a qualifying diagnosis including but not limited to: schizophrenia, schizoaffective disorder, bipolar disorder, and substance-induced psychotic disorder. These diagnoses are complex due to 1) the difficulty in communicating with clients due to medication management, 2) the time spent with clients assessing both mental health needs as well as evidentiary investigations, 3) the time spent by the attorney collaborating with community resources to treat the client’s needs, and 4) the likelihood that the client will have a co-occurring
disorder. Considering these factors, the fee schedule listed below is reasonable and takes into consideration the additional case work-up needed to adequately represent those living with mental illness.

Flat Fee
1. Flat rate plea/dismissal – $350
2. Pre-Trial Diversion - $350
3. Trial Fee- $750

Add-ons
1. Jail Visits – $50
2. Uncontested Competency/Sanity - $100
3. Contested Competency/Sanity - $150
4. Bond Hearing/Safety Plan – $75
5. Each additional case – $25

***Contingent on qualifying diagnosis***

**Recommendation 4: Board Certified Incentive.**

The MAC also suggests that Bexar County follow Tarrant County’s lead and allow for a $100 bonus per invoice for all participating attorneys who are board certified in criminal or juvenile law. Presently, there are forty-seven board certified attorneys in San Antonio, Texas. Of those, 37 practice, or can practice, criminal defense in some capacity.²⁹ Currently, only 6 board certified attorneys accept court appointments. By adding the $100 board certification incentive, the county will have an opportunity to reward highly qualified attorneys for their participation for a very insignificant financial impact. This incentive may also encourage participants to seek board

²⁹ The other nine attorneys listed currently serve the county as judges or prosecutors.
certification which would inherently cause them to seek professional opportunity to become eligible, thus placing more experienced lawyers on the wheel.

**Recommendation 5: Process Improvement- Screening for Indigence**

As of June 2022, 93% of arrested defendants received court appointed counsel following their arrest.\(^{30}\) Over-appointment imposes significant costs to the county, because an arrestee who could otherwise afford to retain private counsel is receiving assistance at the County’s expense. In many instances, counsel is appointed to an ineligible candidate who later retains private counsel, and the county is responsible for paying $50 to $100 to the wrongfully appointed attorneys.

Improving and standardizing the indigence screenings will aid in reducing this issue.\(^{31}\) The Director of the MAC met with Lubbock County Judge Mark Hocker, who created a system for uniform indigence screenings. The MAC intends to host a training led by Judge Hocker for all officials who are tasked with conducting indigence screenings. Once in use, the County can reasonably anticipate a reduction of case assignments through the use of verified, uniform screening, bringing the percentage of appointed cases to an estimated 65-70%. By reducing the initial appointment rate, the county can ensure that only those in need receive appointed counsel. This remedy would lower initial costs significantly by forcing those that can afford counsel, to independently retain them, and eliminating unnecessary pay-outs to attorneys who are appointed and later replaced with retained counsel.\(^{32}\)

---

\(^{30}\) Information and data taken from County Court Administration.

\(^{31}\) Judge Mark Hocker Indigency Forms.

\(^{32}\) Of course appointments may still be made in the interest of justice upon an appropriate showing of need as provided by the county court indigent defense plan.
Admittedly, the current case management system does not avail itself to this type of tracking. However, as Tyler Odyssey becomes the main data source for the county, the Managed Assigned Counsel Program can be sure to account for the reduction in re-assignment fees once enhanced screening is implemented.

**Recommendation 6: Encourage the Utilization of Expert Assistance on Criminal Cases.**

The cases identified in the proposed fee schedule often require expert assistance in order to provide thorough and effective representation. Family violence cases require the assistance of an investigator to prevent the advocate from becoming a witness in his or her own case when conducting witness interviews. DWI Cases may require the assistance of a medical expert to explain rates of extrapolation of alcohol, and the intoxicating impacts of alcohol on various body types and conditions. Mental Health cases require medical experts to render an opinion on the mental capacity of a defendant, and to create potential mitigating treatment efforts in lieu of criminal punishment.

The current fee structure fails to incentivize use of experts because coordinating and working with others on a defense team requires additional time spent on a case. By allowing for hourly billing in these scenarios, the attorney is properly compensated for the time spent preparing an expert witness or utilizing investigative services.

A second issue with the current fee schedule is many attorneys receive significantly less pay than the experts appointed to assist on their cases, leaving many feeling disconsolate about the entire process. The total increase in fee structure combined with the specialized hourly billing
option helps combat the inequity of the current situation, and raises the quality of defense across the county.

**Recommendation 7: Encourage Participation in Community Court and Other Diversion Programs.**

The Bexar County Criminal District Attorney’s Office offers a wide variety of diversion programs which allow Defendants to participate in selected community programs in order to avoid a criminal conviction. The District Attorney’s office is also piloting a new program, “Community Court”, which is a diversion program designed for indigent defendants in an effort to reduce the case backlog and jail population. This program’s development is a significant advancement for the Bexar County misdemeanor criminal justice system. Additionally, the dispute resolution center is now available to resolve qualifying family violence cases. Continuing to expand and develop the alternative routes to justice encourages attorneys to accept court appointments and reduces time to case resolutions.

