

Sixty Years
After *Gideon*:
Indigent Defense in Nueces County

THE WREN COLLECTIVE

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Executive Summary

Part I: Problems With Indigent Defense in Nueces County

Sixty years ago in *Gideon v. Wainwright*,¹ the Supreme Court declared that everyone in this country facing incarceration has a right to have an attorney appointed to them if they cannot afford one. It is not enough for an attorney to be present. The attorney must also be effective. He or she must zealously advocate on behalf of a person who is facing a loss of liberty at the government's hands.

Unfortunately, in many parts of this country, *Gideon* was and is a pyrrhic victory for the poor. They received the right to lawyers, but not effective ones. It is common to hear cases of lawyers never visiting their clients in jail, never investigating their clients' cases, and even sleeping during trial. According to the Exoneration Project, one out of every five exonerations involves a lawyer who failed to provide effective representation – which is only the “minimum standard of competence.”² In some parts of America, effective assistance is simply the exception, rather than the rule.

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As part of the Wren Collective's evaluation of indigent defense in America,³ we examined the state of affairs in Nueces County, Texas, a mid-sized county with a thriving community of over 350,000 people. This year, Nueces County made important strides when it started its first mental health public defender, the only public defender in the county. The office has started handling a small portion of the indigent defense cases, focusing on those where clients are experiencing serious mental health issues. But that office, which currently has a staff of nine, can handle only a small portion of the thousands of felony and misdemeanor cases filed each year – sometimes upwards of a number that nears 8,000.⁴ Although some of those charged individuals will hire paid lawyers, most are too poor to do so. In 2021, for example, over 6,000 people had their cases resolved by court-appointed lawyers. In 2022, that number rose to over 9,000.⁵

We therefore focused our investigation on evaluating the court-appointment system. We watched court, we spoke to judges, and we talked to numerous criminal defense attorneys. We requested jail data, appointment data, and other records. What follows are our findings.

What we found about that system is disturbing. “Justice” is cheap in Nueces County. Court appointed lawyers are paid meager flat fees for cases at a rate so low lawyers cannot possibly do meaningful work for their clients. **In 2021, for example, the county paid just \$200 to defense lawyers in almost 60% of all criminal cases.** In our interviews, one lawyer reported receiving just \$900 for a murder case that went to trial – the most recent comprehensive workload study suggests those cases should take around 248 hours of work.⁶

7

investigators paid
over 6 months

Unsurprisingly, to make a living, many lawyers who rely on the appointment system must have unsustainable caseloads, some reaching over 400. There are not enough hours in the day and in the year, even if the lawyer never went to sleep and worked every hour of the day, to provide effective representation. Unsurprisingly, many lawyers have removed themselves from the court-appointed list in search of a better income.

Other flaws persist in the appointment system. According to our interviews, lawyers do not regularly request investigators to prepare a challenge of the government's factual case, a claim supported by data, **which showed just seven payments for investigators in a six-month time span.** Interviews and data also showed that lawyers are rarely hiring experts, and few if any are engaged in any meaningful motion practice, which can include filing challenges to the constitutionality of a police search, an interrogation, or the admission of scientific evidence that might be unreliable, like fingerprints or ballistics testimony. This type of evidence is regularly challenged in jurisdictions across the country.⁷ There is also no robust training for new lawyers, or for lawyers as they start taking on more serious cases.

In the end, it is the clients in Nueces County who suffer. But all is not lost. Our interviews revealed judges and lawyers who are aware of these problems and who exhibit a willingness to try something new. We end this report with recommendations to improve representation in Nueces County. We recommend first raising the attorney rates so that attorneys can bill by the hour. Nueces County should also establish a Managed Appointed Counsel system that is independent from the judiciary, capable of closely monitoring attorney performance by collecting and analyzing data that measures how attorneys are representing their clients, including whether they are going to the jail, investigating their cases, and filing motions. And of course, Nueces County should continue to support and expand the Public Defender.

*With some effort and will,
Nueces County can start meeting
the promise of Gideon, and ensure
that access to justice is not only
reserved for the wealthy.*

Part I:

The Problems

I. The Fee Structure Hampers Zealous Advocacy

Because of the rates set by the Nueces County judges, attorneys there are compensated at egregiously low levels that incentivize minimal work. Attorneys are largely compensated with a flat-fee per case at the following levels felony cases⁸:

- \$100 for a withdrawal
- \$200 for a case where the DA does not charge
- \$300 for a dismissal/diversion
- \$450 for a motion to revoke
- \$500 for a state jail felony case
- \$550 for a third degree felony
- \$750 for a second degree felony
- \$900 for a first degree felony

In misdemeanor cases, attorneys are compensated at the following rates:⁹

- Withdrawal: \$100
- Dismissal: \$200
- Plea: \$300
- Bench trial: \$600
- Jury trial: \$800

Neither of these fee structures come close to providing adequate compensation for the work an attorney must perform to adequately represent their client.

