

**FORT BEND COUNTY
TRIAL DIVISION
PUBLIC DEFENDER DEPARTMENT**



Policy and Procedures Manual
(Revised April 2018)

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**FORT BEND COUNTY
MENTAL HEALTH DIVISION
PUBLIC DEFENDER DEPARTMENT
Policy and Procedures Manual**

This manual is designed to function as the working guide to the operation and utilization of the Fort Bend County Public Defender Department (Mental Health Division). The policies and procedures outlined in this manual have been developed by the Public Defender under the guidance of the Fort Bend County Commissioner's Court. These guidelines are subject to the organizational agreement between the Public Defender and the Commissioner's Court. Policies and procedures described in this manual are subject to change on an "as needed" basis as the needs and capabilities of the department and the county change.

As employees of Fort Bend County, all members of the MH Division are subject to the policies set forth in the Fort Bend County Employee Information Manual. The manual is available on the internet, and the policies contained therein are part of the terms and conditions of employment.

I. PERSONNEL

Detailed job descriptions for each position in the Public Defender Department Mental Health Division are attached as Appendix "A" to this document. The MH DIVISION consists of:

- A) Attorneys**
 - a. Chief Public Defender**
 - b. TRIAL Division Chief**
 - c. Attorney I and Attorney II**
- B) Immigration Attorney**
- C) Support Staff**
 - a. Office Coordinator**
- D) Conduct/Ethical Guidelines**

As employees of attorneys, staff members are bound by the same ethical standards as attorneys. First and foremost, this includes the attorney-client privilege. Anything we learn from a client is confidential and will not be shared with anyone outside this department without the clients' permission. This includes friends and family of the client.

Secondly, all members of the MH DIVISION should be respectful of the witnesses and other parties that we come across during the course of our representation of a client. While there will be individuals who will make it difficult, always go into the situation as respectfully as possible. You should also show respect to the victims and/or law enforcement personnel who agree to speak with us. Finally, you should seek a parent or guardian's permission before speaking to a juvenile witness or victim. Also be mindful that our clients should not have direct contact with a victim/complaining witness as this can be considered intimidation of a witness.

E) Sick/Vacation/Cover Leave

Sick and vacation leave are to be governed under the guidelines and policies of Fort Bend County, and may also be found in the Fort Bend County Employee Information Manual; Section 709 (Sick Leave) and Section 513 (Vacation).

"Cover leave" is to be governed by the MH DIVISION. Whenever an attorney or a member of the support staff are requesting leave, either sick or vacation, they will try to the best of their ability to have another attorney or support staff covers their court docket or department duties. A "cover request" is to be filled out, if possible, by both the employee requesting leave and the employee

accepting covering duties. The “cover request” is then to be submitted to the MH Division Chief for approval. A copy of the “cover request” is attached as Appendix “B”.

F) Outside Employment

Employees may not accept or continue outside employment that would give rise to, or the appearance of, a conflict of interest without the Chief Public Defender or MH Division Chief’s approval (see Fort Bend County Employee Information Manual, Section 605 (Outside Employment) and Section 602 (Conflict of Interest). Employees may not accept or continue legal employment involving restricted clients (inmates/ clients, inmate’s/ client’s immediate families, or individuals referred by inmates/ clients or their families) or restricted defendants (state and federal governments, state agencies, cities, municipalities, and counties) or legal employment in an area of law with high potential for conflict (Deportation, Expungements, Family Law, Immigration, and Misdemeanor Appeals) without the MH Division Chief’s approval.

Employees may accept outside employment in an area with low potential for conflict with the Mental Health Division - Public Defender Department except when such employment gives rise to or may give rise to a conflict of interest or the appearance of impropriety. In those instances, the employee must obtain the Chief Public Defender or MH Division Chief’s approval.

If the nature of an employee’s outside employment changes such that it becomes, or the employee learns that it is or may be a conflict of interest to continue such employment, the employee must notify the Chief Public Defender or MH Division Chief and obtain his or her approval for continuing said employment.

The use of county assets in support of outside employment is strictly prohibited. This prohibition includes local and long distance telephone use and both incoming and outgoing calls. Outside employment is not to be conducted while on county time or on county property.

II. TRAINING

Training is an integral part in developing personnel who can provide vigorous and zealous defense of their clients. Although all department personnel share a responsibility of providing services to the client, these needs are most keenly felt at the attorney and social worker and caseworker positions. An overview of the training program for these positions follows. This plan is subject to modification depending upon the skills and training already possessed by new employees.

