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<u>Data Investigation Report: Indigent Defense Disparities in Texas</u>

Introduction

Texas' Indigent Defense System came to resemble its current state after the passage of the Fair Defense Act, a landmark piece of legislation that mandated all criminal courts adopt some formal procedures for providing lawyers to indigent defendants. This legislation was first proposed in 1991 and later passed by the legislature in 1999, but then-Governor Bush vetoed it. The final iteration of the bill, SB7, was signed into law by Governor Perry in 2001. The new statewide standards for public defense in Texas established by SB7 include the prompt appointment of counsel, quality standards for lawyers, and state funding.[1] Before this legislation, the indigent defense system had been entirely regulated and funded at a county-wide level. Texas' indigent defense system has improved significantly since 2001. There are currently 18 public defense offices serving more than 100 counties, compared to only seven offices in 2001.[2] Harris County, which includes the city of Houston and has a population of 4.5 million, is one of the counties that is newly served by these offices. The bill offers significant flexibility to counties in how they meet the standards set forth by the law to account for the fact that counties systems were very different upon passage of this bill. According to an evaluation conducted in 2005 of the implementation of the Fair Defense Act, must counties had for the most part been successful in adapting to the requirements of the law.[3]

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[1] Brooks et al. "Texas Enacts Landmark Reforms."
[2] Brooks et al. "Texas Enacts Landmark Reforms."
[3] Carmichael et al. "Study to Assess the Impacts of the Fair Defense Act on Texas Counties (2005)."

Research Question

       While the Fair Defense Act made many improvements, there are still many problems with the system of indigent defense in Texas. Statewide expenditures cover a marginal and shrinking portion of the costs of indigent defense. The current funding structure suggests that there may still exist disparities in quality and funding between different counties in Texas. Hence, the research question of this investigation is "Are certain communities disproportionately impacted by the problems in Texas' Indigent defense system?" I will explore this question by performing an intersectional analysis of the demographics of the counties of Texas. I will examine the issues of high caseloads, which can cause a myriad of problems for a public defense system. High caseloads can prevent attorneys from being able to allocate enough time to each case and thus provide adequate counsel. This metric can serve as an indication of the quality of defense in each county. I am interested in how high caseloads, a well-researched problem in public defense, impacts different populations in Texas differently. Specifically, I will explore if communities of color disproportionately experience the problem of high caseloads in Texas.

Current Research

       The "public defender problem" is well-documented and well-researched. In light of the 50th anniversary of *Gideon V. Wainwright*, the Supreme Court decision which established the right to public defense, a body of research emerged to evaluate to what extent the ruling has been realized.[4] Scholars often refer to this decision as the "unfunded mandate" because the decision did not specify a funding method for this system of public defense.[5]

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[4] Gross, J. "Gideon at 50: A Three-Part Examination of Indigent Defense in America."
[5] Giovanni et al. *Gideon at 50: Three Reforms to Revive the Right to Counsel*.

There is also evidence of racial bias in the public defense system on an individual level showing that attorneys treat their clients differently based on their race.[6] This research project is not interested in the problem of racial bias against individuals but instead if this problem extends to system-wide differences in quality of defense based on race, potentially due to inequitable resource allocation. Additionally, this paper was on a national scale and not specific to the state of Texas.

Another branch of research studies "holistic defense," the idea that people who utilize public defenders often experience a myriad of other systemic issues and thus it is difficult for an attorney to look at their case in isolation from these other factors.[7] I see this investigation of the confounding impacts of socio-economic, racial, and legal issues faced by a county aligning with this idea of holistic defense.

