

CAPITAL AREA PRIVATE
DEFENDER SERVICE

PLAN OF OPERATION

OCTOBER 15, 2014

INTRODUCTION

The mission of the Capital Area Private Defender Service (“CAPDS”) is to enhance the quality of representation provided to indigent adult defendants in Travis County. We achieve this by establishing meaningful standards for quality representation, ensuring assigned counsel exceed these standards, overseeing the work of assigned counsel, and by providing education and mentoring services to support those assigned to represent indigent clients.

This initial operating plan is provided pursuant to our contract obligation in Section 3.4 of the approved contract between the CAPDS and Travis County. This report addresses the requirements of Texas Code of Criminal Procedure Article 26.047(c) and contract requirements 3.4.1 – 3.4.9. The plan includes: (1) a budget for the program, including salaries; (2) a description of each personnel position, including the program’s director; (3) the maximum allowable caseload for each attorney assigned by the program; (4) provisions for training personnel of the program and attorneys assigned under the program; (5) a description of anticipated overhead costs for the program; (6) a policy regarding licensed investigators and expert witnesses used by attorneys assigned under the program; (7) a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; (8) a policy to ensure that an attorney assigned under the program does not accept appointment in a case which involves a conflict of interest for the attorney that has not been waived by all affected clients; and (9) a policy to ensure that all board and committee volunteers and staff are not on the assigned counsel list.

This Operating Plan contains an outline of the CAPDS basic plans and procedures. The CAPDS will publish a Policies and Procedures Manual by January 1, 2015. The policy manual will be consistent with this Operating Plan, but will contain detailed procedures for how the CAPDS will operate, including but not limited to, the function of the review committee, procedures for requesting investigator or expert assistance, policies on voucher submissions, guidelines for the mentorship program, and other relevant topics.

The CAPDS looks forward to working with the Travis County Commissioners' Court, the Travis County Criminal Judiciary, court administration, and others dedicated to providing indigent defendants in Travis County with a quality defense.

THE OPERATING PLAN OF CAPDS:

(1) THE BUDGET

<u>CAPDS PERSONNEL BUDGET</u>	<u>Amount</u>
Attorney - Executive Director of CAPDS*	\$160,000
Attorney - Deputy Director of CAPDS*	\$120,000
Attorney - Deputy Director of CAPDS*	\$120,000
Investigator [□]	\$80,000
Administrative Assistant [□]	\$50,000
Part-time Financial Analyst [□]	\$35,000
SALARY EXPENSE	\$565,000
Fringe Benefits - Medical, Retirement, Long-Term Disability, Parking, etc.	\$104,060
Taxes @7.65% up to base salary of \$113,700	\$38,434
TOTAL PERSONNEL COSTS	\$707,494
<u>CAPDS OPERATING EXPENSES</u>	
INSURANCE	\$4,000
Professional insurance coverage for Director and/or Board of Directors:	
TRAINING AND PROFESSIONAL MEMBERSHIPS	\$10,500
Travel/training for professional development and memberships, including bar dues:	
PROFESSIONAL SERVICES	\$5,000
Accounting/Tax-CPA to file non-profit tax returns and other financial documents:	
OFFICE SPACE¹	\$0
Office space provided by the Austin Bar Association through September 2015:	
MENTORSHIP PROGRAM	\$30,000
Mentoring for new and current attorneys seeking to increase levels on the list:	
OFFICE SUPPLIES/MISC.	\$11,100
CAPDS PERSONNEL AND OPERATING BUDGET TOTAL	\$768,094
CAPITAL/EQUIPMENT	\$1,800
Funds for one-time office startup cost.	
CAPDS CONTRACT BUDGET TOTAL	\$769,894

* Current salaries are less than maximum funded to create additional operating funds

□ Positions currently unfilled

(2) **STAFF POSITIONS**

The CAPDS currently employs an Executive Director and two Deputy Directors. In the near future we will expand our team to include an investigator, an administrative assistant, and a part-time financial analyst. Descriptions of each position are listed below.