A) Attorney Training

a. Training Program and Practice Guidelines

The best way of learning various aspects of criminal defense work is to observe an experienced attorney as he works. The Division Chief and the Attorneys will meet regularly to discuss various aspect of working as a public defender. These would include:

- i.** Introducing the Attorneys to the judges, court personnel and other individuals in Fort Bend County’s criminal justice system;
- ii.** The Division Chief will show the Attorneys the location of the various courts, departments and jail facilities of Fort Bend, including jail operations and visitation;
- iii.** The Division Chief will take the Attorney I to the District Attorney’s Office, introduce them to the members of that office and instruct the new attorney in the interaction between the DIVISION and the Assistant District Attorney (ADA), such as viewing client files and plea negotiations;

- iv. The Attorneys will attend court hearings with the Division Chief and participate in any cases that go to trial;
- v. The Division Chief and the Attorneys will meet to discuss each other's cases with the Division Chief providing guidance and insight on how the Attorneys should proceed on a particular case; and
- vi. The Division Chief will be available to answer questions that the Attorney I might have about various aspects of DIVISION procedures.

The purpose of having this program is to provide guidance and instruction to the Attorney I. In short, the Attorney I will be responsible for his/her assigned cases, subject to the MH Division Chief's insight.

B) Continuing Legal Education

Under the Texas Fair Defense Act, as adopted by Fort Bend County, any attorney requesting appointments to represent indigent defendants must have at least ten (10) hours of continuing legal education in the field of criminal law each calendar year and be an active member of the State Bar of Texas to maintain eligibility to receive appointments. In addition, attorneys for the MH DIVISION will complete at least three (3) hours of CLE in the area of Mental Health to be increased as more programs and CLE become available.

The Public Defender Office will cover all expenses in sending its attorneys to CLE seminars in order to meet with appointment requirements. The PDO also maintains a library of legal manuals and materials centering on improving trial skills, criminal procedure, mental health and immigration issues.

B) Immigration Attorney Training

As with the other attorney training, Trial Division Chief will go over policies and procedure with Immigration Attorney.

Immigration Attorney will stay in touch with other immigration attorney across the State of Texas and keep abreast of any changes in immigration law.

IV. THE PRACTICE OF LAW - ASSIGNMENT OF CASES

A) Assignment and Flow of Cases

In order to provide the most efficient use of resources and facilitate the speedy representation of the client, cases should be processed in the following manner. These guidelines are subject to ongoing review and change when necessary to insure that service to the client is represented in a timely and cost-effective manner. All referred clients must meet the guidelines for indigence established by Fort Bend County.

1) Intake Process/Procedure for Referral

The case flow process within the DIVISION begins when the Notice of Appointment is first received from the Senate Bill 7 (SB7) Coordinator. The SB7 Coordinator will assign misdemeanor and felony cases for those with a notation of mental health on a rotation basis. Cases will be assigned to Trial Division unless it has been designated for MH DIVISION unless there is a conflict of interest or until a maximum of 100 felony cases and 300 misdemeanor cases per year are assigned. Other clients will be accepted at the discretion of the MH Division Chief. Methods for referral of clients apart from the

“slots” or rotation order will include referrals directly from Fort Bend County Court at Law Judges.

2) Screening Process

All referred clients will have a confirmed Axis I diagnosis of a major mental illness, including paranoid schizophrenic, bi-polar, major depression and schizoaffective disorder. At the time of referral from court administration, if there is no confirmed diagnosis from the jail staff, a state of Texas Mental Health Hospital, Texana , MHIDD VA, private source or other mental health authority, a social worker or case worker from MH Division will meet with the client for an assessment. At the discretion of the MH Division Chief, if a client referred from the SB7 Coordinator does not meet these guidelines or if there is a conflict of interest, the client will be returned to the SB7 Coordinator for reassignment to an appointed private attorney.

3) Creation of Case

The appointment is given to the office coordinator, who takes the information from the appointment form to open up a physical case file and enter the client’s info into the case management system, Defender Data.

4) Initial Contact with Client

Upon appointment of a new case, Attorney must make contact within 24 to 48 hours after being assigned the case.

B) Caseload Standards

The Division Chief shall review caseload standards quarterly to determine numbers and complexity of cases for each lawyer. The number of arrests varies during the year, depending on the weather and other factors. In any quarter, the MH Division Chief shall have pending no more than 75 (i.e. Pre-disposition) active files. In any quarter, the Attorney I shall have pending no more than 90 active files. If, during any quarter, the case load exceeds this number, the MH Division Chief, in his/her discretion, will contact the SB7 Coordinator and the judges of the two mental health courts to remove the MHPD from the rotation. If any exception to the caseload standards is authorized by the MH Division Chief, the MH Division Chief will notify the Oversight Board in writing.

