



# **Review of Jefferson County's Indigent Defense Systems**

**April 17, 2014**



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**MISSION**

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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## **Purpose of Review**

The Texas Indigent Defense Commission (“Commission”) is required to monitor local jurisdictions’ compliance with the Fair Defense Act (“FDA”).<sup>1</sup> The purpose of this review is to promote local compliance and accountability with the requirements of the FDA through evidence-based practices and to provide technical assistance to improve processes where needed. In addition, this review process is designed to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA.

## **Background**

The Commission conducted a fiscal monitoring review of Jefferson County with an on-site visit that was made between August 10 and August 13, 2010. The report identified the use of a felony contract defender system in which a contract attorney would initially be appointed to a case but would be replaced at a later time if the case moved to the trial docket. The issue was brought before the Commission’s Policies and Standards Committee on June 6, 2011. The Committee discussed the issue but did not reach any resolution regarding the automatic replacement of counsel for cases moving to the trial docket. At a meeting of the full Commission on December 1, 2011, a motion was passed that directed staff to perform an onsite review of the contract defender system in Jefferson County.

The focus of the contract defender review was limited to the felony appointment process in Jefferson County as it relates to the contract defender system used by the district courts. Commission staff did not review the other elements of the FDA such as the distribution of appointments, the methods for making misdemeanor appointments, or the methods for making juvenile appointments. Between February 13 and February 16, 2012, staff examined numerous case files and interviewed several court and county personnel and criminal defense attorneys. The report made recommendations regarding the duration of representation by appointed counsel and regarding the use of bond in determining indigence. The County responded to the report recommendations with amendments to its indigent defense plan for felony cases.

In February 2013, Senator Rodney Ellis and Representative Joe Deshotel sent a letter to Jefferson County Judge Jeff Branick (see Appendix B), documenting their concerns about low attorney appointment rates in the County and about the use of bond in determining indigence. In April 2013, Commission staff met with County officials regarding various elements of the indigent defense system, including those addressed by Senator Ellis and Representative Deshotel. The discussion focused on procedures for appointing counsel, and as a result of the discussion, it was agreed that the Commission would conduct a full policy monitoring review to determine whether local practices were meeting the requirements of the FDA and to determine areas where improvements were needed. Judge Branick sent a letter to the Commission requesting this review (see Appendix C). After the discussion, the auditor’s office discovered that it had undercounted the number of cases in which it paid attorneys for indigent cases. The office provided amended reports to the Commission covering the years FY08 through FY12. At its meeting on June 6, 2013, after a motion was passed, the Commission accepted the amended reports.

## **Timeline and Methodology**

Commission staff conducted an onsite policy monitoring review of Jefferson County that included visits to the County between September 30 and October 4, 2013 and between January 6 and January 7, 2014. Throughout this report all references to Commission staff use the term “monitor”. The monitor met with and interviewed the following persons: the district judges hearing felony cases; the

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<sup>1</sup> Tex. Gov’t Code § 79.037(a)-(b).

district judges hearing juvenile cases; the statutory county judges hearing misdemeanor cases; the county judge; the auditor's office; a magistrate judge; a pre-trial services staff person who screens defendants for indigence; court coordinators handling requests for counsel; and criminal defense attorneys. The monitor observed: misdemeanor dockets; Article 15.17 hearings; and juvenile detention hearings. The monitor examined the following records:

- Local indigent defense plans;
- Attorney appointment lists with relevant CLE records;
- Contracts with the felony contract defenders;
- Felony case files in the district clerk's office;
- Misdemeanor case files (obtained electronically) from the county clerk's office;
- Juvenile case files from the district clerk's office;
- Magistrate warning forms from the sheriff's office; and
- Auditor's office data summarizing payments by the County for indigent defense services.

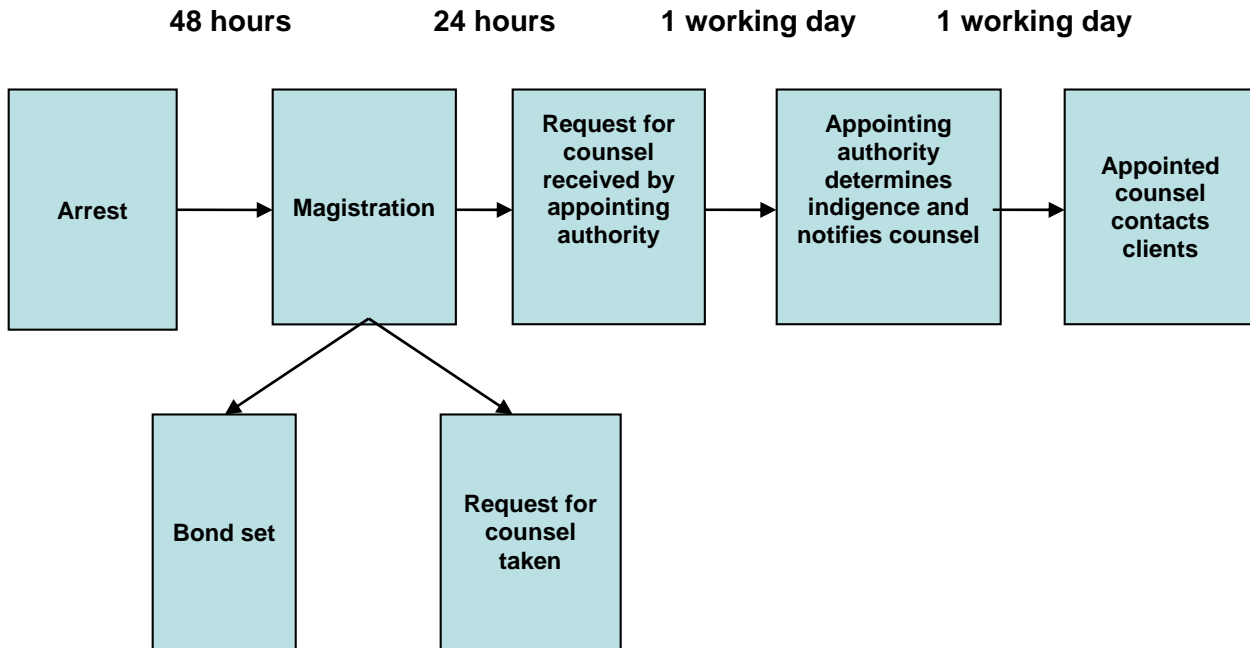
From these interviews, observations, and examinations of records, the monitor compared the County's procedures and performance with the core requirements of the FDA. This policy monitoring review supersedes the previous limited scope review of the contract defender system. In the assessment that follows, the core requirements of the FDA are compared to the County's performance on each of the following requirements:

1. Conduct prompt and accurate Article 15.17 proceedings:
  - Inform and explain right to counsel to accused;
  - Provide reasonable assistance to accused in completing necessary forms to request counsel;
  - Maintain magistrate processing records.
2. Determine indigence according to standards directed by the indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate a standard attorney fee schedule and payment process.
7. Comparison of the felony contract with rules promulgated in Title 1, Subsections 174.1 – 174.25 of the Texas Administrative Code (Contract Defender Rules)
8. Statutory data reporting (required by Section 79.036(e) of the Texas Government Code)
9. Indigent defense plan submission (required by Section 79.036(a) of the Texas Government Code)

## Overview of Jefferson County’s Indigent Defense System

The FDA timeline listed in Figure 1 sets a statutory framework for which jurisdictions must establish local procedures to appoint counsel in adult criminal matters. These local procedures are found in Jefferson County’s District Court Plan for felony cases (see Appendix F) and County Court Plan for misdemeanor cases (see Appendix G). Jurisdictions have wide latitude in how they implement methods to appoint counsel, but the procedures must meet the requirements set by the FDA and by the Commission’s Administrative Rules. This review describes these procedures and assesses the level to which these procedures meet the FDA requirements.

**Figure 1: Fair Defense Act Timeline Model for Counties with Populations Over 250,000**



## Felony Appointment Process

Adults arrested in Jefferson County are brought to the Jefferson County Jail. Article 15.17 hearings are held every morning at 7:00 a.m., and the hearings are normally conducted by retired judges. At Article 15.17 hearings, magistrates treat unfiled cases in a different manner than filed cases. When a case has been filed with the clerk, magistrates will ask arrestees whether they would like to request counsel. When a case has not been filed, magistrates often do not ask arrestees whether they would like to request counsel. If an arrestee has been detained for three working days but no case has been filed, the arrestee is typically given a personal recognizance bond.

If a request for counsel is made at the Article 15.17 hearing, the magistrate warning form is transmitted to the felony courts’ coordinator (i.e. the person given responsibility for appointing counsel to detained arrestees), but the affidavit of indigence is not always included with the magistrate warning form. Since the affidavit of indigence contains the arrestee’s financial information, the courts are unable to make a determination of indigence based on the financial standard listed in the indigent defense plan. Instead counsel is appointed for all detained persons, whether or not there was a request for counsel.

The indigent defense plan established by the judges presiding over felony cases presumes a person to be indigent if his/her income is less than 100% of the federal poverty guidelines or if he/she receives various federal welfare program benefits. According to the plan, the accused’s posting of bail

or ability to post bail may not be considered in determining whether the accused is indigent, except to the extent that it reflects the defendant's financial circumstances.