Whether a misdemeanor or a felony case, there are basic steps an attorney must do to provide effective representation and they take considerable time. An attorney must review the government's evidence, which often includes forensic evidence, police body camera footage, and phone calls the client made from the jail. This work alone can amount to several hundred hours worth of time, depending on the case. The attorney and their investigator must interview government witnesses, and the defense must try to find their own witnesses who can help challenge the government's evidence. In many cases, the defense must evaluate their client's mental health, including their competency to stand trial, but also must investigate any evidence that might help their client receive a more lenient sentence or a better plea offer. They must prepare for trial by writing opening statements, direct examinations, and cross examinations, and also file motions to admit evidence and challenge the government's evidence.

A comparison between Nueces County’s flat fee system and workload studies estimating the hours that must be spent on the case shows how abysmal the compensation is there. A 2015 Texas Indigent Defense Commission workload study recommends that attorneys spend at least 66 hours on felony 2 cases,¹⁰ which include serious charges like robbery or arson and which can carry up to twenty years of prison time.¹¹ **A court-appointed lawyer in Nueces County who worked the minimum recommended hours on these cases, if it went to trial, would make an abysmal eleven dollars an hour.** The Commission likewise recommended that attorneys spend at least 83.6 hours for felony 1 cases, which carry a sentence up to life in prison and include cases such as murder or aggravated sexual assault. **An attorney who spent that amount of time would make \$10.70 an hour while performing some of the most intensive, stressful work imaginable.**

And this hourly-estimate is a conservative one. A new workload standard study suggests that for murder cases, attorneys should spend on average 248 hours, for serious sex cases, 167 hours, for other serious felonies, 99 hours.¹² **An attorney who did that amount of work on a murder case that went to trial and received a flat fee would make \$3.60 an hour. An attorney who did that amount of work on a serious, aggravated sexual assault case would make \$5.39 an hour.**

Or, attorneys could do the bare minimum amount of work for their client, process their clients through court, and collect nearly the same amount of money - effectively raising their hourly rate by reducing their advocacy for their clients.

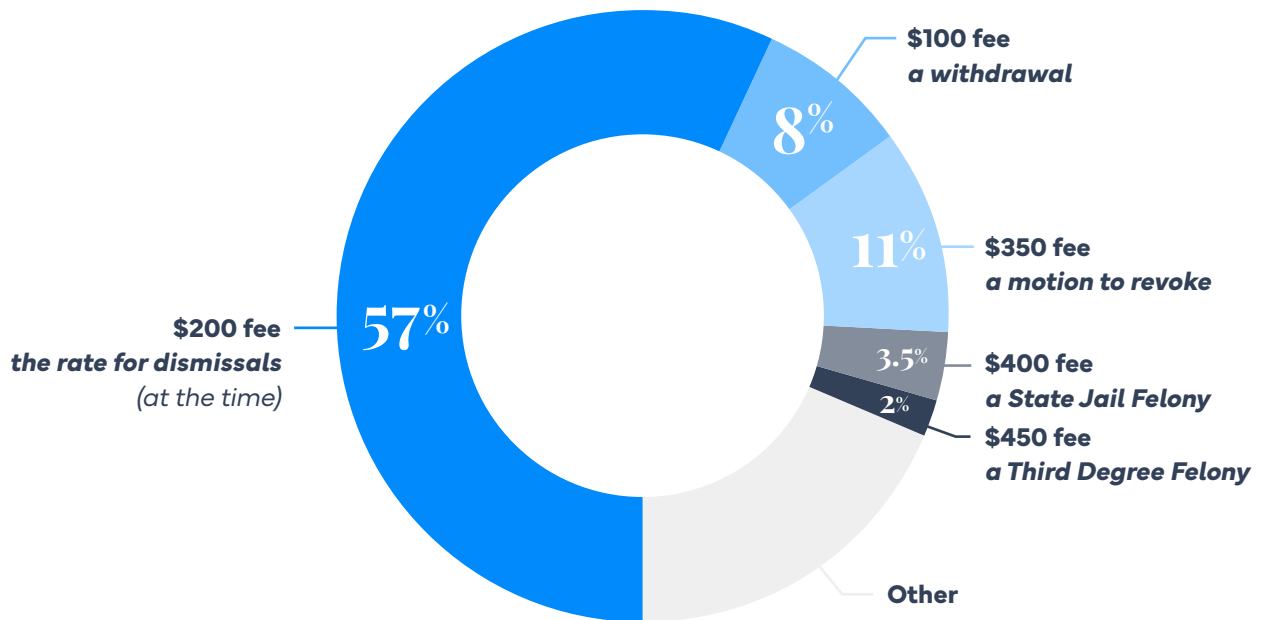
Nueces County’s rate per hour falls behind that provided in many jurisdictions.