If the client is in custody, the office coordinator creates a folder for the lawyer assigned. The folder will be generated from the following windows off the County Website system as well as the Tiburon inmate search page. It will include the standard questionnaire forms used by the MH DIVISION as well as blank forms for medical release authorization. The folder will be delivered to the attorney for visitation within one business day.

If the client was released from custody on bond, the office coordinator will make a client packet consisting of the same information found in the jail packet. The office coordinator will calendar all court dates and attorneys and case workers will be responsible for notifying clients on bond of their court dates. This can be done via: 1) letter or 2) having a client sign a “Notice of Court Setting” form which lists the court date and time.

C) Conflict Checks

A lawyer cannot effectively represent a client when a conflict of interest exists. In criminal defense work, that conflict most often arises when you have been appointed to represent someone

and you already represent the victim, a co-defendant, or adverse witness in the case. In order to avoid that situation, a conflict check is to be conducted on each case early in the appointment process.

The office coordinator, or the attorney assigned to the case, should enter in the names of the client, victim(s), co-defendant(s), if any, and any known witnesses into the conflict checking software if available. If additional victims, witnesses, etc. are later uncovered, they should also be entered into the software program to see if a conflict arises.

In the event a potential conflict is uncovered, the attorney needs to view the nature of the conflict and then make a professional judgment as to whether withdrawal is required. If in doubt, the attorney should discuss it with the MH Division Chief for guidance.

D) Procedures for Handling Conflict of Interest Cases

1. The following situations constitute a conflict of interest, requiring the assignment of outside counsel. Those situations shall include but are not limited to:

a. When lawyer is appointed to provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved;

b. When the defendant was represented at the trial level by an individual within the same defender agency and it is asserted by the client or appears arguable to the attorney that trial counsel provided ineffective representation;

2. If a conflict of interest exists, it exists for the entire department, and assigning the case to another attorney within that entire agency will not cure the conflict.

3. As soon as a case is identified as meeting the definition of "conflict of interest case" the case shall be immediately identified and assigned to counsel outside the Public Defender Office and returned to the trial court. The Division Chief shall conduct a prompt review of each case to make a timely decision as to whether a conflict of interest is probable.

4. If a conflict of interest is found to exist or is probable, the MH Division Chief shall contact the trial court immediately and ask that a member of the private bar represent the client.

E) Establishing an Effective Attorney – Client Relationship

Establishing an effective attorney – client relationship is integral to a successful outcome in a case. When dealing with clients in this department, it is important to remember several key things. First, your client didn't pay or choose your services, you were appointed as his/her attorney. This can lead to a great deal of suspicion on the part of the client. Second, your client is in a situation that, whether he/she admits it or not, is frightening to him/her. In our unique department, all the clients have a major mental health diagnosis and this can exacerbate such feelings.

Both of these feelings can seriously complicate having an effective attorney-client relationship, especially when they lead to hostility on the part of the client. In some cases, you will not be able to overcome these obstacles. However, in the majority of cases, it is possible to build a

relationship based on a degree of trust on the client's part. Once you have accomplished that, it becomes possible to get the client to listen to your advice on the case. Without overcoming the client's innate skepticism of a court – appointed attorney or public defender, you will not be able to serve your client to the best of your ability.

This will seem like an obvious point, but the best way to establish an effective attorney – client relationship is to spend time communicating with your client, whether it is in the jail or over the phone. In the most serious cases, it is best to start with face-to-face contact. However, in a great many cases the client will have received the news that you are going to be representing him/her before you get the file. Talking to the client before you get the file is a judgment call, but remember that the client may have important information that needs to be acted on quickly. Granted, it is hard to know the value of the information when you haven't seen the file, but it might be best to err on the side of caution and speak to the client.

It is always important to remember what you are trying to accomplish: the best outcome for the client, based on the situation that exists. There are times when this will involve trying to get the client to accept the "best" alternative (or at perhaps the "least worst" alternative). If you've built an effective relationship with the client, it can be easier to convince them that your opinion on their situation needs to be taken into account.

The way to do this is to be honest with the client. If your objective evaluation of the case leads you to a conclusion that you know the client will not like, it is nonetheless your obligation to give him your opinion. You can build trust with a client by keeping the promises you make to him. The flip side of this is to not make promises that you can't keep. If you tell the client that you're going to accept his calls, accept them. If he wants a copy of the arrest affidavit, make sure it gets sent to him. Send him copies of the investigation so he knows what you know. If he's got some ridiculous offer to make to the prosecution, make sure you inform the District Attorney. No attorney can promise a client an outcome of the case, but you can promise to work hard and then show the client you mean it. A little attention to the client can pay big dividends.