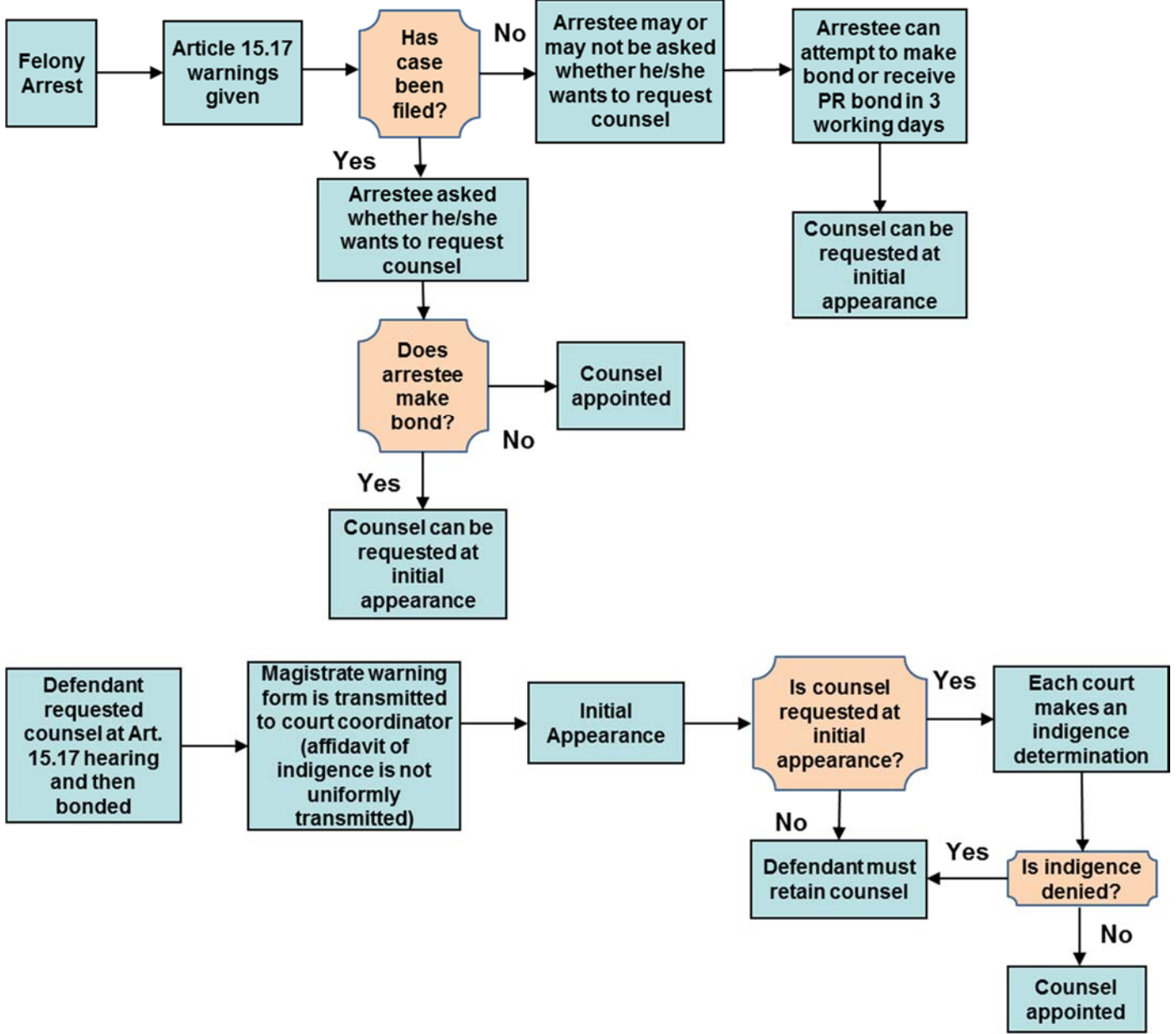
A request for counsel made at the Article 15.17 hearing will not be promptly ruled upon if the defendant makes bond, but the arrestee may request counsel at the initial appearance before the district court, and the district judge appoints counsel for those determined to be indigent. At the initial appearance, the district court judges are not likely aware of all requests for counsel made at the Article 15.17 hearing because magistrate warning forms are not part of the district clerk's case file.

The monitor's 2012 report identified three issues relating to the felony appointment process. First, the report found that defendants who make bond are not considered indigent, and that this complies neither with the local indigent defense plan nor with statute. Second, the report found that appointed counsel is removed from indigent cases if the client makes bond. Third, the report found that in the Criminal District Court, appointed counsel is replaced if a case moves to the trial docket. In reviewing whether the jurisdiction had adequately put in place processes to address these three issues, the monitor found the following:

- 1) The jurisdiction has not changed its procedures for determining indigence to address the issue of promptly appointing counsel for persons who make bond.
- 2) The monitor was unable to determine whether attorneys are removed from appointed cases when the client makes bond.
- 3) The jurisdiction has eliminated the practice of replacing counsel without a finding of good cause when a case moves to the trial docket.

To remedy the first issue from the 2012 report and to follow the standard set in its indigent defense plan, the district courts should consider implementing a method to collect financial data from all persons requesting counsel at the Article 15.17 hearing and to screen these requests according to the factors stated in the indigent defense plan. Under this process, counsel could be appointed within the one working day time frame for all persons determined to be indigent, as required by state law. See Figure 2 for a summary illustration of the felony appointment process in Jefferson County.

**Figure 2: Jefferson County Procedures for Appointing Counsel in Felony Cases**





## **Misdemeanor Appointment Process**

Adults arrested in Jefferson County are brought to the Jefferson County Jail. Article 15.17 hearings are held every morning at 7:00 a.m., and the hearings are normally conducted by retired judges. In misdemeanor cases (for non-family violence offenses), bonds are pre-set, often at \$250, and a large portion of misdemeanor arrestees make bond before receiving Article 15.17 warnings. Under *Rothgery v. Gillespie County*, 554 U.S. 991 (2008), the right to counsel attaches when a person is brought before a magistrate and is informed of the charges against him/her. If an arrestee makes bond before the Article 15.17 hearing, the right to counsel has not attached, and under Texas law, the arrestee must be informed of the procedures for requesting counsel at the initial appearance.

At Article 15.17 hearings, magistrates treat unfiled cases in a different manner than filed cases. When a case has been filed with the clerk, magistrates will ask arrestees whether they would like to request counsel. When a case has not been filed, magistrates often do not ask arrestees whether they would like to request counsel. If an arrestee has been detained for three working days but no case has been filed, the arrestee is typically given a personal recognizance bond.

If a request for counsel is made at the Article 15.17 hearing, the magistrate warning form is transmitted to the felony courts' coordinator and then to the misdemeanor courts' coordinator, but the affidavit of indigence is not included in the transmission. Since the affidavit of indigence contains the arrestee's financial information, the courts are unable to make a determination of indigence based on the financial standard stated in the indigent defense plan. The judges presiding over misdemeanor cases do not rule on requests for counsel made at the Article 15.17 hearing.

For detained persons, jail dockets are conducted twice per week by each court, and counsel may be requested and appointed at these dockets.

If a misdemeanor arrestee makes bond, the arrestee may request counsel at the initial appearance before the statutory county court. At the initial appearance, the statutory county court judges are not likely aware of all requests for counsel made at the Article 15.17 hearing because magistrate warning forms are not part of the county clerk's case file. Some defendants who had requested counsel at the Article 15.17 hearing later enter uncounseled pleas. The accompanying waivers of counsel for these defendants are presumed invalid under Article 1.051(f) – (f-2) of the Code of Criminal Procedure.

The indigent defense plan established by the judges presiding over misdemeanor cases sets the following standard of indigence:

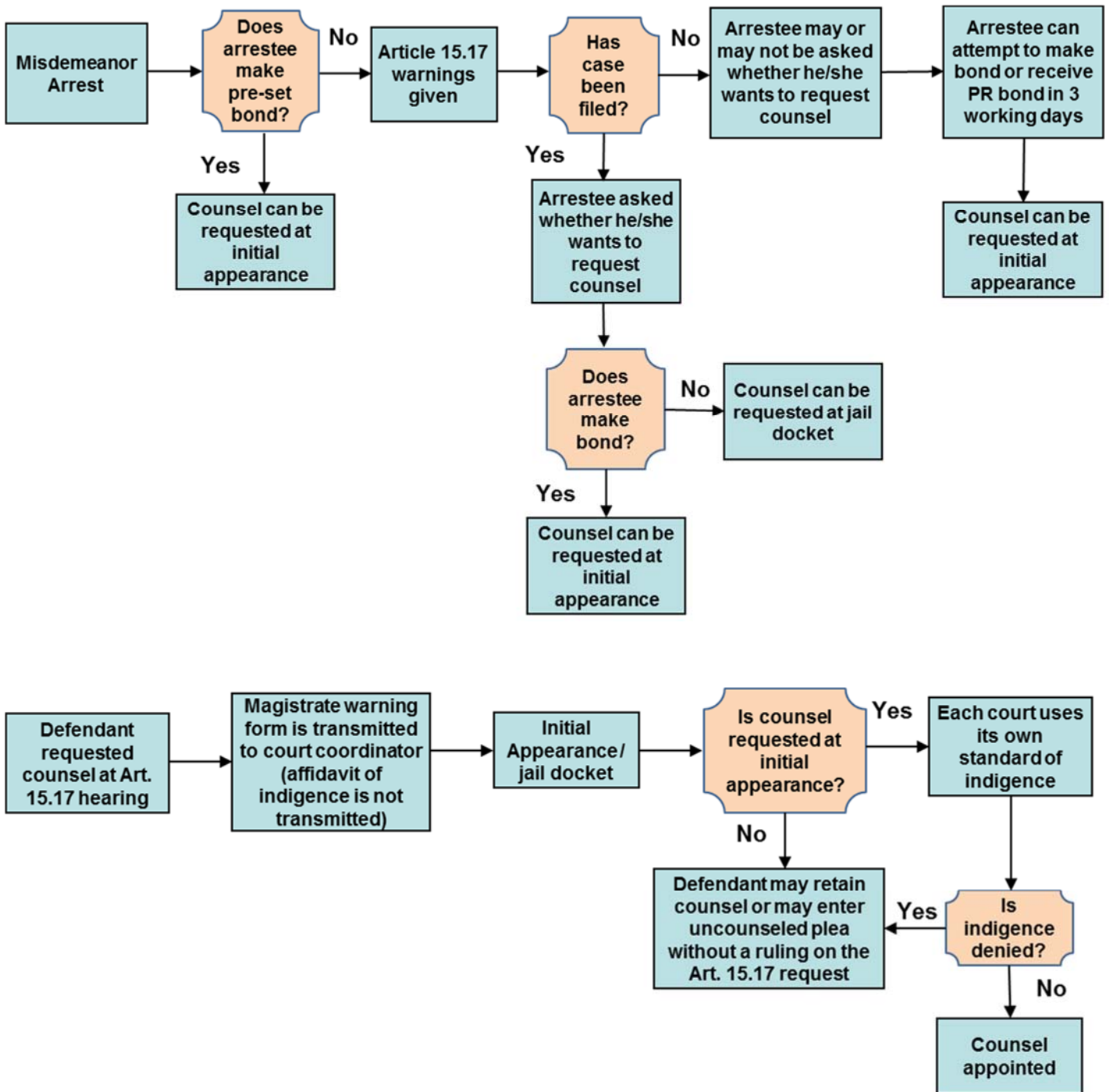
- (1) income is less than 125% of the federal poverty guidelines; or
- (2) defendant remains incarcerated; or
- (3) (a) net income is less than \$2500 per month; and  
(b) non-exempt assets are worth less than \$2500.