Nueces County’s rate per hour falls behind that provided in many jurisdictions. At the federal level, including in Nueces County, attorneys on non-death penalty cases earn \$164 *per hour* for both in-court and out-of-court time.¹³ In Dallas County, attorneys who elect to bill by the hour can charge \$100 for each hour of their time, and if they decide to accept a flat fee, nonetheless receive a daily rate for each day in a contested trial.¹⁴ In Galveston County, attorneys receive \$100 an hour for felonies on the mental health wheel and \$85 an hour for felony 1 cases— a rate that is too low but far exceeds what Nueces lawyers make if they do the required number of hours on a case.¹⁵

Unsurprisingly, voluminous research demonstrates that flat fees incentivize poor performance. A study conducted in six counties in North Carolina, for example, found that changing lawyer compensation from an hourly rate to a flat fee led to reduced attorney effort. Lawyers under a flat fee system reported spending 11% fewer hours on indigent cases, disposed of their cases 25% faster, and were 36% more likely to dispose of a case on the same day as their first meeting with their client.¹⁶ Additionally, under the flat fee compensation system, people were 11% more likely to be convicted and almost 37% more likely to be incarcerated, a result largely driven by an increase in guilty pleas.¹⁷ Likewise, a RAND study in Philadelphia evaluating capital murder cases found that the flat fee system seriously disincentivized adequate work in capital cases.¹⁸

Nueces County purportedly allows attorneys to bill for their time by the hour if they perform more work than the flat fee anticipates, but this rarely happens and the County has not made it clear when billing hourly is acceptable.

According to the 2021 Court Appointed Attorneys Report, of the over 6,500 cases paid in 2021:



By our calculations, lawyers received over \$1,000 in just 80 cases during that year.¹⁹ By comparison, a 2012 study of cases in Nevada estimated that non-capital murder cases performed by court appointed attorneys cost \$75,125 per case.²⁰

While it is hard to know why attorneys do not bill by the hour and then perform more work for their clients while taking fewer cases, some attorneys report that judges will often not pay the full amount of their invoices after they have completed work. If true, an attorney could perform hundreds of hours preparing for a trial in a murder case, file a voucher after the case resolves, and receive just \$900 dollars for their work.

These flat fees also may discourage lawyers from doing the hard work required for critical results like dismissals. Dismissals are obviously the best outcome for the client– the client has no conviction and does not have to go through a trial to get that result – and yet lawyers receive just \$300 for them in felony cases and \$200 in misdemeanor cases. Achieving a dismissal, however, often requires tremendous work, sometimes the same amount of work required to prepare for a trial. Attorneys conduct robust investigations, take witness statements, engage

experts to challenge forensic evidence, and then use all of that work to convince a prosecutor that the dismissal is a just outcome. But for \$200–300 per dismissal, attorneys simply cannot afford to put in the amount of work required to get that result.

This low rate may mean that many cases that are going to trial should have resulted in dismissals, or, also likely, that many people are spending unnecessary time in jail waiting for a prosecutor to review their cases. This latter result is a distinct possibility given the high number of dismissals seen out of the District Attorney’s office in the last few years.²¹

II. Lawyers in Nueces County Are Taking Too Many Cases

Perhaps because of the low pay, or perhaps because of a troubling culture, many lawyers in Nueces County take on more cases than they can possibly handle. **One of the top earners in Nueces County was paid for 470 cases in 2022– 63 juvenile cases, 295 adult felony cases, 111 adult misdemeanor cases, and one felony appeal.** Assuming this lawyer spent 40 hours per week on case-related work, and worked 52 weeks a year with no vacation or sick leave, this attorney could spend no more than 4.4 hours on each case, which would have to include waiting at the jail, driving to investigate, or sitting in court waiting on a hearing.

Of the top ten earning lawyers who took court appointments in Nueces County in 2022, every single attorney had a case load above 200.

Indeed, of the top ten earning lawyers who took court appointments in Nueces County in 2022,²² every single attorney had a case load above 200. Although this information is publicly available, we have elected not to include attorney names in this report. The problem is a systemic one.

| | Payment | Caseload |
|--------------------|--------------|----------|
| Attorney 1 | \$222,594.00 | 438 |
| Attorney 2 | \$214,562.50 | 244 |
| Attorney 3 | \$208,614.00 | 470 |
| Attorney 4 | \$190,443.84 | 240 |
| Attorney 5 | \$155,495.00 | 286 |
| Attorney 6 | \$150,737.00 | 324 |
| Attorney 7 | \$128,747.00 | 262 |
| Attorney 8 | \$126,290.00 | 266 |
| Attorney 9 | \$124,270.50 | 277 |
| Attorney 10 | \$101,581.61 | 258 |

The above numbers include appointments from other counties. **Examining only Nueces County appointments, 21 court-appointed attorneys had caseloads of 150 or more from the county in 2022.²³ Combined, those attorneys handled 46.5% of the 9,153 court appointments paid out that year in Nueces County.**