1. The Initial Client Interview

The initial client interview will depend in large part on the amount of information you have about the case. Unfortunately, there are going to be cases where you don't have the arrest affidavit, despite the best efforts of the support staff. If you have the arrest affidavit, you are in a better position to ask questions relevant to the case. If you don't, you'll have to try and get as much from the client as you can.

It's best to start any client interview with the same basic information, introduce yourself, and assure your client that the attorney/client privilege will protect the confidentiality of anything he tells you, the charge and the possible range of punishment. Emphasize that you're doing the latter only for informational purposes and not because you think he's guilty. Tell him you just want him to know the possible consequences for someone in his position. Always interview a client alone if possible. Family members tend to interfere with the interview process and influence the client's answers to your important questions.

Next, it can be helpful to get some general background information from the client. If he is married or not, has any children, how far he got in school, is he employed, any medical problems, etc. This can also be useful to help establish some trust on the part of the client-never forget that he/she didn't get to pick his/her attorney. All of this may account for nothing in the long term, but there's no way to know what's important at the start.

2. Special Needs Clients (See Section 46 of the Code of Criminal Procedure)

Special needs clients are typically those who are mentally ill or mentally retarded. Not all of our clients are mentally ill. A client's mental health problems can affect a case in several different ways, but the two most important are sanity and competency. Sanity, of course, deals with the client's mental status at the time the offense was allegedly committed. Competency is an issue of fairness and can arise at any time. A client might be competent when you first see him, then deteriorate and become incompetent. While the Code of Criminal Procedure permits other parties to raise the issue of incompetency, as a practical matter that responsibility falls on the shoulders of the person who has the most contact with the defendant: the defense attorney. The best preparation for this is to read *Mental Illness, Your Client and the Criminal Law*. Much of the information that follows is taken from that publication which is available within the MH DIVISION's library materials. If Trial Attorney discovers client is mentally ill, transfer to MH Division.

F) Immigrants/Non-citizens

The Immigration Attorney shall be consulted on all non-citizen cases.

G) Reviewing the District Attorney's File

Once the attorney has received the case file, he or she should begin the investigation process. The assigned attorney should review discovery, including the information and the affidavit for arrest. If the client is in jail, and a client interview has not already been conducted, the attorney should go to the jail to conduct an in-person interview.

The attorney should next arrange to go and view the DA case file. It is usually best to call or e-mail the Assistant District Attorney (ADA) in charge of the case to arrange a time to view the file. If no file has been brought over to the DA's office, then there will be nothing to view. As a general rule, if your client is in jail and has been there for 30 days or more and the DA's office still has not filed an indictment, you should request a PR bond for your client to obtain his/her release. While there is no guarantee that you will be able to get your client released, it is about all you can do at this point to get them out of jail.

The District Attorney's Office has an "open file" policy, which means that you can review all the materials they have: police reports, lab reports, etc.

H) Bond Setting and Reduction

Motions regarding bail generally fall into two categories: reducing bail or getting bail set. What motion to file depends on what you're trying to accomplish; most of the time, that's going to be asking a court to reduce your client's bail. In situations where your client is asking for a bail reduction, first look at what amount of bail s/he currently has. There's nothing that prevents you from asking that the bail be reduced, and it can be useful to go ahead and file the motion, particularly if you have a difficult client.

If the client's bail seems high, the next step is to ask the client how much bail s/he believes they can make. If the client can't make bail, you should tell him/her that getting bail reduced, while possible, isn't going to get them out of jail. There are some clients who will hope that winning a series of bail reductions will ultimately lead to an amount of bail they can make. Experience will teach you that this is not the case.

In preparation for the bail reduction hearing, you should have your client contact several bail bond companies with an eye towards finding out how much they would charge for bail that the client could afford, and the best way to do this is by quoting prices from one or more bonding companies. You should also contact family members, employers, etc., who might be able to testify favorably for the client.

At the hearing, it is permissible to have the client testify for the limited purpose of the bail reduction motion without waiving his/her privilege against self-incrimination and in most cases, the client will have to as you will not be able to locate anyone who can testify for the client. You should prepare the client by telling him/her that you will be asking them questions about where s/he would live, employment opportunities, financial status, health problems, etc. If s/he has a criminal record or has had previous bond forfeitures, rest assured that the prosecutor will ask your client about it. Note also that the rules of evidence do not apply to a bail reduction hearing, although evidence from the State that denies your client the right to confront the witnesses against him/her is probably objectionable on that basis.

There are a few other things to note. There are a lot of myths about bail that float around the jail. No client is entitled to bail s/he can make, nor are they entitled to a bail reduction after 90 days in jail (this is often confused with being entitled to bail you can make or a personal bond if the State hasn't filed an information/indictment within the legal time frame). Remember that you are under no obligation to file a motion that you believe will be a waste of the court's time. Consequently, you should counsel with your client if his/her ideas about bail are unreasonable. The other side of this is that filing a motion to reduce bail that you know is futile may help your relationship with a difficult client.