**Recommendation 8: Continue to Foster Early Access to Counsel & Reduce Jail Population.**

Ensuring early assignment of counsel has been shown to significantly reduce jail population, and even result in better case outcomes for the accused. It costs the county $80 a day per inmate and $300 a day for a mentally ill inmate to be housed at the jail. By timely providing counsel, issues of bail are addressed immediately and the attorneys can immediately begin to work on the merits of the assigned cases. Early access reduces costs to the county by securing faster release of clients and resolution of cases.

**Recommendation 9: Mentorship and Training Requirements for Participating Attorneys**
The County, through the Managed Assigned Counsel office, will establish a formal mentoring process, wherein more experienced attorneys will serve as mentors to newer, less experienced, attorneys looking to gain hands-on experience. The mentorship program benefits the county as a whole because it creates an avenue to retain more experienced practitioners on the misdemeanor wheel by allowing them to serve as a mentor, and encourages new lawyers to participate and gain valuable knowledge from tenured attorneys in the field.

Attorneys who are selected to serve as a mentor will receive a case assignment with an assigned mentee. The mentee will be tasked with motions drafting, case research, client interviews, and expert coordination under the supervision of the mentor attorney. This process will allow the mentee to gain meaningful experience while ensuring the quality of work is not compromised. Mentor programs ensure effective representation and serve as an incredible opportunity to develop a professional network within the community.

Increased CLE and Training Requirements

In addition to the mentorship opportunities, the requirements to receive misdemeanor court appointments will be elevated to include an interactive onboarding workshop and additional annual CLE reporting focused on criminal defense subjects. The Managed Assigned Counsel office will facilitate monthly trainings to reinforce best defense practices, and to encourage innovative defense tactics. Continued reinforcement and education of the defense bar ensures that all practitioners stay current on the state of the law, and are capable of delivering the best representation possible.

Recommendation 10: Modify the District and Juvenile Fee Schedule
After addressing the emergency state of the misdemeanor appointment system, Bexar County would be best served by proactively amending the District and Juvenile Court fee schedules.

A court appointed lawyer in juvenile court is a unique individual. Each juvenile practitioner must have inimitable expertise, including an understanding in civil law, criminal law, juvenile law, family law, as well as CPS, and Mental Health law. According to the TIDC website, in 2019 there were 146 attorneys that heard at least one juvenile case. In 2021, that number dropped to 90, a 62% drop in attorneys.

The current Bexar County juvenile fee schedule is a hybrid system, so in addition to the “hourly rates” an attorney may submit a “fixed fee” amount for initial detention visit and for each detention hearings he/she may have appeared for. For most juvenile misdemeanor stipulation or dismissal situations the “fixed fee” rate is solely what an attorney will make for a plea or dismissal. The current Bexar County “fixed fee” rate for a juvenile misdemeanor stipulation or dismissal (like the current adult misdemeanor fixed fee rate) is $180. The MAC recommends that the fixed fee rate for juvenile misdemeanor pleas and dismissals be adjusted to be commensurate with the adult misdemeanor adjustment to $300.

As is presently situated, adoption of this fee proposal will cause an abnormal shift within the indigent defense budget. In 2021, Bexar County used the indigent defense fund by allocating roughly 75% to pay for resolved felony cases, 21% to resolved misdemeanor cases, and the remaining 4% funded disposed juvenile cases.\(^3^3\) The current proposal changes that estimated

\(^3^3\) This fee distribution is similar to comparable peer counties within the State.
distribution, causing the misdemeanor budget to account for nearly 52% of the funds. Understanding there is more to be done to ensure equitable compensation and restore the wage balance among all criminal cases, Bexar County must take this action as a necessary step towards the overhaul required.

**2021 Payment Distribution by Wheel Type**

- Felony: 75%
- Juvenile: 4%
- Misdemeanor: 21%

**2023 Proposal Payment Distribution by Wheel Type**

- Felony: 52%
- Juvenile: 45%
- Misdemeanor: 3%

**Recommendation 11: Establish Effective Electronic Data Management System**

Data tracking is critical to ensuring success of the indigent defense system. Bexar County has contracted with Tyler Odyssey to replace its current system. The Tyler Odyssey system has been customized to better serve the needs of the criminal justice system. The Odyssey team has spent a significant amount of time collaborating with court administration, managed assigned counsel, and public defender offices to customize data reporting fields to ensure a more comprehensive record of activity in each criminal case. Utilization of the case data is key to
measuring the sustainability of our indigent defense system, while allowing the County to keep abreast of any adjustments that need to be made in the future as demands change.

*Increase Public Trust by Fostering Accountability*

Transitioning to itemized billing and providing additional flat fee line-items for those cases that may not be itemized requires lawyers to report the work done on each appointed case. The reported work is verifiable through court records, and will be compared annually with case outcomes. The MAC intends to implement a data reporting system that individually evaluates each panel attorney’s cost per case, and annual case outcomes. This will ensure that attorneys are held accountable for their billing and indigent defendants are receiving quality representation. Greater performance by the defense bar establishes a deeper trust within the community, and removes the negative stigma attached to receiving assistance from a public defender.

**Conclusion:**

Increasing the fee schedule is a critical first step towards addressing the misdemeanor representation crisis within Bexar County. By making the necessary changes to the fee schedule the County incentivizes dedicated, quality representation for indigent defendants. The increased fee schedule, along with the other enumerated recommendations, is an essential step to restoring the fractured state of the current system.

This recommendation is an important step, but it is just that- a step. As our system develops and the county enhances its data tracking capabilities, the MAC anticipates additional developments and looks forward to fostering progress within the County.