These caseloads are unfathomably high. The RAND Corporation’s recent workload study on indigent defense recommends attorneys handle no more than 7 felony cases that carry a life sentence (and then no other cases), 8 murder cases (and then no other cases), 21 felony-high cases (and then no other cases), or 59 felony-low cases per year (and then no other cases).²⁴ RAND made this calculation assuming that lawyers had 2,080 hours a year to work, which, it acknowledged, is an extremely high estimate, because those hours do not include work spent on activities unrelated to adult criminal case representation – like travel and billing.²⁵ Likewise, in Texas, a 2015 study ordered by the 83rd Texas Legislature, recommended an annual caseload of no more than 77 first degree felonies, which in Texas includes offenses like murder, trafficking in persons, kidnapping, aggravated robbery, and aggravated sexual assault.²⁶ Nearly all court appointed attorneys in Nueces have caseloads that far exceed these recommendations.

As discussed earlier, many of these lawyers take appointments in both Nueces County and other neighboring jurisdictions, adding to the already crushing workload. Lawyers who take cases in both Nueces County and neighboring San Patricio or Aransas Counties, for example, must drive 30 minutes one way between the two courthouses and jails to see their clients. Witnesses are sometimes not located particularly close together, so an attorney may need to drive all over the region to conduct interviews (time for which they are not compensated). It is simply impossible for many of the court appointed attorneys to handle all of their cases.

III. There Are Not Enough Lawyers To Take Cases

Perhaps because of the low compensation, there are not enough lawyers to take on court appointments in Nueces County. One-third of the County’s attorneys left the indigent defense wheel from 2019 to 2022, but the number of criminal cases did not see the same decrease. These departures only exacerbated the excessively high caseloads for the remaining appointed attorneys. In 2022, according to indigent defense data, Nueces County paid just 103 lawyers to take appointments. But 60 lawyers handled 90% of the cases that the county paid that year – or over 8,374 cases.²⁷ Simply put, Nueces County needs more lawyers taking court appointments.

IV. Clients Do Not Meet Their Lawyers at Magistration

According to interviews, some clients in Nueces County have no idea who their lawyers are for some time. Once someone is arrested, the Sheriff’s Office books them into the correctional system. Their first court appearance, or “magistration,” is in front of a magistrate judge, who determines whether to set bail and at what amount, all without an attorney present to advocate for the accused person. During the magistration process, an attorney is appointed to indigent clients via facsimile.²⁸ However, with the exception of a small pilot program that is being run with Texas A&M researchers, the attorneys are never

60

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present at magistration and do not have an opportunity to meet with their clients. According to interviews, indigent clients are told they will be assigned an attorney, but they do not always receive their lawyer's name or contact information, which means they do not know how to find them. Similarly, attorneys sometimes receive outdated contact information for their clients.

This gap presents a major problem in representation. If an attorney cannot meet with a client in the jail before his or her release, the lawyer is sometimes unable to make contact with their client, especially if the client does not have a permanent address. The lawyer cannot effectively start the investigation or build trust with the client. And they also cannot notify their client about court dates or conditions of release, which may result in missed court dates and then judges issuing warrants for their client's arrest.

V. Lawyers Are Not Requesting Investigators

The Wren Collective requested data on how the number of investigators paid for work between January and June of 2023. **In total, the court paid investigators on just seven cases in that time span.**²⁹ Interviews with both judges and attorneys corroborate this data, as they told us attorneys rarely request investigators except in the most serious cases, and even then, there is a lack of qualified investigators to hire.³⁰

Defense attorneys have a duty to investigate all cases, regardless of an accused's admissions or statements to the attorney that suggest guilt.

Investigators are the lifeblood of criminal defense work, as they help unearth evidence that can undermine the government's case or even prove a client's innocence. As the American Bar Association Guidelines make clear, defense attorneys have a duty to investigate all cases, regardless of an accused's admissions or statements to the attorney that suggest guilt.³¹ Investigators have unique skills and expertise that lawyers do not have, and are responsible for interviewing witnesses, surveying the crime scene, and gathering records and other evidence that negate or undermine the prosecution's theory. Most importantly, thorough investigations win cases. And though lawyers can investigate their own cases, they cannot do so single-handedly, because otherwise, they risk becoming a witness in the client's case. If the lawyer interviews an inculpatory witness and catches him in a lie, for example, the only way to introduce the inconsistency is through the person who overheard the statement— and in this case, that would be the lawyer. Thus, an investigator must be present for all interviews, even if the lawyer also attends.

This failure to request and find investigators puts the defense at an enormous disadvantage in what should be a true adversarial process. Prosecutors have the advantage of having investigators on every case: the police department. Those investigators talk to witnesses and review evidence and are available to assist the prosecutor throughout the life of the case, free of charge to that office. The defense does not have this luxury, but absolutely should have access to the same resources to preserve the fundamental right to a fair trial for each accused person.