A. The Executive Director

Under the direction of the Board of Directors, the Executive Director is responsible for the provision of indigent legal defense services to all eligible persons in Travis County according to the terms of the Professional Services Contract for Management of Assigned Counsel between the CAPDS and Travis County, Texas. The Executive Director formulates the CAPDS's mission, goals, objectives, and related policies and is responsible for their implementation. The Executive Director oversees the legal representation of indigent criminal defendants in Travis County. The Executive Director will work closely with elected officials, committees, and policy-making entities in accomplishing the mission of the CAPDS.

The Executive Director provides guidance, mentoring, and legal advice to assigned counsel; manages administrative functions of the office including budgeting, human resources, purchasing, and resource planning. He will direct these activities through the Deputy Directors.

The Executive Director will have fiscal and administrative duties in the management of the CAPDS. His duties include preparing the written plan of operation as required by Texas Code of Criminal Procedure Article 26.047(c), and directing the administrative and operational functions of the office consistent with the CAPDS goals

and objectives. The Executive Director oversees staff, including hiring, training, performance evaluations, disciplinary actions, and dismissals.

The Executive Director prepares and presents an annual report on the operation of the office to the Travis County Commissioners. He also prepares and presents quarterly operational and monthly financial reports on the expenditures of indigent resources to the Oversight Committee and the Board of Directors. Along with reporting, the Executive Director establishes policies and procedures relating to the administration of indigent defense in conjunction with the Board of Directors and develops recommendations for the compensation of assigned attorneys.

The Executive Director implements the appropriate quantitative and qualitative metrics for evaluating assigned counsel, ensures compliance with appointment procedures as set forth by law, the Travis County Fair Defense Plan and the Board of Directors, and maintains positive relationships with other components of the criminal justice system and indigent defense organizations.

The Executive Director will facilitate the development, training and education of assigned counsel by providing Continuing Legal Education (“CLE”) programs, implementing a training curriculum consistent with current trial and investigative techniques, and establishing a mentoring program. He will also assemble and maintain the following: expert database, witness/officer files, motion and brief banks, legal research file, CLE materials and performance measures for the office and for assigned counsel.

With the Board of Directors and the Review Committee, the Executive Director develops the process for application, renewal, and advancement of assigned counsel. He

will consult with the Review Committee concerning the placement of attorneys on the assigned counsel panels based on the applicant's qualifications and experience. He will observe assigned counsel in court to evaluate their performance, and consult with assigned counsel concerning defense strategies. The Executive Director will meet with the Review Committee as warranted to address the performance of assigned counsel. He will also respond to inquiries and complaints from members of the public, clients, and judiciary, and investigate such complaints. The Executive Director will refer complaints to the Review Committee when appropriate.

The Executive Director represents the office on various commissions, committees, and boards, and participates in community outreach at various governmental, judicial, and community functions. He will also research and review legislative updates and legal opinions, and adapt existing policies and procedures to address legislative changes.

Beyond the above responsibilities, the Executive Director also performs other duties as assigned by the Board of Directors.

B. Deputy Directors

The CAPDS Deputy Directors will share responsibility for assisting the Executive Director in formulating and implementing the CAPDS's mission, goals, objectives, and related policies. They will oversee the legal representation of indigent criminal defendants in Travis County. The Deputy Directors will work closely with the Executive Director and the Board of Directors, elected officials, committees, and policy-making entities in furtherance of the CAPDS mission. They will provide guidance, mentoring, and legal counsel to assigned counsel, and manage administrative functions of the office

including budgeting, human resources, purchasing, and resource planning. The Deputy Directors will assist the Executive Director in all fiscal and administrative activities of the CAPDS. They will assist the Executive Director as directed by the Executive Director and the CAPDS Board of Directors in the execution of all of the duties and functions of the CAPDS.