Under this plan, the accused's posting of bail or ability to post bail is not to be considered in determining whether the accused is indigent. In practice, County Court-at-Law #2 requires persons requesting counsel at the initial appearance to meet with a screener and to bring several documents proving indigence. According to the interviews, the process may take as long as three to four weeks to determine indigence. In County Court-at-Law #3, persons requesting counsel at the initial appearance meet with the court coordinator at the time of the docket for a determination of indigence.

The misdemeanor courts should consider implementing a method to screen affidavits of indigence for all persons requesting counsel and to appoint counsel within the one working day time frame set by Article 1.051(c) of the Code of Criminal Procedure. If these processes were implemented, the courts could avoid the occurrence of uncounseled pleas in which defendants waive counsel without

a previous request being ruled upon. See Figure 3 for a summary illustration of the misdemeanor appointment process.

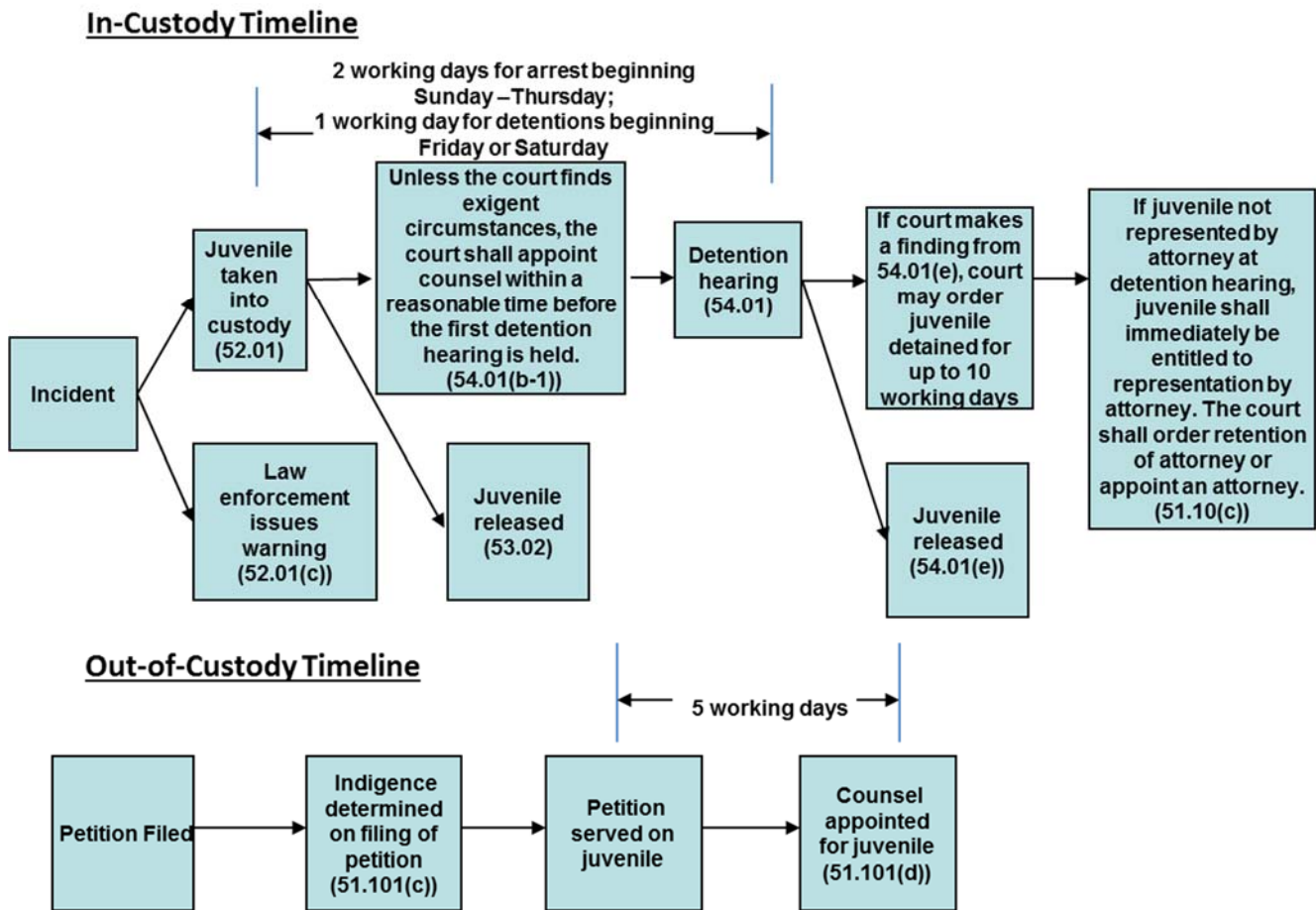
**Figure 3: Jefferson County Procedures for Appointing Counsel in Misdemeanor Cases**



## Juvenile Appointment Process

The FDA timeline listed in Figure 4 sets a statutory framework for which jurisdictions must establish local procedures to appoint counsel in juvenile matters. These local procedures are found in Jefferson County’s Indigent Defense Plan for juvenile cases (see Appendix H). Jurisdictions have wide latitude in how they implement methods to appoint counsel, but the procedures must meet the requirements set by the FDA and by the Commission’s Administrative Rules. This review attempts to describe these procedures and to assess the level to which these procedures meet the FDA requirements.

**Figure 4: Statutory Attorney Appointment Timeline for Juveniles**



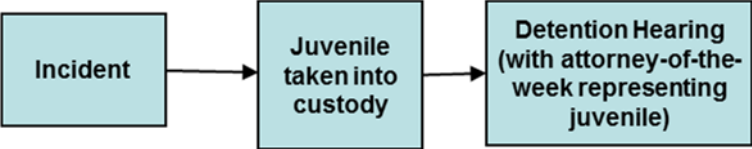
In juvenile cases, if a juvenile is taken into custody and intake for the juvenile probation department determines that continued detention is needed, the juvenile is promptly brought to a detention hearing. Detention hearings are conducted on Monday, Wednesday, and Friday mornings. According to interviews, very few parents show up for the hearings. An attorney-for-the-week represents all juveniles without counsel at these hearings. If counsel has already been appointed for the juvenile, the detention hearing attorney acts on behalf of the previously appointed counsel. Periodically the juvenile probation department needs to communicate with attorneys, and if counsel other than the detention hearing attorney has been assigned for the juvenile, the communication is with counsel assigned to the case.

After an incident requiring action by the juvenile probation department, intake attempts to obtain information regarding the family’s financial condition. Under Section 51.101(d) of the Family Code, when a petition is served on a juvenile, counsel is to be appointed within five working days of service.

In Jefferson County, counsel is often appointed prior to service. The appointment system for juveniles relies on financial information submitted by the parent or other person responsible for the juvenile. If a parent meets the indigence threshold, counsel is appointed. If the parent does not meet the threshold but is able to afford counsel, the court issues an order to retain counsel. See Figure 5 for a summary illustration of the appointment process for juvenile cases.

**Figure 5: Jefferson County Procedures for Appointing Counsel in Juvenile Cases**

**In-Custody Timeline**



**Out-of-Custody Timeline**



## Program Assessment

In the assessment that follows, core requirements of the FDA are listed and are compared to the County's performance with regard to each requirement.<sup>2</sup> If the monitor found that the County met the respective requirement, a box to the left of the provision is checked. If no box is checked, the requirement was either considered unsatisfied or was found to be inapplicable. The local procedures are then described, and recommendations are made regarding areas where process improvements are needed.

### Requirement 1: Conduct prompt and accurate Article 15.17 proceedings.

#### Local Practices Compared to Adult Statutory Provisions

- The accused must be brought before a magistrate within 48 hours of arrest.<sup>3</sup>
- A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.<sup>4</sup>

**Requirement met.**

- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>5</sup>

**Requirement met.**

- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>6</sup>

**Requirement not satisfied.**<sup>7</sup>

- A record must be made of the following:
- the magistrate informing the accused of the accused's right to request appointment of counsel;
  - the magistrate asking whether accused wants to request appointment of counsel;
  - and whether the person requested court appointed counsel.<sup>8</sup>

**Requirement not satisfied.**<sup>9</sup>

- If authorized to appoint counsel, the magistrate must do so within one working day after receipt of request for counsel in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>10</sup>

**Not applicable.**

- If not authorized to appoint counsel, the magistrate must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours of the request being made.<sup>11</sup>

**Requirement not satisfied.**<sup>12</sup>

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<sup>2</sup> This comparison is based upon the template used in the Commission's biennial examination of indigent defense plans.