VI. Lawyers Are Not Requesting Experts

Data and interviews with judges and lawyers also reveal that lawyers rarely request appointment of social workers or experts, to their client's detriment. **Between January and July of 2023, attorneys requested experts in just 37 cases.**³² This failure to utilize experts is problematic, because mental health experts and social workers can dramatically improve client outcomes. Social workers and other mental health professionals are able to gather powerful mitigating evidence that explains a client's behavior and contextualizes the crime within the client's life history. They are able to address mental health issues, connect clients with community-based providers, and collaborate with the defense attorney to identify alternative sentencing plans that are focused on treatment and rehabilitation and may help the client avoid prison time. They also help lawyers prepare for competency hearings.

Interviews also revealed that lawyers are not regularly requesting other types of experts, including those who specialize in reviewing forensic evidence, even though there are cases in Nueces County that involve complex fingerprint, ballistics, or DNA evidence. Texas has a long history of flawed use of DNA evidence. Despite this, defense lawyers acknowledged that forensic evidence is rarely challenged, either because of a need for training on the appropriate use of experts, a severe lack of available experts in the jurisdiction, or both.

VII. Lawyers Are Not Requesting Immigration Assistance

Our interviews also revealed that attorneys are rarely consulting an immigration attorney for assistance on explaining the potential immigration consequences of particular case outcomes to their clients, nor are they receiving any training on the issue. In *Padilla v. Commonwealth of Kentucky*, the Supreme Court held that noncitizen clients must be advised by their criminal defense attorneys about the deportation risks of a guilty plea. Failure to do so constitutes ineffective assistance of counsel. Corpus Christi sits on the Gulf of Mexico and is just 150 miles from the Mexican border. 8.6% of Corpus Christi residents are immigrants, and it is estimated that 60% of the non-citizen immigrant population is undocumented.³³

8.6%

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VIII. Lawyers Receive Inadequate Training

Lawyers in Nueces County do not receive any meaningful training on how to be a zealous advocate. Law school teaches many things, but it rarely teaches robust trial skills. Students might do a mock trial class or a legal clinic, but most leave law school with few practical skills. And then they enter the courtroom.

Many public defender and managed counsel offices have vigorous training on trial skills, issue spotting— like how to tell if there might have been an illegal search – how to challenge forensic evidence, and how to prepare for a sentencing hearing through mitigation investigation. Lawyers receive mentors, and then have regular required trainings throughout the year.

Nueces County, on the other hand, has no centralized training system, not even for new attorneys. They primarily learn on the job. Some attorneys are fortunate enough to be mentored by an older attorney, but even that does not ensure that attorneys are properly trained. It is difficult for lawyers to be zealous advocates without adequate training and education that makes them aware of their ethical and professional duties towards their clients.

IX. Judicial Control Creates a Serious Conflict Of Interest For Defense Attorneys

Nueces County's indigent defense system suffers from a structural problem: it is not independent from the judiciary. A criminal defense lawyer's mission is simple. The lawyer must zealously advocate on behalf of the client, who is facing one of the worst moments of his or her life. Unfortunately, judicial control of a defense system creates divided loyalties. In Nueces County, the judges control who is able to take appointments, whether they remain on the appointment list, how often they are appointed to cases, how much they are paid, whether the lawyer's experts and investigators are compensated, and when a case goes to trial.

The judge's control over a defense lawyer's entire livelihood creates an unsustainable risk that the lawyer will make decisions not on what is best for the client, but on what makes the judge the happiest. This possibility is why nearly every major criminal defense organization advocates against judicial control over indigent defense.³⁴

Fear of inconveniencing or angering judges has the potential to impact every stage of representation. Subconsciously or not, judicial control of the appointment system can impact attorneys' willingness to ask for the resources that they need to adequately represent their clients. Attorneys may be reluctant to request investigators or experts, especially where many types of experts are necessary. They may not want to ask for a continuance, even when they need more time to prepare. They may not file all of the motions necessary to protect their clients, because they fear the judge will be angered by it. Lawyers whose livelihood depends on the judges also may temper their advocacy when faced with an unhappy judge, forcing them to shut down their own arguments even when they know they must say more to protect their client or preserve a record for appeal. Our interviews reveal that this tension does impact lawyer behavior—especially attorneys' willingness to request resources.

Part 2:

Solutions To The Indigent Defense Crisis in Nueces County

In one interview, a stakeholder told us that “[i]ndigent defense here is a charade.” Given the high caseloads, the small number of lawyers on the appointment list, the lack of training, and the failure of many lawyers to zealously investigate the government’s case, that conclusion is not an exaggeration. Nueces County is operating a system of defense that is largely a plea mill, where poor people are rapidly shepherded through a guilty plea and conviction in all but the rarest of cases, like when the District Attorney drops the case.

Numerous studies indicate that public defenders consistently outperform private defense attorneys and appointed counsel, in part because of their access to resources, investigators and social workers, and training.