C. Investigator

The CAPDS investigator performs advanced investigative work that involves researching, reviewing, and investigating criminal cases. These duties include gathering, analyzing, and interpreting business, financial and medical documentation. He will collect and examine evidence, including witness interviews, and assist in analyzing the complex records of individuals, associates and corporations. The CAPDS investigator will document his investigative process by preparing records and comprehensive, detailed reports. He will obtain and prepare affidavits and statements, participate in executing court orders and subpoenas, and respond to oral and written inquiries to provide customer support if needed.

Other primary responsibilities of the investigator include reviewing requests for investigative assistance, determining the viability and feasibility of such requests, and assisting in researching, reviewing, and overseeing the investigations conducted by approved panel investigators when appropriate. The investigator will assist in compiling, evaluating, overseeing, and managing a panel of approved investigators to be used by assigned counsel. He will advise, coordinate, and lead investigative teams if required. He will periodically review samples of completed cases to ensure the consistent and correct

application of the CAPDS investigative policy by approved investigators on the assigned counsel panel.

D. Administrative Assistant

Under the direction and supervision of the Executive Director, the administrative assistant provides professional administrative support to the Executive Director and Deputy Directors in implementing the CAPDS mission, goals, objectives, and policies. The administrative assistant will provide administrative support in the management of the day-to-day operations of the CAPDS staff.

The administrative assistant serves as a liaison between the CAPDS and the Board of Directors, prepares agendas for Board of Directors' meetings as required, and assists in the preparation of, and distribution of, the Board of Directors meeting packets. The administrative assistant will transcribe minutes of Board of Directors' meetings, assist in the preparation of materials for County hearings, and will schedule and secure meeting locations for the Board of Directors. The administrative assistant performs additional duties as requested by the Executive Director or the CAPDS Board of Directors.

E. Financial Analyst (part-time)

The Financial Analyst performs complex accounting and fiscal planning work, with the direction and supervision of the Executive Director, including compiling any required weekly, monthly, quarterly, and annual reports. The analyst also assists in the oversight of all expenditures to ensure conformity to contract obligations.

The analyst responds to financial inquiries from the CAPDS office management and staff, other Travis County and State of Texas fiscal representatives, and public inquiries as appropriate. The analyst provides technical assistance to the CAPDS office

staff in developing and maintaining grants, contracts, payroll, and other operations having financial implications. The analyst assists in developing strategic and tactical financial plans and may assist in the development and implementation of the CAPDS office financial policies, procedures, and strategies.

(3) CASELOAD LIMITS

The CAPDS believes appropriate caseload limits will help ensure assigned counsel have the necessary time and resources to effectively advocate and provide quality representation to indigent clients in Travis County. The current caseload limit, as outlined in the Travis County Fair Defense Plan, requires all assigned counsel exceeding either a total of 90 felony cases or a total of 100 misdemeanor cases be suspended from further assignments. These limits include all of the assigned counsel's cases, both assigned and retained, in every county of Texas and in Federal Court. The CAPDS will monitor the caseloads of assigned counsel to ensure compliance, and may further lower the caseload limits if it appears that assigned counsel are unable to be zealous advocates under the current limits. The current caseload monitoring provide by the Travis County courts checks caseload limits in Travis County; however, the CAPDS will monitor caseloads in additional counties to ensure compliance with our polices and the Travis County Fair Defense Plan.

(4) TRAINING

A. Personnel Training.

1. Staff Attorney Training.

As part of our mission to raise the quality of indigent defense in Travis County, the Executive Director and Deputy Directors will remain current on the laws and standards of criminal practice and will be knowledgeable about the intricacies of indigent defense practice. In order to achieve this goal, the staff attorneys will attend trainings that address these issues, educate themselves through the reading of indigent defense articles and manuals, and conduct one-on-one talks with experts in the field of indigent defense.