<sup>3</sup> Tex. Code Crim. Proc. art. 14.06(a).

<sup>4</sup> Tex. Code Crim. Proc. art. 17.033.

<sup>5</sup> Tex. Code Crim. Proc. art. 15.17(a).

<sup>6</sup> *Id.*

<sup>7</sup> Assistance in completing affidavits of indigence is not provided to all persons requesting counsel at the time of the hearing.

<sup>8</sup> Tex. Code Crim. Proc. art. 15.17(e).

<sup>9</sup> The magistrate does not always record whether counsel is requested when a case has not been filed at the time of the warnings or when an arrest is made for an out-of-county warrant.

<sup>10</sup> Tex. Code Crim. Proc. art. 15.17(a) requires the magistrate to appoint counsel according to the time frames set in Tex. Code Crim. Proc. art. 1.051.

<sup>11</sup> *Id.*

<sup>12</sup> Paperwork necessary to determine indigence (affidavit of indigence) is not always transmitted to the appointing authority.

## **Jurisdiction's Process**

Adults arrested in Jefferson County are brought to the Jefferson County Jail. Article 15.17 hearings are held every morning at 7:00 am. In misdemeanor cases (for non-family violence offenses), bonds are pre-set, often at \$250, and a large portion of misdemeanor arrestees make bond before receiving Article 15.17 warnings. Article 15.17 hearings are conducted by retired judges. If a case has been filed against the arrestee, the arrestee is asked whether he/she would like to request counsel. If no case has been filed, the arrestee may or may not be asked whether he/she would like to request counsel. Affidavits of indigence are not always completed at this time.

## **Examination of Article 15.17 Forms**

In reviewing Article 15.17 records, the monitor found that magistrate warning forms were not part of the felony and misdemeanor case files, but were available only through the Jefferson County Sheriff's Office. During the course of the review, the monitor examined 117 felony case files and 250 misdemeanor case files, but since the magistrate warning forms were not in case files, the monitor was only able to find magistrate warning forms corresponding to a sub-set of the original sample. If magistrate warning forms were part of the case file, the courts could benefit in their efforts to ensure that all requests for counsel are ruled upon.

The monitor examined magistrate warning forms for a sub-set of the original sample. This sub-set consisted of forms for 24 felony cases and 44 misdemeanor cases. The forms document events that occurred at Article 15.17 hearings conducted between September 2012 and January 2013. All but two of the forms were "on accusation" - a local term meaning that the case had not been filed with the clerk when magistrate warnings were given. The monitor found that 23 forms did not record whether the arrestee requested counsel. This practice does not comport with statutory requirements. Where the forms were properly completed, 33 forms indicated that counsel had been requested (73% of properly completed forms indicated that counsel was requested).

Article 15.17(e) of the Code of Criminal Procedure requires that in each case the magistrate is to note whether the arrestee is requesting counsel. This statute does not make an exception for instances when a case has not yet been filed in a clerk's office. Article 15.17(e) states:

*In each case in which a person arrested is taken before a magistrate as required by Subsection*

*(a), a record shall be made of:*

- (1) the magistrate informing the person of the person's right to request appointment of counsel;*
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and*
- (3) whether the person requested appointment of counsel.*

## Timeliness of Warnings

The monitor analyzed the timeliness of Article 15.17 hearings with this same sample of magistrate warning forms. Under Article 15.17(a), magistrate warnings must occur within 48 hours of arrest. In determining the timeliness of the warnings, the monitor looked at the number of days between arrest and the Article 15.17 hearing. If the Article 15.17 hearing occurred within two days of arrest, the monitor presumed that the warnings were timely. All 68 Article 15.17 hearings occurred within two days of arrest, and so are presumed to have met the 48 hour threshold. The County clearly has procedures to promptly bring arrestees before a magistrate. See Table 2 which summarizes the timeliness of these warnings.

**Table 2: Timeliness of Article 15.17 Hearings**

	<b>Sample Size</b>	<b>Percent</b>
Number of records examined	68	
Article 15.17 hearing occurs x days after arrest:		
0 days	14	20.6%
1 day	54	79.4%
2 days	0	0%
<b>Timely Hearings</b>	<b>68</b>	<b>100%</b>

## Observation of Article 15.17 Hearings

On October 2, 2013, the monitor observed Article 15.17 hearings for six felony arrestees and nine misdemeanor arrestees. The magistrate also conducted hearings for a few other matters such as protective orders and bond revocations. Of the six felony arrestees, three indicated that they were requesting counsel. Of the nine misdemeanor arrestees, six indicated that they were requesting counsel. A total of three arrestees had out-of-county warrants. It did not appear that they were able to request counsel for the out-of-county offenses. The magistrate asked one of these three if he wanted to request counsel, and he answered that he wanted to request counsel, but this appeared to be for the in-county offense. The magistrate did not ask the other two persons arrested on out-of-county warrants if they wanted to request counsel.

Article 15.18 allows persons arrested on out-of-county warrants to receive Article 15.17 warnings in the county of arrest. Article 15.17 does not make any exception regarding the recording of counsel requests for out-of-county warrants. Article 15.17(e) requires that for each person taken before a magistrate, the magistrate record whether the person is requesting counsel. Article 15.17(a) requires that this request be transmitted to the appointing authority within 24 hours of arrest. The Commission maintains a list of out-of-county contacts for transmitting these requests.<sup>13</sup>

## Handling Requests for Counsel

Article 15.17(a) requires that the magistrate “ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel” at the time of the hearing. If the magistrate is not authorized to appoint counsel, the forms requesting counsel are to be transmitted to the appointing authority within 24 hours of the request being made. In Jefferson County felony and misdemeanor magistrate warning forms are sent to the felony coordinator (and from there to the coordinator for misdemeanor cases) after the Article 15.17 hearings. These forms may show a request for counsel, but they do not include information allowing the appointing authority to determine whether arrestees are indigent according to the standards set in the local indigent defense plans.

<sup>13</sup> See <https://tidc.tamu.edu/Positions/OutOfCountyArrestContacts.asp> on our log-in website for this list.



**Recommendations for Requirement 1: Conduct prompt and accurate magistration proceedings.**

**Recommendation 1:** Per Article 15.17(e), in each case in which an arrestee is taken before a magistrate under Article 15.17(a), a record must be made of:

- (1) the magistrate informing the arrestee of the right to request appointment of counsel;
- (2) the magistrate asking the arrestee whether he/she wants to request appointment of counsel; and
- (3) whether the arrestee requested appointment of counsel.

**Recommendation 2:** Persons brought before a magistrate on out-of-county warrants are not exempt from Article 15.17 requirements. These persons must receive all Article 15.17 warnings and must be asked whether they want to request counsel. Article 15.17(a) requires that the requests for counsel be transmitted to the appointing authority, which would be the appointing authority of the county issuing the warrant.

**Recommendation 3:** Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the forms for requesting counsel at the time of the hearing. These forms are to be transmitted to the appointing authority within 24 hours of the request being made. A method must be put in place to provide these forms to arrestees at the time of the Article 15.17 hearing, to ensure reasonable assistance in completing the forms, and to transmit them to the appointing authority within 24 hours.

**Requirement 2: Determine indigence according to standards directed by the indigent defense plan.**

**Local Indigent Defense Plan Compared to Adult Statutory Provisions**

- Provide detailed procedures used to determine whether a defendant is indigent.<sup>14</sup>  
**Plans meet statutory requirements, but the plans are not typically followed.**
- State the financial standard(s) to determine whether a defendant is indigent.<sup>15</sup>  
**Plans meet statutory requirements, but the plans are not typically followed.**
- List factors the court will consider when determining whether a defendant is indigent.<sup>16</sup>  
**Plans meet statutory requirements, but the plans are not typically followed.**

**District Court's Plan**

According to the district court's indigent defense plan (see Appendix F), the financial standard presumes that a defendant is indigent if any of the following factors are present:

1. *At the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;*
2. *The accused's net household income does not exceed \_100\_% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or*

<sup>14</sup> Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>15</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>16</sup> Tex. Code Crim. Proc. art. 26.04(m).



3. *The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.*

Only factors related to the accused's financial circumstances are to be used in determining indigence, and the "posting of bail or ability to post bail may not be considered in determining whether the accused is indigent except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed herein."

### **Issues Identified in the Monitor's 2012 Report**

The monitor's 2012 report identified three issues relating to the felony appointment process. First, the report found that a defendant who makes bond is not considered indigent, and that this complies neither with the local indigent defense plan nor with statute. Second, the report found that appointed counsel is removed from indigent cases if the client makes bond. Third, the report found that in the Criminal District Court, appointed counsel is replaced if a case moves to the trial docket.

In response to the finding that bonded persons are not considered indigent, the district court judges amended their indigent defense plan to state that bond could be considered in determinations of indigence, but only to the extent that it reflects the defendant's financial circumstances. This change reflects language in Article 26.04(m) of the Code of Criminal Procedure. While the plan conforms to statute, the monitor found that after a felony arrest, counsel is appointed based upon whether the arrestee makes bond and not according to the arrestee's financial condition. In order to use the provision for how bond relates to the defendant's financial circumstances, the courts will need to implement methods to collect financial data that would give evidence of the defendant's financial circumstances. See Requirement 4 for more details.

As to the finding that counsel is removed from an appointment if the defendant makes bond, the finding was based on attorney-client letters and on a sample of felony cases reviewed. The attorney-client letters stated that attorney representation terminates if the client makes bond because the client would no longer be indigent. The 2012 review of felony case files showed multiple appointments of the same attorney to an individual case, and each appointment would occur after re-arrest. It seemed that there was a need for multiple appointment orders because previously assigned counsel had been removed from the earlier appointment when the defendant made bond. In response to this finding, the Criminal District Court Judge stated that counsel is not removed when a defendant makes bond, and that he was previously unaware of letters from attorneys to clients stating that representation terminates upon the posting of bond.