Motions to set bail are typically used in cases where a client is in jail for allegedly violating his/her community supervision. If the client is on deferred adjudication community supervision, s/he is entitled to bail, as s/he has not yet been convicted. Some judges will set the bail at the same amount it was prior to the client being placed on deferred. Others will require a hearing. Be sure and check on the practice of the particular court that has jurisdiction over the client's case.

In cases where the client is on adjudicated community supervision, bail is at the discretion of the court. Unless the prosecutor agrees to some bail amount, you will have to file a motion and get a hearing set in order to have a chance to get bail set. Again, you can prepare for the hearing much like the bail reduction hearing. Your goal should be to give the court some compelling reasons to set bail in your client's case.

Regardless of what kind of community supervision your client is on, you should think twice about getting bail set. If the client is in on technical violations, it may be that any money s/he could spend on bail would be better spent at the community supervision and corrections department getting caught up on what s/he owes them. However, never have a client or their family pay any money to Community Supervision and Corrections Department (CSCD) or Adult Probation without making sure that the prosecutor will agree to dismiss the motion to revoke. If money is paid and there is no such agreement, there is no way for the family to get the money back. Never have money paid without knowing it will help the client's situation.

I) Obtaining a Plea Recommendation

It is a fact of life in criminal law practice that only a small percentage of criminal cases will go to a jury trial. The overwhelming majority are either dismissed or disposed of via plea-bargain. Your role as attorney and counselor is to make sure that your client is fully informed of the charges, the possible consequences if convicted, and any plea offers made by the District Attorney. While you are charged to counsel your client on the pros and cons of any offer, it is not your decision to make whether to accept any particular offer. With experience you will learn that clients will sometimes take plea bargains they would most likely be better off rejecting and refusing offers you believe they should accept. You must always remember that regardless of the client's decision, they are the ones who will live with the consequences so as long as you keep them informed and worked to get them the best offer possible, you have done your job.

V. THE PRACTICE OF LAW – FROM CASE INVESTIGATION TO TRIAL

At this point you have interviewed your client, hopefully secured his/her release from jail, reviewed the District Attorney's file and obtained a plea recommendation. The next step is to conduct your case investigation. An independent investigation of the facts of an alleged offense is a duty a criminal defense attorney owes to each client. Existing case law suggests that this means more than simply reviewing the prosecution's file. More importantly, it is your obligation to give the client all the information about the case that you can. Since it is ultimately up to the client to decide how to plead, the only way s/he can make an intelligent decision is if s/he has as much information as possible. It is the attorney's responsibility to provide him/her that information.

A) Preparing an Investigative Request – Role of the Investigator

Two Investigators are part of our office. Use them in all cases where appropriate.

B) Interviewing Potential Witnesses

Interviewing witnesses is best left to an investigator, but if you need to question a witness yourself, never do it alone. If a witness tells you one thing in an interview, then testifies differently at trial, you will not be able to impeach their testimony yourself because you won't be able to testify. You will need someone, either the investigator or another attorney, to witness the conversation. By so doing, you will be able to have them testify, should it become necessary. Of course, there is nothing wrong with going with an investigator or another individual to participate in the questioning of the witness.

All interviews should be conducted in a professional and respectful manner. In almost every case, we will need to stay on good terms with the witness in order to maintain their cooperation. All interviews should be recorded, with the knowledge of everyone on the tape, unless the witness specifically asks that it not be done. Emphasize that recording the conversation protects both sides against any false claims that might be made about what happened during the course of the interview. If the witness will still not agree, proceed but with someone else present.

Although it has never been an issue, the staff is not to put themselves in a situation where they might be concerned about their personal safety. The DIVISION represents people who are charged with criminal activity and some witnesses may be hostile or in less than safe environments. For this reason, it is important that everyone be aware of their surroundings and to formulate possible

exit strategies for their own safety. The MH DIVISION does not expect any staff member to put themselves “in harm’s way” for any client.

C) Issuing/Delivering Subpoenas

Subpoenas can be used in different ways. Most commonly, they are used to get a witness to come to court. The best practice is to subpoena all the witnesses you might need regardless of how willing they are to participate. If a witness, who is under subpoena, tells you s/he will show up and then doesn’t, you can have the court issue a writ of attachment, which means the sheriff’s department will go looking for them, but only if there is a valid subpoena in the court’s file. Having the witness under subpoena is without question the safest thing to do and protects both you and the client. For a subpoena to be valid; it must request that a witness appear on a certain date and time. There are instances where this department uses subpoenas prior to trial. This will almost always involve records of some sort. We frequently use subpoenas “duces tecum” without a hearing date to attempt to get records. We are usually successful with these, but it is important to note that issuing a subpoena that requires the custodian to comply “instantly” has no validity and is subject to being quashed. Furthermore, if the party fails to comply with the subpoena, you have to wait to compel compliance. In situations like this, it might be best to have the case set for a pre trial hearing. You can then subpoena the records to the hearing. If not then, it will have to wait until the trial date.