All the CAPDS staff attorneys will be trained by the Office of Court Administration in the use of the Attorney Management Portal (“AMP”) and Indigent Defense Application (“IDA”). The CAPDS staff attorneys will exceed the CLE requirements set for assigned counsel.

2. Investigator Training.

The CAPDS strives to ensure that the cases of all indigent defendants in Travis County are thoroughly and professionally investigated when appropriate. The CAPDS will train the staff investigator in issues specifically relating to indigent defense investigation. The investigator must continue to fulfill the requirements of continuing education as required by the Texas Board of Investigators and Security Officers. The CAPDS will train the investigator to monitor other investigators, how to conduct effective trainings for investigators and will train the investigator how to manage the assigned investigator list.

3. Support Staff Training

All support staff will be trained in the policies and procedures of the CAPDS.

B. Assigned Counsel Training

One mission of the CAPDS is to provide assigned counsel in Travis County quality training and support. As part of that mission, the CAPDS will ensure that assigned counsel are current on legal issues, have the opportunity to attend trainings, and have available to them the resources they need to be zealous advocates. The CAPDS will also provide specialized training in areas relating specifically to indigent defense, including the collateral consequences of convictions, immigration consequences of convictions, and handling mental health issues in the indigent client.

The CAPDS has partnered with ACDLA to provide for 30 hours of free CLE per year. The CAPDS will also offer CLE in the specific areas required for yearly recertification. The CAPDS will make appropriate CLE available electronically for assigned counsel to view as time permits.

The CAPDS will administer a mentorship program to allow assigned counsel to benefit from the valuable resource provided by the mentorship of a more experienced attorney. A goal of the mentorship program is to help new attorneys gain the experience and skills needed for the assigned counsel program and to advance through the assigned counsel program. After the first quarter of 2015, the CAPDS will determine how the mentorship program will function.

The CAPDS will work with individual attorneys, as needed, providing feedback, advice and court observation. The CAPDS will maintain an expert database,

witness/officer files, motion and brief banks, legal research files, and CLE materials that will be available for the use of all assigned counsel.

(5) **OVERHEAD COSTS**

See detailed budget description.

(6) **INVESTIGATOR AND EXPERT WITNESS POLICIES**

A. Licensed Investigators

Investigators serving with assigned counsel must possess a state license as a private investigator issued by the Texas Board of Investigators and Security Officers and the Department of Public Safety, pursuant to Texas Occ. Code § 1702.

Investigators must comply with the requirements of continuing education and renewal procedures of the Texas Board of Investigators and Security Officers.

Investigators must demonstrate experience, or document training prior to appointment, in the important areas of defense investigation such as: locating witnesses, obtaining witness statements, including complaining witness statements, and in collecting mitigating evidence.

B. Expert Witnesses

An expert in a field in which licenses and/or certifications are required must be licensed or certified and a member in good standing with the licensing and/or certifying agency.

An expert in a field in which licenses or certifications are not required must demonstrate competence as an expert in that field through work experience, experience as a consultant in prior cases or in prior testimony. References will be used to assist in evaluating the expert's competency.

If assigned counsel expects to call an expert as a witness at trial or in a hearing, the expert must be able to demonstrate that his expertise and his methodology are reasonably likely to be accepted as admissible, under Article VII, Texas Rules of

Evidence and pertinent case law, including Daubert v. Merrell Dow Pharms., 509 U.S. 579(1993).

(7) **ALLOCATION OF ASSIGNMENTS POLICY**

The CAPDS policy will ensure that assignments are reasonably and impartially allocated among qualified assigned counsel.

Assignments shall be made using a rotation system following an alphabetical listing of the names of eligible counsel (taking into account the type of assignments they may receive).

In misdemeanor cases, a joint jail reduction docket will be held daily by the county courts at law. Assignments will be made on a rotating basis, in alphabetical order. Cases in which assigned counsel does not appear will be reassigned in court from the alphabetical rotation.