In the current review, the monitor found one case in which counsel was appointed to a defendant on multiple occasions after re-arrests. However, the monitor could not definitively determine what was happening in this case. The monitor did see letters from attorneys to clients stating that their representation terminates if the client makes bond, but the Criminal District Court Judge stated that those attorneys are acting outside of the County's plan. Upon discovering such an attorney-client letter, the judge had this attorney removed from the appointment list. The attorney who was removed from the appointment list insisted that the current policy of the County remains that representation terminates when a defendant makes bond.

As for the finding about replacement of counsel for cases going to the trial docket, the district judges amended their plan so that any replacement of counsel would include a finding of good cause entered in the record along with the defendant's consent. This change corresponds to language in Article 26.04(j)(2). In the monitor's review of case files, the monitor found replacements of counsel, and the following language was included in the case file, "upon consultation with the public defender, the

Defendant requests a trial in this case and the public defender at the court would be unable to expediently try all the public defenders criminal cases which are set for trial." The County has implemented its response to this third finding from the 2012 report.

### **County Court's Plan**

According to the county court's indigent defense plan (see Appendix G):

- i. *An accused is presumed indigent if at the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.*
- ii. *An accused is also considered indigent if the accused meets any one of the following three criteria AND meets the asset test set out in subsection iii below:*
  1. *the accused's net household income does not exceed 125 % of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;*
  2. *The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or*
  3. *The difference between the accused's monthly net household income and reasonable necessary expenses is less than \$2500. Reasonably necessary expenses should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone).*
- iii. *In addition to meeting one of the criteria under section ii above, an accused is considered indigent only if the value of non-exempt assets and property owned by the accused does not exceed the greatest of the following:*
  - a. *\$2,500;*
  - b. *\$5,000 in the case of an accused whose household includes a person who is 60 years or older, disabled, or institutionalized; or*
  - c. *Double the estimated cost of obtaining competent private representation for the offense with which the accused is charged.*

.....

*The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.*

While the plan conforms to statute, the monitor found that determinations of indigence based on in-court requests for counsel do not follow the standards set in the plan. For out-of-court requests for counsel, the courts do not rule on these requests. See Requirement 4 for more details.

**Recommendation for Adult Portion of Requirement 2: Determine indigence according to standards directed by the indigent defense plan.**

**Recommendation 4:** The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence.

### **Local Indigent Defense Plan Compared to Juvenile Statutory Provisions**

- ☑ Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>17</sup>  
**Requirement met.**
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>18</sup>  
**Requirement met.**
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>19</sup>  
**Requirement met.**

### **Jurisdiction's Plan**

According to the County's juvenile indigent defense plan (see Appendix H), a juvenile's family is presumed indigent if:

1. *The family's net household income does not exceed 150% of the poverty guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register;*
2. *The family, at the time of requesting appointed counsel, is eligible to receive food stamps, Medicaid, TANF supplemental social security, or public housing;*
3. *The family does not meet the financial standards above but is otherwise unable to retain private counsel without substantial hardship to the family, taking into account the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the dependents living in the family home or entitled to support; and*
4. *If a member of the immediate family of the juvenile defendant is the alleged victim of the alleged offense and the juvenile defendant is personally unable to afford private counsel.*

### **Requirement 3: Establish minimum attorney qualifications.**

#### **Local Practices Compared to Adult Statutory Provisions**

- ☑ Establish objective qualification standards for attorneys to be on an appointment list.<sup>20</sup>
  - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.<sup>21</sup>**Requirement met.**
- ☑ Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.<sup>22</sup>  
**Requirement met.**<sup>23</sup>

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<sup>17</sup> Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>18</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>19</sup> Tex. Code Crim. Proc. art. 26.04(m).

<sup>20</sup> Tex. Code Crim. Proc. art. 26.04(d).

<sup>21</sup> 1 Tex. Admin. Code §§174.1-174.4.

<sup>22</sup> Tex. Code Crim. Proc. art. 26.04(d).

<sup>23</sup> The monitor did not examine attorney applications, but saw that the courts had appointment lists that they followed.

### **Jurisdiction's Process (Felony Courts)**

The felony courts use contract defenders for the majority of felony appointments, but also use assigned counsel. Separate appointment lists are present for trial-level cases, capital cases, and appellate cases. Trial-level attorneys are required to obtain fifteen criminal law CLE hours annually. The monitor found that the felony courts have procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plan. The minimum CLE requirements are well in excess of the six hours required by the Commission.

### **Jurisdiction's Process (Misdemeanor Courts)**

The misdemeanor courts use assigned counsel for indigent appointments. Separate lists are present for trial-level cases, mental health cases, and appeals cases. Trial-level attorneys are required to obtain six criminal law CLE hours annually. The monitor found that the misdemeanor courts have procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plan.

### **Local Practices Compared to Juvenile Statutory Provisions**

- ☑ Establish objective qualification standards for attorneys for three levels of conduct.<sup>24</sup>
  - Conduct indicating a need for supervision or delinquent conduct (no TJJD commitment possible);
  - Delinquent conduct (TJJD commitment possible); and
  - Determinate sentence or discretionary transfer to criminal court proceedings have been initiated.

**Requirement met.**

- ☑ Standards must require attorneys to complete at least six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period or be currently certified in juvenile law by the Texas Board of Legal Specialization.<sup>25</sup>

**Requirement met.**

- ☑ Attorneys must be approved by a majority of the Juvenile Board or judges on the Juvenile Board to be placed on or removed from the appointment list.<sup>26</sup>

**Requirement met.**<sup>27</sup>

### **Jurisdiction's Process (Juvenile Courts)**

The district courts handling juvenile matters use separate lists for juvenile detention hearings, trial-level cases, and appeals. The trial-level list requires attorneys to be approved for specific offense levels including: CHINS cases; delinquent conduct cases where commitment to the Texas Juvenile Justice Department (TJJD) is not an option; delinquent conduct cases where TJJD commitment is an option; determinate sentencing cases; and cases involving the certification to be tried as an adult. Trial-level attorneys are required to obtain six juvenile law CLE hours annually for the lowest-level (CHINS) and fifteen juvenile law CLE hours for the determinate sentencing level. The monitor found that the courts handling juvenile matters have procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plan. For higher level offenses, the minimum CLE requirements are well in excess of the six hours required by the Commission.

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<sup>24</sup> Tex. Fam. Code § 51.102(a),(b)(2).

<sup>25</sup> 1 Tex. Admin. Code §§174.1-174.4.

<sup>26</sup> Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d).

<sup>27</sup> The monitor did not examine attorney applications, but saw that the courts had appointment lists that they followed.

## **Requirement 4: Appoint counsel promptly.**

### **Local Practices Compared to Adult Statutory Provisions**

- Incarcerated persons: After receipt of a request for counsel, counsel must be appointed within one working day in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>28</sup>  
**Requirement not satisfied.**<sup>29</sup>
- Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.<sup>30</sup>  
**Requirement not satisfied.**<sup>31</sup>
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>32</sup>  
**Requirement met.**

In the analysis that follows, the monitor examined the timeliness of indigence determinations rather than the timeliness of counsel appointments, because in practice, a determination that a defendant is indigent occurs at the same time as an appointment of counsel. As an example of this method of analysis, if a defendant requested counsel, the monitor examined whether counsel was appointed within the statutory time frame or whether indigence was denied within this same time frame.

### **Jurisdiction's Process** **Felony Appointments**

If a request for counsel is made at the Article 15.17 hearing, the magistrate warning form is transmitted to the felony courts' coordinator (i.e. the person given responsibility for appointing counsel to detained arrestees), but the affidavit of indigence is not always included with the magistrate warning form. Since the affidavit of indigence contains the arrestee's financial information, the courts are unable to make a determination of indigence based on the financial standard listed in the indigent defense plan. Instead counsel is appointed for all detained persons, whether or not there was a request for counsel.

The indigent defense plan established by the judges presiding over felony cases presumes a person to be indigent if his/her income is less than 100% of the federal poverty guidelines or if he/she receives various federal welfare program benefits. According to the plan, the accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent, except to the extent that it reflects the defendant's financial circumstances.

A request for counsel made at the Article 15.17 hearing will not be promptly ruled upon if the defendant makes bond, but the arrestee may request counsel at the initial appearance before the district court, and the district judge appoints counsel for those determined to be indigent. At the initial

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<sup>28</sup> Tex. Code Crim. Proc. art. 1.051(c).

<sup>29</sup> The monitor's sample sizes were inadequate to assess the percentage of indigence determinations that were timely. However, the monitor found issues with local appointment procedures. See recommendations at the end of this requirement.

<sup>30</sup> Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

<sup>31</sup> Requests for counsel are not ruled upon when the defendant makes bond.

<sup>32</sup> Tex. Code Crim. Proc. art. 1.051(f-2).

appearance, the district court judges are not likely aware of all requests for counsel made at the Article 15.17 hearing because magistrate warning forms are not part of the district clerk's case file.

### **Timing of Felony Appointments as Stated in the Indigent Defense Plan**

In their response to the 2012 monitoring report, the district court judges amended their indigent defense plan with regard to the timing of appointments for defendants who make bond. The plan now states:

*If a defendant is released from custody prior to the appointment of counsel, the determination of indigence will be heard at the first trial court appearance, if necessary. If the defendant is determined to be indigent, a "Public Defender" or Rotation Attorney will be immediately appointed. The appointed attorney shall make contact with and interview the defendant in the same manner as if the defendant was in custody.*

*Rothgery v. Gillespie County*, 554 U.S. 991 (2008) held that the Sixth Amendment right to counsel attaches when a defendant appears before a magistrate and learns of the charges against him and his liberty is subject to restriction (i.e. the Article 15.17 hearing which was held to be the initiation of adversarial judicial proceedings). *Rothgery* made clear that the attachment does not require a prosecutor to be aware of the magistrate proceeding. Article 1.051(j) of the Code of Criminal Procedure then sets the timing of counsel appointments for persons who make bond:

*...if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.*

Since the *Rothgery* decision, the meaning of the language from Article 1.051(j) cannot be construed to allow for a ruling on a request for counsel to be delayed because the defendant makes bond. The statutory time frame for appointing counsel to defendants who make bond under the indigent defense plan will only be met if the first trial court appearance occurs within the time frame for appointing counsel as required by Article 1.051(j).