1. Out of State Subpoenas

Criminal defendants can subpoena witnesses in other states, but the process is significantly more complicated than in-state subpoenas. It will require paperwork filed in a district court-equivalent in the state where the witness resides. It is best to start the process as soon as possible because of the length of time it can take. If you find that you need to subpoena a witness from out-of-state, notify the MH Division Chief as soon as possible.

D) Pre-Trial Motion Preparation

The Fort Bend District Attorney’s office has had an “open file” policy in place for several years in regards to their criminal cases. While most discovery is filed, it is still a good idea to view the DA’s file.

In all cases, the MH DIVISION maintains a set of standard “pre-trial” motions for use in practice. While these motions are generally sufficient for most cases there are some situations where additional motions may need to be filed. A comprehensive list of these motions can be obtained from the MH Division Chief.

1. Motions to Suppress and Hearing

Suppression motions can be fruitful in a couple of different ways. First, of course, is the opportunity to exclude exculpatory evidence. Second, you can get the witnesses committed to a version of the facts.

The first decision will be whether to pursue the suppression issue pre-trial or wait to raise the issue during a trial. There are costs and benefits to each decision. If you raise the issue pre-trial and lose, the court’s ruling can be appealed even if the defendant accepts a plea bargain (note that the defendant can waive that right

if s/he signs all of the plea paper work typically available in the courts. Read it carefully and make sure the record reflects that the defendant can appeal the motion to suppress, assuming that's part of the deal). Of course, most prosecutors will not be happy about your client's appeal, so you may find him/her less willing to show the same kind of discretion s/he might in a pre-trial setting. If you lose the issue at trial, you can always raise it on appeal.

If you decide to raise the issue pre-trial, it is your responsibility to get the motion filed and a hearing set. Generally speaking, a motion to suppress evidence serves to shift the burden to the State to show that what happened was legal. Your preparation and presentation will be the key to any chance of success you might have. In cases where the defendant faces serious consequences, it is the best practice to go ahead and file suppression motions even though you know you're going to lose. It is best to have those things on the record and it will protect you from future ineffective assistance claims.

E) "Case Specific" Motions

Having standard motions for our cases does not preclude preparation of case specific motions and attorneys are encouraged to prepare case specific motions when necessary.

F) Legal Research

Legal research as discussed in this section deals with research of the law as it affects your case. The DIVISION works to maintain a library that is current not only with the most recent case law, but also having practitioner manuals, legal articles and motion practice files. We also have access to Lexis/Nexis, internet sites and resources, and the Fort Bend County law library.

Another invaluable resource is the other attorneys within the department as well as a number of the private practice criminal defense lawyers in town. Lastly, there are several excellent criminal defense associations such as TCDLA, NACDL and FBDLA which can provide benefits to its members.

VI. THE PRACTICE OF LAW – TRIAL

A) Trial Skills

While law school prepared you for learning about the law, it probably gave you little if any experience in the "practice" of criminal law. Trial skills are an important and necessary part of being an effective criminal defense lawyer, but the reality is that most of your cases will be settled either through dismissal or plea-bargain. However, the more effective you are at trial can greatly influence the quality of plea offers you are able to obtain for your clients. With that in mind, the goal of this department is to provide you with graduated training in the various aspects of trial work.

VII. CASELOAD ALLOCATION

The ability to provide zealous and effective representation of indigent citizens accused of crimes depends on the skill of the attorney, the quality of the support staff, adequate funding for investigators and experts, and sufficient time to adequately investigate, research and prepare the case. In order to allow sufficient time to be allocated to any individual case, the attorneys and support staff must not be responsible for representing too many clients at any one time, lest the representation of all should suffer. Counterbalancing the needs of the client is the need to be

mindful of the limited resources available to the defense of indigent citizens. The caseload standards and allocation plan for fairly distributing cases amongst the attorneys of the public defender department seeks to maximize the number of cases that can be handled by the department while still maintaining a quality defense in line with ethical and professional standards.