The Data

The data I use is from the Texas Indigent Defense Commission, a group established under the Fair Defense Act. Their mission is to "[provide] financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of the local communities and the requirements of the Constitution and state law.[8] As part of this mission, TIDC issues grants to counties for things like technical support resources and funds the Innocence Project at different law schools in Texas.[9] The commission also collects data on the current state of indigent defense and makes it publicly available. The dataset utilized in

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[6] Richardson et al. "Implicit racial bias in public defender triage."
[7] Frederique, et al. "What is the state of empirical research on indigent defense nationwide: A brief overview and suggestions for future research."
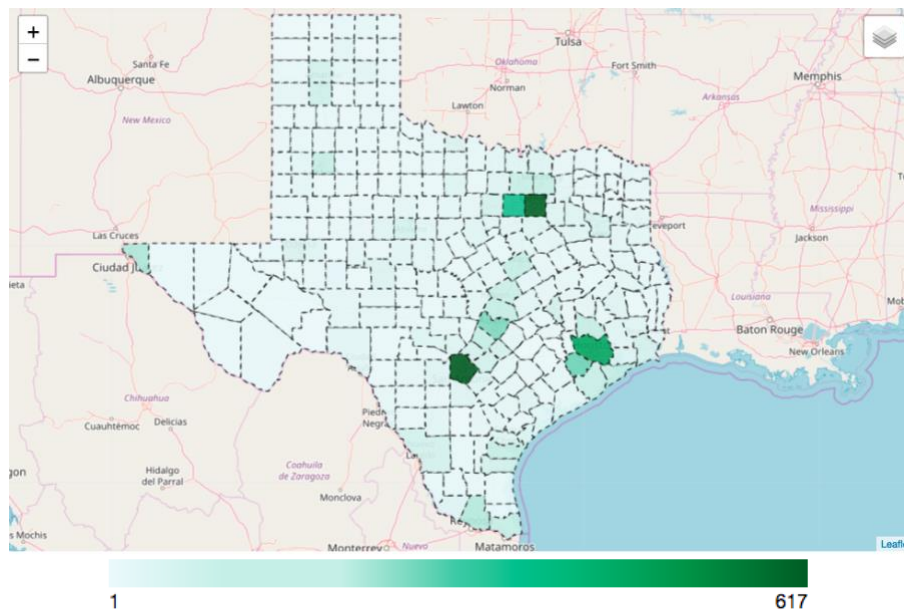[8]" Texas Indigent Defense Commission, *Annual Expenditure Report Fiscal Year 2016.*
[9] Texas Indigent Defense Commission, *Annual Expenditure Report Fiscal Year 2016.*

this project is the Statewide Attorney Caseload Report for 2016, which contains information for each statewide attorney including the amount paid for cases they worked on for the year and in which county the cases took place.[10] Since I am not interested in individual attorneys, I grouped the data by each county to obtain the number of cases per county.