### **Review of Felony Case Files**

The monitor examined 117 randomly selected felony case files that were filed between October 2012 and March 2013 in order to establish the timeliness of felony indigence determinations. However, since magistrate warning forms were not in case files, the monitor was only able to identify a small number of requests for counsel (requests could be identified either through the magistrate warning form or an affidavit of indigence). This limited the monitor's ability to ascertain the timeliness of counsel appointments. The monitor was able to find requests for counsel, either from an affidavit of indigence or from a magistrate warning form, in 26 cases. The number of indigence determinations was less than the sample size required to determine the effectiveness of the County's ability to make timely indigence determinations in felony cases.<sup>33</sup>

Of the 26 cases in which the monitor could establish the timeliness of indigence determinations, 21 contained timely appointments of counsel.<sup>34</sup> In three of the cases not deemed timely, the monitor found a request for counsel at the Article 15.17 hearing, but no ruling afterwards, as it appeared that the

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<sup>33</sup> The monitor attempts to obtain a sample with a +/- 15% confidence interval at a 95% confidence level. Since the County reported paying counsel for 2,023 felony cases in FY13, and the monitor examined the first half of FY13, the monitor required a sample of 41 cases in which indigence was determined.

<sup>34</sup> There were no denials of indigence in the case files.

defendant made bond.<sup>35</sup> In an additional eight cases, the monitor found that the defendant did not make a request for counsel at the Article 15.17 hearing but was still appointed counsel shortly thereafter. As just noted, because of the small sample size, the monitor was unable to establish whether the County's felony indigence determinations were at least 90 percent timely, but the monitor did see samples where requests for counsel were not ruled upon when the defendant made bond.

### **Misdemeanor Appointments**

The monitor examined 250 misdemeanor cases that were filed between October 2012 and March 2013 to establish the timeliness of misdemeanor indigence determinations.<sup>36</sup> As with the felony cases, since magistrate warning forms were not in case files, the monitor was only able to ascertain the timeliness of indigence determinations in a small number of cases (21 sample cases in which all requests were from the magistrate warning forms; no affidavits of indigence were in the misdemeanor case files). This number of indigence determinations was less than the sample size required to establish the effectiveness of the County's ability to make timely indigence determinations in misdemeanor cases.<sup>37</sup>

Of these 21 cases where the timeliness of indigence determinations could be established, only one was timely. Five contained appointments of counsel in the case file, but the appointments were much later than the date of request. Fifteen (15) did not contain a ruling on the request for counsel. As just noted, because of the small sample size, the monitor was unable to establish whether the County's misdemeanor indigence determinations were at least 90 percent timely, but the monitor only saw one sample case that was ruled upon in a timely manner.

### **Other Findings from Misdemeanor Case Files**

Of the 21 misdemeanor requests made at the Article 15.17 hearing, seven involved instances where an arrestee requested counsel, but in which there was no determination of indigence listed in the case file, and in which the defendant later entered an uncounseled plea to either probation/deferred adjudication or a term of confinement. Article 1.051(f) presumes any waiver of counsel in which a request for counsel has not been ruled upon to be invalid. Article 1.051(f) – (f-2) states:

*(f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.*

*(f-1) In any adversary judicial proceeding that may result in punishment by confinement, the attorney representing the state may not:*

*(1) initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or*

*(2) communicate with a defendant who has requested the appointment of counsel, unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county **has denied the request** and, subsequent to the denial, the defendant:*

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<sup>35</sup> A fourth case included a request for counsel but no ruling on the request. In this case the monitor could not tell whether the defendant made bond after the request.

<sup>36</sup> The monitor first examined 201 randomly selected misdemeanor case files. This random sample yielded a very small number of cases involving appointed counsel, and so the monitor selected an additional 49 misdemeanor cases that the monitor knew had appointed counsel.

<sup>37</sup> The monitor attempts to obtain a sample with a +/- 15% confidence interval at a 95% confidence level. Since the County reported paying counsel for 265 misdemeanor cases in FY13, and the monitor examined the first half of FY13, the monitor required a sample of 32 cases in which indigence was determined.

(A) *has been given a reasonable opportunity to retain and has failed to retain private counsel; or*

(B) *waives or has waived the opportunity to retain private counsel.*

*(f-2) In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county **has denied the request** and, subsequent to the denial, the defendant:*

*(1) has been given a reasonable opportunity to retain and has failed to retain private counsel; or*

*(2) waives or has waived the opportunity to retain private counsel.*

The fact that seven persons (one third of the sample) agreed to uncounseled pleas while having pending requests for counsel is a strong indicator that Jefferson County does not have procedures in place to rule on all requests for counsel. This practice comports neither with the requirements of state law nor with the county's local plan. Any resulting waiver of counsel would be presumed invalid under Article 1.051(f). These statutory requirements provide that a county must rule upon a request for counsel prior to any waiver of counsel. If magistrate warning forms were included in the case file, the courts could be aware of whether a request for counsel was made at the Article 15.17 hearing, and limit the dangers associated with accepting pleas from unrepresented persons.

### **Observations of Misdemeanor Docket in County Court-at-Law #2**

The monitor observed misdemeanor dockets in County Court-at-Law #2 and County Court-at-Law #3. The two courts have different procedures for determining indigence and appointing counsel.

On October 1, 2013 the monitor observed both a jail docket and a bonded docket in County Court-at-Law #2. The jail docket went first, and contained eleven inmates. At this docket, the judge advised defendants of the right to counsel and explained that since they were in jail, they were considered indigent if they wanted appointed counsel. Those defendants wanting to speak with the prosecutor to hear the plea offer could do so, but first had to sign a waiver of counsel. Of the eleven inmates, five asked for counsel and were appointed counsel at the docket, and five others pled pro se at the docket.

For the bonded docket, the judge explained the right to appointed counsel. The judge explained that a pre-trial release staff person was available to take applications for counsel. The judge noted that the criteria for indigence was difficult to meet, and stated that generally misdemeanor defendants who receive appointed counsel are either in jail or are disabled. At this docket, there were 56 total defendants, five of whom did not appear at the docket, two who had already received appointed counsel, and sixteen persons who requested counsel.

The pre-trial staff person was in court and set up appointments to conduct an initial indigence screening interview that day with defendants. At the initial interview, the staff person provides a one page document to let the defendant know what forms he/she needs to bring to the second interview (See appendix I for this list of forms and the affidavit of indigence that is used by the court.). The second interview is typically three or four weeks after the initial interview. At this interview, the pre-trial release person makes a recommendation as to whether counsel should be appointed. According to the staff person, the recommendations are based on common sense. If the defendant does not attend the second



interview or if the defendant does not provide complete information, she may not recommend that the defendant qualify as indigent, but if the defendant receives public benefits, she will likely recommend that the defendant qualify as indigent. The pre-trial staff person sends the recommendation to the courts electronically, and sends hard copies of affidavits to the clerk's office.

### **Observations of Misdemeanor Docket in County Court-at-Law #3**

On October 4, 2013, the monitor observed a portion of a misdemeanor docket in County Court-at-Law #3. The docket was for thirteen defendants. For those persons who were not represented by counsel, the judge warned all persons of the dangers of self-representation, took requests for counsel, and appointed counsel. In this court, requests for counsel are sent to the court coordinator.

The court uses its own affidavit of indigence (See Appendix J). The affidavit is not the one listed with the misdemeanor courts' indigent defense plan. Aside from the fact that this affidavit is not the one listed in the indigent defense plan, the affidavit includes a section where the defendant is to provide a list of three attorneys with whom the defendant has consulted about the case. While requiring consultation with defense attorneys prior to appointment of counsel is not expressly disallowed in the factors that may be considered in determining indigence,<sup>38</sup> the one working day time frame to rule on a request for counsel may not be feasible if it takes the defendant more than one day to meet with three attorneys after making a request for counsel.

#### **Recommendations for Adult Portion of Requirement 4: Appoint counsel promptly.**

**Recommendation 5:** The felony courts must promptly rule upon all requests for counsel, whether the defendant remains in jail or makes bond.

**Recommendation 6:** The misdemeanor courts must put in place a method to promptly rule upon requests for counsel.

**Recommendation 7:** In accordance with Article 1.051(f-1) and (f-2), the misdemeanor courts must implement procedures to ensure that all requests for counsel are ruled upon prior to any waiver of counsel.

**Recommendation 8:** Based upon in-court observations and interviews with local staff, the misdemeanor courts do not determine indigence within statutory time frames set forth in state law or in the local indigent defense plan. The actual practices must comport with written procedures for determining indigence and appointing counsel.

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<sup>38</sup> See Article 26.04(m) which states:

*In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.*

## **Local Practices Compared to Juvenile Statutory Provisions**<sup>39</sup>

- ☑ Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.<sup>40</sup>  
**Requirement met.**
- ☑ If the child was not represented by an attorney at the detention hearing and a determination was made to detain the child, the child shall be immediately entitled to representation by an attorney.<sup>41</sup>  
**Requirement met.**
- ☑ If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.<sup>42</sup>  
**Requirement met.**

The monitor examined the timeliness of indigence determinations in instances when the juvenile was detained and in instances when a petition was served on the juvenile. To ascertain the timeliness of local processes, the monitor examined 71 juvenile case files that were filed between October 2012 and March 2013.<sup>43</sup>

### **Juvenile Detention Hearings**

Under Section 54.01(b-1) of the Family Code, unless the court finds that exigent circumstances are present, the court must appoint an attorney for a juvenile in detention within a reasonable time before the first detention hearing is held. If the court were to find that such exigent circumstances were present, Section 51.10(c) of the Family Code requires either the immediate appointment of counsel or an order to retain counsel for juveniles not represented by counsel at the hearing. If no attorney was present for the hearing, the attorney who is subsequently appointed or retained may request a de novo hearing under Section 54.01(n).