A) Caseload Standards

Department Caseload standards (Developed through reference to other case management standards used by public defender and legal aid offices, including the National Legal Aid and Defender Association {NLADA}. These standards may be reevaluated later based upon actual experience by the MH DIVISION.

a. Types of Cases

- i. Misdemeanors – Class A & B
- ii. Felonies – State Jail, 3rd Degree, 2nd Degree, 1st Degree

b. Caseload Limits

- i. 200 Cases/year for the Division Chief and 300 Cases/year for the Attorney I
- ii. These standards may be modified by agreement of the Commissioner's Court and the DIVISION based upon:
 - 1. Number and type of support personnel;
 - 2. Actual mix of cases;
 - 3. Experience and position level of attorney; and
 - 4. Actual experience.

c. Case Tracking

- i. Computer software program to track and monitor caseloads to determine most viable numbers will be implemented.
- ii. Records to be kept regarding number of each grade misdemeanor assigned to department will be implemented.

B) Caseload Distribution and Court Assignments Amongst Attorneys

The Public Defender is designed to provide indigent defense services for indigent individuals charged with misdemeanors and felonies. The particular case assignments shall be determined by the Division Chief.

VIII. APPEALS

A) General Information

An appeal is the legal method used to review the validity of a conviction. Compared to the number of cases in the criminal justice system, the number of appeals is very small. There are a couple of reasons for this. First, when someone pleads guilty in a plea bargain situation they give up their right to appeal except in very limited circumstances. Second, of our clients who go to trial and lose, not all of them wish to pursue an appeal. The decision to appeal is left to the client.

Every appeal is heard by a court of appeals. There are fourteen courts of appeals in Texas. The one which hears cases from Fort Bend County is in Houston. Court of Appeals must hear all the cases which come to them; they have no discretion. Once they reach a decision, the case can be appealed to the Court of Criminal Appeals, the highest court in Texas which hears criminal cases. Unlike the court of Appeals, the Court of Criminal Appeals can pick and choose which

cases it will hear. When it chooses to hear a case, it grants discretionary review. For the purposes of our departments, the Court of Criminal Appeals is the highest court to which we can go.

B) How to Appeal

No appeal will be taken without permission from the MH Division Chief. A request on behalf of the client will be made to the trial judge in which the case was heard, and that Judge will then appoint a private attorney to handle the case. That attorney will then become attorney of record for the client. At this point, the MH DIVISION is not set up to handle appeals.

C) Motion for New Trial (MFNT)

The timetable just discussed applies to almost all cases, with one exception. In some cases a Motion for New Trial is filed in the trial court and this will pass back the start of the appeal. It only affects when the notice of appeal must be filed. A motion for new trial (MFNT) is a mini-appeal to the trial judge which lists mistakes the trial attorney believed happened during the trial. If the judge grants it, the case is back where it started; i.e., awaiting trial.

The MFNT trial must be filed within 30 days of the date of sentencing. The trial judge must rule on it within 75 days of sentencing. If the judge doesn't make a ruling, the law considers it overruled after 75 days have passed. The defendant must then file notice of appeal within 90 days of sentencing. Once notice of appeals is given, and all the other paperwork is done, the timetable runs normally.

IX. CASE MANAGEMENT/ PERFORMANCE GUIDELINES

The provision of criminal defense services is not one that easily lends itself to pure numerical analysis. While the process of determining the dollars and cents it costs to provide defense services for "x" number of cases is ascertainable, determining the actual quality of those services is more difficult. The Constitution guarantees all citizens accused of jailable offenses the effective representation of counsel. Mindful of that guarantee, the goal should be to provide a high quality of representation at a reasonable cost and not the bare minimum at lowest possible cost. While there is no one standard to determine effective representation, the Public Defender should seek to measure, to the extent possible, those items that the department and the Commissioner's Court agree provide some measure of the success in providing criminal defense services, as required by the grant establishing these services. These measurements and reports are subject to ongoing revision based upon the capabilities of the equipment available to capture the information and the determination of the parties as to what constitutes valid measurement criteria.

For more objective measurements of the MH Division's performance, reports relaying the following information are under development. In the event that the computer software used by the department is unable to prepare this information, alternative reports shall be developed.

A) Effectiveness of Representation

1. Monthly case flow

- i. Number of cases received;
- ii. Number of cases closed; and
- iii. Pending case load

2. Length of time from:

- i. Arrest to appointment;
- ii. Arrest to complaint signed by D.A.'s Office;
- iii. Arrest to release from custody with judgment or dismissal;
- iv. Appointment of case to release from custody with judgment or dismissal;
- and
- v. Appointment to disposition of case

X. USE OF EXPERTS

Owing to the diversity of criminal offenses that may be prosecuted, there are many situations that will arise where the attorney may be ill-equipped to zealously defend their client because of a lack of training in certain specialties. While the particular specialties required will vary from case to case, they most often will be medical, psychological, or involve forensic testing in numerous areas. The cost in using such experts can vary widely depending upon the particular discipline, geographical location of the expert, and their background. Attorneys should never hesitate to try and arrange for expert assistance if truly required, but should be mindful of expense in determining who to use. If the state has an expert, you probably need one too.