There has been a bright spot: last year, the County agreed to open a small public defender office to handle mental health cases. This was a notable and laudable development because Nueces County was one of the largest counties in Texas without one. The office, headed by a well-respected member of the local defense bar, is expected to represent 45% of the mental health related cases and 13% of the non-mental-health related cases.³⁵ That is a critical step. Numerous studies indicate that public defenders consistently outperform private defense attorneys and appointed counsel, in part because of their access to resources, investigators and social workers, and training. Their work leads to reduced time spent in jail, lower recidivism rates, and shorter case times, to name a few.³⁶

The creation of a local public defender is much needed and long overdue. It is a tremendous opportunity for change, and has been met with excitement from most entities in Nueces County. The County should be commended for its understanding of and attention to this fragile subset of an already vulnerable population and its initiative in supporting the creation of an institutional public defender. It should continue pushing for its expansion, and funding it.

But until the county massively expands the public defender, its existence will not even put a dent in the problems inherent in Nueces County’s system. We therefore recommend the following changes:

I. Increase Hourly Rates And Set Case Limits

It will be virtually impossible for Nueces County to improve the quality of defense until it switches from a flat fee system to an hourly rate. As it stands, attorneys cannot make an adequate living taking court appointments unless they take on too many cases, in which case the provision of defense suffers. All judges should move to an hourly system to encourage and allow for more work on the case.

Likewise, there must be caps on the number of clients an attorney can have, and that cap must consider cases taken by attorneys not only in Nueces County, but elsewhere. We recommend that the cap should mirror the one recommended by the new RAND study, but at minimum, attorneys should have no more cases than that recommended in the 2015 Texas study.

II. Develop An Independent, Managed Counsel System

To complement the public defender, Nueces County should establish a Managed Assigned Counsel (MAC) system. Many large counties in Texas have successfully employed a MAC.³⁷ The MAC oversees all appointments, decides who is qualified to take cases and at what level, and can also hire and train investigators and social workers.

A MAC can solve numerous problems in Nueces County. Effective MACs can provide critical training for the defense bar and train and house skilled investigators, social workers, and an immigration attorney who can consult with criminal lawyers. Unlike judges, who have numerous other responsibilities, the MAC oversight commission can develop regular training and mentorship programs for lawyers, which will both help with improving trial skills but also retention, as new lawyers will feel supported. MACs also can house a cadre of investigators and social workers and provide regular training for them, filling a major gap in the resources currently available in Nueces County. In 2016, for example, the Travis County MAC started hiring forensic social workers to be part of the defense team and help lawyers better represent clients with mental illness and trauma.³⁸ The Travis County MAC likewise trains its investigators on best practices, creating a team of qualified individuals to do one of the most important jobs in criminal defense. Likewise, it can also house immigration attorneys who help lawyers give accurate, constitutionally compliant advice.

MAC oversight commissions can monitor attorney performance and remove attorneys if necessary. MACs provide an independent venue for clients to lodge complaints about their representation, free from fear that a judge will penalize them in sentencing. MAC oversight attorneys can then investigate those complaints and, where valid, take corrective action, help to mediate them, or provide a new lawyer. They can also receive complaints from judges. They can examine jail visitation logs, and also see when attorneys are failing to utilize investigators and social workers, as all requests for case assistance will run through them. They can review dockets and the case management system to see if motions are being filed. Unlike judges, quality control will be perhaps the most important part of their job.

A MAC can set appointment limits and monitor attorney caseloads across counties. As explained earlier, attorneys in Nueces County currently have caseloads that fall well above acceptable levels. Some of these high caseloads are shielded from review unless the appointing body examines a lawyer's caseload not just in Nueces County, but in all other neighboring

counties as well. A MAC oversight panel can expend the time to set a limit on appointments and then monitor whether attorneys are exceeding them by taking cases in other locations. If they are, the MAC can put a hold on the attorney's ability to accept cases in Nueces County.

A MAC can also indirectly help reduce the jail population. First, it can appoint attorneys right at magistration, ensuring that clients know how to find their lawyers, and vice versa. The MAC can also ensure that the client is receiving a visit from their lawyer within the first few days of appointment, and monitor whether attorneys are filing pre-trial release motions in cases where their clients can safely go home to their communities. If a client has trouble finding their lawyer, they can contact the MAC.

A MAC can also provide more transparency into how the criminal defense system operates, and where it must be fixed. Right now, defense representation in Nueces County is largely a black box, and Wren had significant trouble trying to get data requests fulfilled. But a MAC will be able to set up its own case management system, and in turn it can easily collect data and put out reports on the hours worked by lawyers on cases, the number of times lawyers used investigators, social workers, and immigration assistance, and any number of markers that shed light onto whether the system of defense is doing what it should: providing clients with zealous advocates.

Finally, a MAC may assist with attorney recruitment and retention. Young lawyers need and often crave mentorship and community, neither of which are provided in a system that relies on solo practitioners. With a MAC, Nueces County can start attracting recent law graduates committed to indigent defense who also know they need training and support to do it well.