In Jefferson County, detention hearings are held Monday, Wednesday, and Friday mornings. The County uses an attorney-of-the-week for juvenile respondents that do not have another attorney to represent them at the hearing. This attorney is rotated every week. The attorney may or may not meet with the juvenile in advance of the hearing. After a petition is filed, new counsel is appointed for the juvenile, but the attorney-of-the-week will represent the juvenile at detention hearings on behalf of the permanently appointed attorney.

The monitor observed detention hearings for four juveniles on October 2, 2013. One juvenile was represented by retained counsel. The attorney-of-the-week represented the remaining three juveniles who were all undergoing their initial detention hearing. None of the parents for these latter three juveniles appeared at the hearing, and interviewees indicated that this is a common occurrence. Since no parent or responsible person appeared to take custody of the juveniles, a decision was made in all three cases to continue detention for up to two weeks.

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<sup>39</sup> A diagram illustrating these statutory time frames can be found in Figure 4 on page 11.

<sup>40</sup> Tex. Fam. Code § 54.01(b-1). This sub-section was added this past 83<sup>rd</sup> Legislative Session.

<sup>41</sup> Tex. Fam. Code § 51.10(c).

<sup>42</sup> Tex. Fam. Code § 51.101(d).

<sup>43</sup> The juvenile case files were selected by Jefferson County staff. It appeared they were selected in a sequential manner.

Of the 71 case files that the monitor examined, the monitor found 45 cases that had detention hearings. The monitor could determine whether counsel was present in 43 of these cases. All 43 cases involved juveniles being represented by counsel at the initial detention hearing. This corresponds to a sample having 100% timely appointments of attorneys at juvenile detention hearings. The Commission’s administrative rules presume a jurisdiction has procedures for timely appointment of counsel if the monitor’s sample is at least 90% timely. Jefferson County’s use of attorneys designated for detention hearings ensures that appointment of counsel at detention hearings is timely. See Table 4 for a summary of our review of juvenile data.

**Petitions Served on the Juvenile**

Under Section 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to appoint counsel for the juvenile. In Jefferson County, intake for the juvenile probation department obtains financial information from parents, and if a petition has been filed or is likely to be filed, counsel is either appointed or indigence denied. From the monitor’s sample of juvenile case files, the monitor was able to establish the timeliness of appointments/orders to retain counsel in 41 cases. Thirty-nine (39) of the cases involved the timely indigence determinations (appointment or denial of indigence and order to retain counsel). This yields a sample that was 95% timely, or in excess of the Commission’s 90% threshold for presuming that the jurisdiction’s procedures ensure timely appointment of counsel. See Table 3 for a summary of our sample data showing determinations of indigence in juvenile cases.

**Table 3: Times to Appointment in Juvenile Cases**

<b>Jefferson County Juvenile Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of Juvenile Case Files Examined	71		
<b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>			
Number of instances from sample where an initial detention hearing was conducted <sup>44</sup>		43	
Number of instances from sample where an initial detention hearing was conducted with an attorney was present		<b>43</b>	<b>100.0%</b>
<b>TIMELINESS OF COUNSEL APPOINTMENTS WHEN THE JUVENILE IS SERVED WITH A PETITION (and the monitor could determine timeliness)</b>			
Petitions involving appointed counsel		41	
Petitions filed where juvenile received counsel within 5 working days of being served:		31	75.6%
Petitions filed where juvenile's family denied indigence and ordered to retain counsel within 5 working days of being served:		8	19.5%
<b>Total Petitions where Order to Appoint or Order to Retain was timely</b>		<b>39</b>	<b>95.1%</b>
Petitions filed where juvenile received counsel / order to retain more than 5 working days after being served:		2	4.9%

<sup>44</sup> The monitor threw out two sample cases in which it was unclear if counsel was present at the detention hearing.

## **Requirement 5: Institute a fair, neutral, and non-discriminatory attorney selection process.**

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- Rotational method: The court must appoint an attorney from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.<sup>45</sup>

**Requirement met.**

- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.<sup>46</sup>

**Not applicable.**

- Alternative appointment method:<sup>47</sup>

- The local processes must be established by vote of two-thirds of the judges.
- The plan must be approved by presiding judge of administrative judicial region.
- The courts must allocate appointments reasonably and impartially among qualified attorneys.

**Not applicable.**

### **Jurisdiction's Process**

Jefferson County uses both assigned counsel and contract counsel for representing indigent defendants. The Commission measures the fairness of the selection process in assigned counsel cases through an analysis of how cases are distributed between attorneys. In the analysis that follows, the monitor first examines appointment distributions for each court level and then follows with an examination of appointed caseloads. The fairness of the selection process for the contract system is examined later in the comparison of the contracts with the Contract Defender Rules.

The monitor assesses whether a jurisdiction's assigned counsel system is fair, neutral, and non-discriminatory by comparing the number of cases paid received by the top 10% of recipient attorneys with the total number of cases paid available to all attorneys at the court level (felony, misdemeanor, or juvenile). If these top attorneys receive less than three times their representative share of cases paid, the system is presumed to be fair, neutral, and non-discriminatory. The method is set out in the Commission's Policy Monitoring Rules (1 Tex. Admin. Code § 174.28(c)(5)(C)):

*(C) A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. If the county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list.*

## **Appointment Distribution Analysis**

### **Assigned Counsel Non-Capital Felony Cases**

The auditor's office reported that 35 attorneys received payments for assigned counsel felony cases in FY13. The top four attorneys (top 11.4% of recipient attorneys) received 23.5% of available

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<sup>45</sup> Tex. Code Crim. Proc. art. 26.04(a).

<sup>46</sup> Tex. Code Crim. Proc. art. 26.044.

<sup>47</sup> Tex. Code Crim. Proc. art. 26.04(g)-(h).

cases or **2.1 times their representative share of appointments**. This distribution falls within the Commission’s threshold that presumes a jurisdiction’s appointment methods are fair, neutral, and non-discriminatory if the top ten percent of recipient attorneys receive less than three times their representative share of appointments. See Appendix E for more details.

**Assigned Counsel Misdemeanor Cases**

The auditor’s office reported that 46 attorneys received payments for assigned counsel misdemeanor cases in FY13. The top five attorneys (top 10.9% of recipient attorneys) received 27.9% of available cases or **2.6 times their representative share of appointments**. This distribution falls within the Commission’s threshold that presumes a jurisdiction’s appointment methods are fair, neutral, and non-discriminatory if the top ten percent of recipient attorneys receive less than three times their representative share of appointments. See Appendix E for more details.

**Assigned Counsel Juvenile Cases**

The auditor’s office reported that 29 attorneys received payments for assigned counsel juvenile cases in FY13. The top three attorneys (top 10.3% of recipient attorneys) received 19.0% of available cases or **1.8 times their representative share of appointments**. This distribution falls within the Commission’s threshold that presumes a jurisdiction’s appointment methods are fair, neutral, and non-discriminatory if the top ten percent of recipient attorneys receive less than three times their representative share of appointments. See Appendix E for more details.

**Additional Observation: Review of Appointed Caseloads<sup>48</sup>**

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for public defenders, which are detailed in the Table 4.<sup>49</sup>

**Table 4: NAC Caseload Standards**

<b>Type of Case</b>	<b>Maximum caseload</b>
Felonies	150
Misdemeanors	400
Juvenile	200
Mental Health Act	200
Appeals	25

The NAC caseload standards represent the maximum number of cases for each category that are recommended to be handled by a single attorney in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80 percent of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a starting point in assessing caseloads but should not be accepted as universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by the differences

<sup>48</sup> The Commission has not adopted a standard relating to maximum caseloads or workloads.

<sup>49</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

in work required by cases within a category. For example a case involving felony homicide may require significantly more work than a burglary case.

According to data submitted by the auditor’s office, a total of 64 attorneys in Jefferson County received payment for criminal or juvenile indigent defense cases. Of these, seven attorneys had appointed caseloads (not counting civil cases, retained cases, or appointments in other counties) that exceeded the NAC recommended maximum totals. This analysis combines both cases appointed under the assigned counsel system with cases under the contract system. The analysis does not differentiate capital murder felonies from other felony cases. See Table 5 for a summary of the top ten recipient attorneys and see Appendix D for a complete summary.

**Table 5: Top Appointed Caseloads in Jefferson County (based on FY13 cases paid)**

Attorney	Total Felony Cases (including capital murder)	Total Misdemeanor Cases	Total Juvenile Cases	Total Appeals	Number of NAC Attorneys Required
David Barlow	141	-	-	17	1.62
Donald Duesler	237	-	-	-	1.58
C Haden Cribbs Jr.	207	6	25	-	1.52
Brack Jones Jr.	191	-	3	-	1.29
Mike VanZandt	188	-	-	-	1.25
Sheigh Summerlin	182	8	-	-	1.23
Raquel West	163	2	-	-	1.09
Thomas Burbank	60	2	24	9	0.89
Gaylyn Cooper	24	19	16	14	0.85
Terrence Holmes	14	5	15	15	0.78

This past year, HB 1318 from the 83<sup>rd</sup> Legislative Session, directed the Commission to conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney. The study must be based on relevant policies, performance guidelines, and best practices. In conducting the study, the Commission is to consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate. The study is due to be published by January 15, 2015, and should provide more accurate guidance on appropriate caseloads in Texas than other studies have been able to provide.