A) When is an expert appropriate?

- 1. **Detailed policies regarding the use of an expert will be developed by the Division Chief.** For the present time, these summarized guidelines are to be used.
- 2. **Types of cases that experts are most likely to be of benefit:**
 - a. **Mental Illness / Competency**
 - b. **Drug Analysis**
 - c. **DWI / Intoxilyzer**

B) How to obtain an expert

- 1. **Locating potential expert witnesses**
 - a. **Referrals from other attorneys; and**
 - b. **Referrals from professional organizations**
- 2. **Interviewing and evaluating**
- 3. **Allow sufficient time to obtain subpoena**
- 4. **Motion to court**
 - a. **Preparation of motion;**
 - b. **What to include; and**
 - c. **Obtaining funds**
 - i. Estimating costs for evaluation;
 - ii. Travel;
 - iii. Courtroom testimony (time and travel); and
 - iv. Be prepared to make multiple requests for funds (i.e. once for investigation, again for testimony, etc.).

C) How to most effectively utilize the expert?

- 1. **Try to use local people when qualified and available;**
- 2. **Work to minimize travel time; and**
- 3. **Assist the expert as much as possible in obtaining records or client information, to the extent applicable.**

APPENDIX A
Our job descriptions will follow.....

Chief Public Defender

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851
Supervisor:	-	FLSA Status:	E
Supervises:	Mental Health Division Chief Attorney II Attorney I Investigator Caseworker Social Worker Administrative Coordinator Office Coordinator Secretary	Job Grade:	17
SIP/DOT:	N/A	Policy Group:	P/M
Job Summary:	Performs legal defense work for clients needing publicly assisted representation in serious criminal cases accepted by the Public Defender, including felony and misdemeanor charges. Participates in planning of programs, policies or objectives for own work group and department.		

Essential Duties and Responsibilities:

Job Title: Chief Public Defender

Job Code: J17009

Department: Public Defender

Department Number: 4851

- Ensures the functions and services of the Public Defender's Office are provided in accordance with the requirements of State and Federal Constitutions, State and Federal Law, and State Bar of Texas ethical rules
- Plans, organizes, directs, and manages the day-to-day operations of the Public Defender's Office
- Participates in felony trials of all degrees as a lead attorney in both jury and non-jury matters
- Supervises planning, development, preparation and monitoring of annual budget and statistical reports
- Develops and maintains good working relationships with the judges of assigned courts while continuing to act as a vigorous advocate for the rights of clients being represented
- Directs and controls the organization, staffing, administration and evaluation of all authorized activities of the Public Defender's Office
- Supervises the work of subordinate attorneys in felony and misdemeanor cases
- Responsible for the selection, training, evaluation, promotion and termination of attorneys and other staff
- Makes presentations to social and civic groups, incarcerated persons, and other organizations to publicize, promote, and explain the public defender program
- Represents the Public Defender's Office in appropriate public and professional meetings and conferences, in interactions with state and municipal officials, County and State bar associations, and citizen groups
- Performs other duties as assigned
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

Knowledge: Doctor of Jurisprudence.

Experience: 5 to 8 years practicing criminal law, including two years of mid to senior level supervisory or management experience. Experience with cases in felony, misdemeanor, and mental health courts.

Skills and Abilities: Highly advanced research and writing skills, including trial advocacy, legal research and library skills. Verbal and written communication, supervisory, management and organizational skills; interpersonal skills and ability to deal effectively with the public, other employees and elected officials. Must have high degree of case evaluation and advocacy skills, expertise in trial of criminal cases, advanced knowledge of the rules of evidence, case law, penal code and code of criminal procedure.

Special Requirements: Licensed by Supreme Court of Texas. Current active membership in the State Bar of Texas

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

<u>Equipment Used:</u>	Telephone Mainframe Computer Calculator Automobile Typewriter	Personal Computer Fax Machine Photocopier Audio and Video Recording Equipment
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Job Title: Chief Public Defender Job Code: J17009

Department: Public Defender Department Number: 4851

Contacts: Daily contact with criminal defendants, victims, police, co-workers, department employees, the public, and elected officials in person or on the telephone to negotiate, persuade, exchange routine information, instructs and makes presentations as applicable; frequent contact with employees in other departments in person or on the telephone to request information.

Supervision Required: Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.

Physical Demands: Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.

Work Environment: Work is performed primarily in a climate-controlled private office. Provides 24-hour on-call assistance to county officials and law enforcement officials. Noise level is quiet.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