III. Increase Data Access To Monitor Defense Quality

Nueces County lacks a robust data monitoring structure to track things like jail visits, investigative and expert resources used, or motions filed. This failure to systematically collect and then make public data can easily mask a poor culture of representation. There are any number of research institutions and grant foundations willing to invest in improving data collection and transparency in the criminal legal system. Nueces County should partner with these institutions.

IV. Financial Considerations

Financial considerations animate all policy decisions made in Nueces County. And currently, those concerns are serious, as officials are grappling with a multi-million dollar deficit stemming from a dispute in valuations of two local refineries.³⁹

But even if the County increases wages and establishes a MAC, the County may still see cost savings. In 2017, the Texas Indigent Defense Commission put out a study finding that the MACs in Texas saved counties considerable money for several reasons.⁴⁰ First, MAC attorneys worked more diligently to get their clients out of jail, reducing the jail population. This is critical in Nueces County, as the jail is currently at capacity. MACs also reduce the time judges and court staff must spend on appointments, examining vouchers, or ruling on requests for investigators or social workers, cutting down substantially on the judiciary's need to do administrative work.

But in the end, regardless of whether the County would save money or not, Nueces County cannot make up for budget gaps on the backs of poor people facing a loss of their freedom. If the County believes it cannot provide adequate defense with the money it has, it should work with TIDC to help fund a more robust indigent defense system. It is what *Gideon* demands, and the promise of *Gideon* has eluded the county for too long.

Endnotes

- ¹ 372 U.S. 335, 345 (1963).
- ² *Ineffective Lawyers*, THE EXONERATION PROJECT, <https://www.exonerationproject.org/issues/ineffective-lawyers/#:~:text=According%0to%20the%20National%20Registry,defense%20was%20a%20contributing%20factor> (last visited Sept. 25, 2023).
- ³ The Wren Collective works at the intersection of research and policy to push for a more just legal system in America.
- ⁴ TEX. CTS., OFF. OF CT. ADMIN., 2022 dataset for County and District Courts, available to run at <https://card.txcourts.gov/> (also on-file with the Wren Collective).
- ⁵ *Indigent Defense Data for Texas: Nueces County Dashboard*, TEX. INDIGENT DEF. COMM'N, <http://tidc.tamu.edu/public.net/Pages/CountyDashboard.aspx?cid=178> (last visited Sept. 14, 2023).
- ⁶ NICHOLAS M. PACE, ET AL., NATIONAL PUBLIC DEFENSE WORKLOAD STUDY (2023) [hereinafter Rand Workload], https://www.rand.org/pubs/research_reports/RR2559-1.html.
- ⁷ See, e.g., PRESIDENT'S COUNCIL OF ADVISORS ON SCI. AND TECH., EXEC. OFF. OF THE PRESIDENT, FORENSIC SCIENCE IN CRIMINAL COURTS: ENSURING SCIENTIFIC VALIDITY OF FEATURE-COMPARISON METHODS (2016), https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/PCAST/pcast_forensic_science_report_final.pdf.
- ⁸ NUECES CNTY., TEX. DIST. CTS., ATTORNEY FEE VOUCHER (2023), <http://tidc.tamu.edu/IDPlanDocuments/Nueces/Nueces%20District%20Court%20Attorney%20Fee%20Schedule.pdf>.
- ⁹ *Id.* at 1.
- ¹⁰ DOTTIE CARMICHAEL, ET AL., PUB. POL'Y RSCH. INST., GUIDELINES FOR INDIGENT DEFENSE CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION (2015) [hereinafter TIDC 2015 Workload], <https://www.tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf>.
- ¹¹ See TEX. ATT'Y GEN., PENAL CODE OFFENSES BY PUNISHMENT RANGE (2018), 21-22, <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/criminal-justice/PenalCode-Offenses-byRange.pdf>.
- ¹² See Rand Workload, *supra* note 6, at 85 tbl.4.5.
- ¹³ *Payment Rates*, U.S. DIST. & BANKR. CT., S. DIST. OF TEX., <https://www.txs.uscourts.gov/page/payment-rates> (last visited Sept. 14, 2023).
- ¹⁴ DALL. CNTY., TEX., CRIMINAL DISTRICT COURT SCHEDULE OF FEES FOR THE COMPENSATION OF APPOINTED COUNSEL (2021), https://www.dallascounty.org/Assets/uploads/docs/courts/criminal_district/FeeSchedule.21-20210721.pdf.
- ¹⁵ GALVESTON CNTY., TEX., ATTORNEY FEE VOUCHER, <https://www.galvestoncountytexas.gov/home/showpublisheddocument/13900/637952193002230000> (last visited Sept. 14, 2023).
- ¹⁶ Andrew J. Lee, *Flat Fee Compensation, Lawyer Incentives, and Case Outcomes in Indigent Criminal Defense* (Job Market Paper, 2021), https://andrewlee543.github.io/files/AndrewLee_JMP.pdf.
- ¹⁷ *Id.* at 3-4, 24-25.
- ¹⁸ James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes* 32 (Rand Corp. Working Paper, 2011), https://www.rand.org/content/dam/rand/pubs/working_papers/2011/RAND_WR870.pdf.