Assignments for Spanish speaking cases shall be made using a separate rotation system following an alphabetical listing of the names of counsel eligible to receive Spanish-speaking clients.

Assignments for Mental Health Attorneys and the Misdemeanor Mental Health Public Defender shall be made using a separate rotation system. Eligible counsel will be assigned following an alphabetical listing of their names. In mental health cases involving misdemeanors, counsel will be assigned from the misdemeanor mental health attorney rotation including the Mental Health Public Defender. In mental health cases involving state jail, 2nd or 3rd degree felony offenses, counsel will be assigned from the felony mental health attorney rotation.

In felony cases, counsel may receive an assignment for the highest level of offense for which he is qualified and for any lower level offense in which he has

qualified. If a case is enhanced above an assigned counsel panel level, assigned counsel shall notify the CAPDS to ensure the appropriate level counsel is assigned.

In the event a Judge needs to appoint counsel from the bench the CAPDS will provide a qualified attorney from the appropriate assigned counsel panel selected from a rotation system of eligible on-call counsel.

(8) **CONFLICT OF INTEREST POLICY FOR ASSIGNED COUNSEL**

No assigned counsel may accept representation or continue with the representation of an indigent client with whom he has a conflict of interest as set out below.

No assigned counsel may represent more than one of the defendants in a multi-defendant case. No assigned counsel may represent or agree to represent any co-defendant of an already assigned defendant in any legal capacity on any other legal matter. No assigned counsel may represent a defendant in any case in which the complainant or a material witness for the prosecution was a former client of the assigned counsel.

All counsel assigned by the CAPDS to represent indigent defendants in Travis County shall be aware of and abide by the rules governing conflicts of interest as set out in Rules 1.06, 1.07, 1.08 and 1.09 of the Texas Disciplinary Rules of Professional Conduct.

All counsel assigned by the CAPDS to represent indigent defendants in Travis County must notify the CAPDS in writing of any actual or potential conflict of interest which might disqualify them from representing any indigent defendant to which they may have been assigned or from accepting an assignment to represent any indigent defendant.

(9) **INTERNAL CONFLICT OF INTEREST STATEMENT**

The CAPDS affirms that no assigned counsel on the CAPDS's Indigent Defendant Assigned Counsel Panels or accepting assignment by the CAPDS for the representation of indigent defendants in Travis County serves on the Oversight Committee, on the Review Committee or as a voting member of the Board of Directors. The CAPDS further affirms that no assigned counsel on the CAPDS's Indigent Defendant Assigned Counsel Panels or accepting assignment by the CAPDS for the representation of indigent defendants in Travis County will be eligible to serve as a voting member on any board or committee of the CAPDS that provides day-to-day oversight, policy creation, or determines or influences the selection or appointment process established by the CAPDS.

October 15, 2015

**Travis County Commissioners Resolution Approving
Capital Area Private Defender Service's Plan of Operation
and Incorporating it into Contract 4400002180**

Recitals

Travis County entered into Contract 4400002180 for the Management of Assigned Counsel with the Capital Area Private Defender Service on September 16, 2014.

Section 3.4 of Contract 4400002180 outlined a written report that would be submitted to Commissioners Court for approval, and when approved, attached to that Contract as Exhibit 2 to Attachment A.

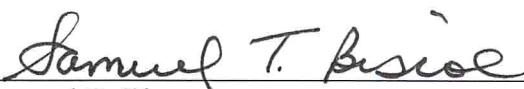
The Capital Area Private Defender Service has provided that written report in the document entitled Plan of Operation; and that Plan of Operation is attached to this Resolution.

The Commissioners Court authorizes Judge Biscoe to execute this Resolution.

Resolution

The Commissioners Court of Travis County approves the attached Plan of Operation and includes it as Exhibit 2 to Attachment A of Contract 4400002180.

Signed and entered this 28th day of October, 2014.



Samuel T. Biscoe
County Judge