To examine demographics of Texas at a county level for the year of 2016, I utilize The American Community Survey (ACS) which makes estimates in between the census. I selected for different demographic variables to obtain a breakdown of each Texas county by race, poverty levels and language. The mapping discussed primarily in this paper focuses on the African-American community. The data were given in total population numbers, so I converted all amounts to be percentages so that population size would not impact the analysis.
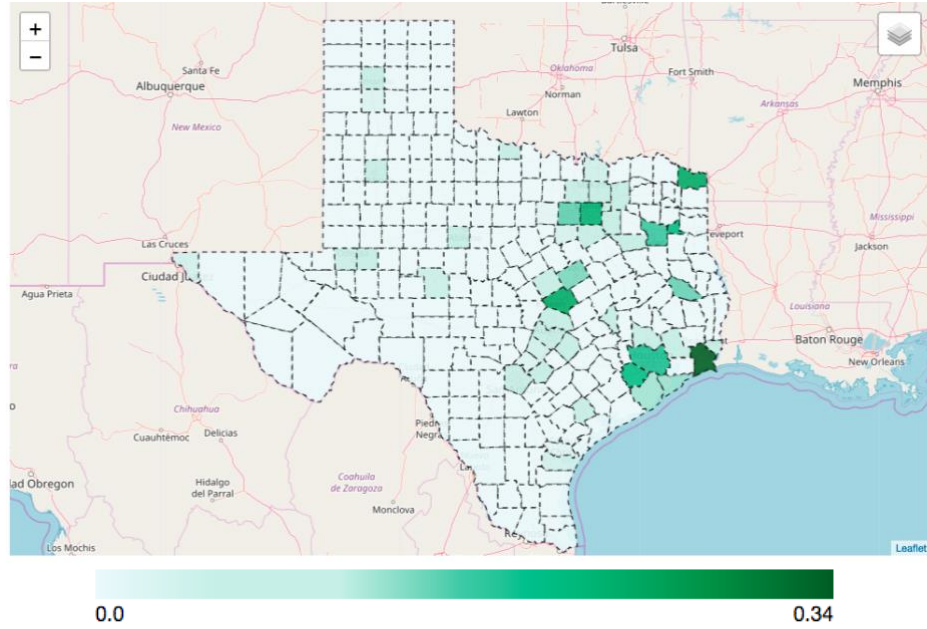
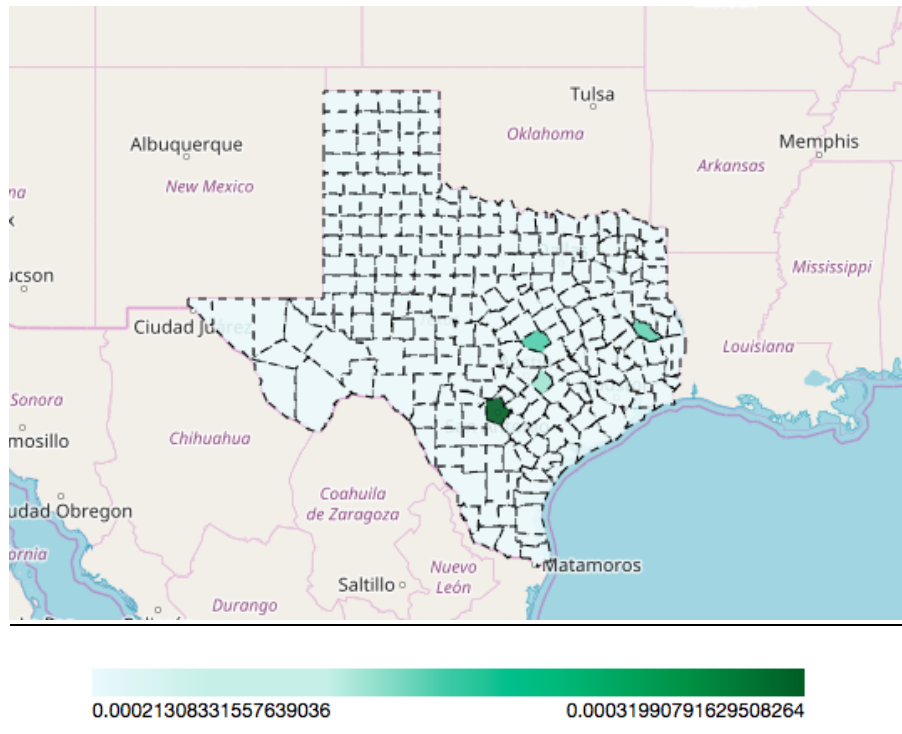*Results*

Map 1: Texas Public Defender Caseload Levels, 2016

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[10] Indigent Defense Data for Texas, *Statewide Attorney Caseload Report FY 2016.* Texas Indigent Defense Commission.

Map 2: African-American Population % by County, Texas 2016

Map 3: Texas Public Defender Caseload per Capita, 2016

Conclusions

This data investigation aimed to explore the impact of Texas' Indigent System on different counties in the state after the passage of the Fair Defense Act. I compared the caseload and funding levels of the indigent defense system in each county to demographics of the county using 2016 data from the American Community Survey and the Statewide Attorney Caseload Report. I used the folium package mapping function in python to map the demographics of the counties, caseload, and caseload per capita. These maps create a visual representation of this problem so that I could quickly identify patterns of how race correlated with higher caseloads.

The evidence from Map 1 and Map 2 suggests that high caseload disproportionately impacts counties that have more substantial black communities. However, this pattern does not hold when we look at Map 3, which takes population into account. This makes sense because counties with high populations should have a higher number of people who utilize any government service, including a public defender's office.

There is still an opportunity for further research and analysis in this dataset. The main limitation of this research is that it focuses on urban areas. The indicators of a weak defense system selected, underfunding and high caseload, may not be useful in looking at rural counties. Other indicators and variables might better reflect the quality of defense in these areas.

In general, most of the research on indigent defense that I reviewed for this investigation fails to take into consideration how the system is further underserving populations of color. I believe there is significant opportunity to study the "public defender problem" further.

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