- ¹⁹ Data on file with the Wren Collective, derived from the Nueces County 2021 Court Appointed Attorneys Report. See NUECES CNTY., TEX., COURT APPOINTED ATTORNEYS REPORT (2021), <https://www.nuecesco.com/home/showpublisheddocument/28688/637865837458500000>.
- ²⁰ TERANCE D. MIETHE, ESTIMATES OF TIME SPENT IN CAPITAL AND NON-CAPITAL MURDER CASES: A STATISTICAL ANALYSIS OF SURVEY DATA FROM CLARK COUNTY DEFENSE ATTORNEYS (2012), <https://dpic-cdn.org/production/legacy/ClarkNVCostReport.pdf>.
- ²¹ Taylor Alanis, *Nueces County Dismissed Three in Four Criminal Cases over Three Years*, KRIS 6 NEWS, (Aug. 3, 2022), <https://www.kristv.com/nueces-county-dismisses-nearly-three-in-four-criminal-cases-over-three-years>.
- ²² These individuals are not necessarily the top-earners within Nueces County, as they take cases and therefore earn appointments across the county.
- ²³ Data on file with the Wren Collective, derived from Texas Indigent Defense Commission data. See *Indigent Defense Data for Texas: Texas Counties*, TEX. INDIGENT DEF. COMM'N, <http://tidc.tamu.edu/Public.Net/> (last visited Sept. 14, 2023) (click "Attorney Caseload Report" under "County ID Expenditures & Cases"; then select "Nueces" under "County") [hereinafter TIDC Database].
- ²⁴ See Rand Workload, *supra* note 6, at xii tbl.S.1.
- ²⁵ TEX. INDIGENT DEF. COMM'N, PLANNING STUDY: NUECES COUNTY PUBLIC DEFENDER OFFICE (2022), <https://www.scribd.com/document/570625301/Planning-Study-Nueces-County-PDO-2022>.
- ²⁶ See TIDC 2015 Workload, *supra* note 10, at 34.
- ²⁷ Data on file with the Wren Collective, derived from TIDC Database, *supra* note 23.
- ²⁸ Stakeholders reported that the magistrate court sends a facsimile of the paperwork to the appointed counsel, and counsel signs and returns the document to accept the appointment.
- ²⁹ Data on file with the Wren Collective.
- ³⁰ The Wren Collective was so surprised at this small number that it called the auditor's office, who confirmed that she rarely received requests for investigator payments.
- ³¹ AM. BAR ASS'N, CRIMINAL JUSTICE STANDARDS: DEFENSE FUNCTION, PART IV (4th ed. 2017) available at https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/.
- ³² Data on file with the Wren Collective.
- ³³ Jim Lee, *Immigrants in Corpus Christi*, ECON. PULSE, no. 10, 2017, http://stedc.tamucc.edu/files/Econ_Pulse_2017_10.pdf.
- ³⁴ See AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 2 n.2 (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-603-public-def-principles-2023.pdf ("The public defense function, including the selection, funding, and payment of defense counsel, is independent.").
- ³⁵ Chase Rogers, *Here's who will serve on the oversight board for Nueces County's public defender's office*, CORPUS CHRISTI CALLER-TIMES (June 22, 2022), <https://www.caller.com/story/news/2022/06/22/texas-nueces-county-public-defender-office-oversight-board-who/7640042001/>.
- ³⁶ MAGGIE BAILEY, UNC SCH. OF GOV'T CRIM. JUST. INNOVATION LAB, EMPIRICAL RESEARCH ON THE EFFECTIVENESS OF INDIGENT DEFENSE DELIVERY SYSTEMS (2021), <https://cjil.sog.unc.edu/wp-content/uploads/sites/19452/2021/02/Research-on-Indigent-Defense-2.19.20.pdf>.
- ³⁷ See TEX. CODE CRIM. PROC. ANN. art. 26.047 (West 2011). By statute, any Commissioners Court in Texas may ask a governmental entity, a bar association, or a nonprofit corporation to oversee the appointment system.

- ³⁸ See *Social Worker, Cap. Area Private Def. Serv.*, <http://www.capds.org/social-worker.html>.
- ³⁹ Bryan Hofmann & Rachel Denny Clow, *Nueces County budget shortfall has officials planning for layoffs and cuts to services*, KRIS 6 News (June 29, 2023), <https://www.kristv.com/news/6-investigates/nueces-county-budget-shortfall-has-officials-planning-for-layoffs-and-cuts-to-services>.
- ⁴⁰ TEX. INDIGENT DEF. COMM'N, PRIMER ON MANAGED ASSIGNED COUNSEL PROGRAMS (2017), <https://www.tidc.texas.gov/media/8d87ba4edab9eb1/managed-assigned-counsel-primer.pdf>.