## **Requirement 6: Promulgate standard attorney fee schedule and payment process.**

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- ☑ Payments shall be in accordance with a schedule of fees adopted by the judges.<sup>50</sup>  
**Requirement met.**
- ☑ No payment shall be made until the judge approves payment after submission of the attorney fee voucher.<sup>51</sup>  
**Requirement met.**
- ☑ If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.<sup>52</sup>  
**Requirement met.**
- ☑ Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.<sup>53</sup>  
**Requirement met.**

### **Jurisdiction's Process**

The monitor's review of payment processes consisted of interviews with auditor staff and an examination of data maintained by the Jefferson County Auditor's Office for submission of the FY13 Indigent Defense Expense Report (IDER). The Commission has had extensive interviews in the past with the Jefferson County Auditor's Office. As a result of these interviews, the Office put in place a method to obtain monthly statements of cases disposed by each felony contract attorney. The Office recently submitted an amendment to past years' reports because case totals for probation revocation cases had not been counted in the past. The Office now appears to be tracking all cases and expenses in which criminal and juvenile indigent defense expenses are incurred.

### **Additional Observation: Use of Support Services**<sup>54</sup>

The monitor attempted to document the use of support services (investigators and expert witnesses) used by defense attorneys in representing indigent defendants. The monitor examined data supporting the FY13 IDER. The IDER indicates that investigative expenses and expert witness expenses are regularly incurred in capital murder case as evidenced by the fact that of the total \$732,711 capital murder expenses, \$98,735 was spent on investigative expenses, and \$171,046 was spent on expert witness expenses.

For non-capital murder offenses, defense support services are not as highly utilized. Only \$65 total was spent on licensed investigators for non-capital cases (see Table 6). The lack of investigative expenses could be an indication that defense services are not as effective as they could be. The National Study Commission on Defense Services (NSC) developed a standard for investigative expenses<sup>55</sup> that

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<sup>50</sup> Tex. Code Crim. Proc. art. 26.05(b).

<sup>51</sup> Tex. Code Crim. Proc. art. 26.05(c).

<sup>52</sup> *Id.*

<sup>53</sup> Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).

<sup>54</sup> The Commission has not adopted a standard relating to an expected use of support services.

<sup>55</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976). These caseloads are based on caseload standards for attorneys set out in the National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973). According to the NSC standard, there should be one full-time investigator for every three attorneys.

calls for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. This level of use would require 5.5 full-time investigators for indigent defense cases involving non-capital murder offenses. Based on data provided by the auditor, however, only one non-capital murder case incurred an expense for a licensed investigator.

**Table 6: Use of Support Services in Felony, Misdemeanor and Juvenile Cases**

	Total Cases	Percent of Cases Incurring Expenses	Total Expenses
Total Non-Capital Felony Cases Paid <sup>56</sup>	1998		\$1,131,660
Non-Capital Felony Cases with Investigator Fees	1	0.05%	\$65
Non-Capital Felony Cases with Expert Witness Fees	30	1.50%	\$25,490
Total Misdemeanor Cases Paid	265		\$61,375
Misdemeanor Cases with Investigator Fees	0	0.00%	\$0
Misdemeanor Cases with Expert Witness Fees	2	0.75%	\$1,190
Total Juvenile Cases Paid	485		\$123,587
Juvenile Cases with Investigator Fees	0	0.00%	\$0
Juvenile Cases with Expert Witness Fees	1	0.21%	\$350

**Requirement 7: Ensure contracts meet Contract Defender Rules.**

- For a contract defender program, the county must meet contract defender standards.<sup>57</sup>

**Requirement not satisfied.**<sup>58</sup>

**Jurisdiction’s Process**

The Commission has established its Contract Defender Rules that are found in Title 1, Rules 174.10 – 174.25 of the Texas Administrative Code. The Commission measures the fairness of the selection process in contract cases according to whether the contents of the contract meet the provision of the Contract Defender Rules dealing with an open solicitation process. A sample felony contract from Jefferson County is listed in Appendix K. In the analysis that follows, the monitor compares the felony defender contract with the provisions of the Contract Defender Rules.

**Solicitation Process -- Requirement met.**

The Commission’s rules regarding the contract solicitation process are set in 1 Tex. Admin. Code §§ 174.12 - 174.15. These rules require that there be a notification of the opportunity to apply, an opportunity to respond, and an application. The application is to be reviewed by the appointing authority and the following factors are to be considered: (1) experience and qualifications of the applicant; (2)

<sup>56</sup> This total is three cases less than reported in the FY13 IDER. The auditor’s office provided supporting documentation for the difference.

<sup>57</sup> 1 Tex. Admin. Code §§174.10-174.25.

<sup>58</sup> The contract must include a maximum caseload term. All contracts must be updated to meet Contract Defender Rule standards.



applicant's past performance in representing defendants in criminal cases; (3) applicant's disciplinary history with the state bar; (4) applicant's ability to comply with the terms of the contract; and (5) cost of the services under the contract. The contracting authority can only enter into the contract if the contract complies with the Commission's contract standards and all applicable laws governing professional service contracts entered into by counties. The contract is not to be awarded solely on the basis of cost.

An application for persons seeking to provide contract defender services is available as part of the local indigent defense plan (see Appendix E). The monitor also found public notices in the courthouse regarding the availability of contractors. This solicitation process meets the Commission's administrative requirements as set in 1 Tex. Admin. Code §§ 174.12 - 174.15.

**Parties -- Requirement met.**

The contract identifies the appointing authority, contracting authority, and contractor. The contract states:

*This contract is agreed and entered into by the following parties: \_\_\_\_\_ Court of Jefferson County, Texas ("Court") [appointing authority], \_\_\_\_\_ ("Attorney") [contractor], and Jefferson County, Texas ("County") [contracting authority] for the purposes of providing legal representation and services to indigent defendants who appear before the court.*

This language meets the requirement of 1 Tex. Admin. Code § 174.15.

**Term of Contract -- Requirement met.**

The contract specifies that it is a month-to-month contract. The contract states:

**Term of Contract:** *This contract is in full force and effect on a month-to-month basis unless terminated by Attorney or by the Court. If this contract is terminated, Attorney will be relieved of all pending appointments and will not be required to continue representation in any case previously assigned.*

**Contract Termination:** *This contract may be terminated at-will by either Attorney or by the Court.*

This language meets the requirement of 1 Tex. Admin. Code § 174.16.

**Scope of Contract -- Requirement met.**

The contract specifies the category of cases in which the contractor is to provide services. The contract states:

**Scope of Contract:** *In all criminal cases for which the Court has jurisdiction, Attorney agrees to represent indigent criminal defendants in all said cases assigned to Attorney in the Court with regard to all pre-trial matters which have not been assigned to indigent defendant trial counsel.*

Later the contract states:

**Standards of Performance:**

*(b) Attorney shall ensure continuity of representation of each defendant unless relieved or replaced in accordance with Art. 26.04(j)(2) Texas Code of Criminal Procedure.*

This language meets the requirement of 1 Tex. Admin. Code § 174.17. The language under the scope of the contract may imply that the contract does not include trial work, but the Standards of Performance language states that the contract does include trial work.

**Minimum Attorney Qualifications -- Requirement met.**

The attorney must certify that he/she meets all of qualifications required to serve as a Contract Public Defender pursuant to the Plan. The Plan requires multiple qualifications, including that the attorney received at least fifteen criminal CLE hours. This certification by the attorney appears to meet the requirement of 1 Tex. Admin. Code § 174.18.

**Duration of Representation -- Requirement met.**

As part of the contract's standards of performance, the contract states:

***Standards of Performance:***

*(b) Attorney shall ensure continuity of representation of each defendant unless relieved or replaced in accordance with Art. 26.04(j)(2) Texas Code of Criminal Procedure.*

An issue regarding the duration of representation was specifically identified in the 2012 report on the contract defender system. The report made a recommendation stating:

*As required by Article 26.04(j)(2), appointed attorneys must represent their clients until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered to withdraw as counsel for the defendant after a finding of good cause is entered on the record. Furthermore, findings of good cause must be in line with Texas statutes and case law.*

In our review of felony case files, we found cases in which initial counsel had been replaced, but these orders replacing counsel noted good cause for the replacement, specifically that the defendant was requesting the replacement since the initial counsel would be unable to expediently try the case. Based upon the contract language and our review of case files showing good cause for replacement of counsel, it appears that 1 Tex. Admin. Code § 174.19 requirements regarding duration of representation have been met. This practice is an indication that the recommendation from our previous contract review about attorneys remaining with the case to which they had been appointed unless good cause is found for their removal has been followed by the jurisdiction.

**Substitution of Attorneys -- Requirement met.**

As part of the contract's standards of performance, the contract states:

***Standards of Performance:***

*(c) Attorney shall not re-assign, subcontract, or delegate any part of the services to be provided by Attorney under this contract unless first obtaining the approval of the Court. Any substitution of attorneys under this provision shall be made from the approved indigent appointment list for the Jefferson County Criminal District Courts.*

This language meets the requirement of 1 Tex. Admin. Code § 174.20.

**Caseload Limitations -- Requirement not satisfied.**

There are no provisions in the contract relating to maximum caseload limitations. This language does not meet the requirement of 1 Tex. Admin. Code § 174.21. For more information on caseload totals in Jefferson County, please refer to the Examination of Appointed Caseloads.

### **Standards of Representation -- Requirement met.**

The contract states:

*Attorney shall provide reasonably competent, zealous legal services to each indigent criminal defendant in accordance with Attorney's responsibility under the Texas Disciplinary Rules of Professional Conduct and the Texas Code of Criminal Procedure.*

Furthermore,

#### ***Standards of Performance:***

*(a) Attorney shall provide all services required by Senate Bill 7 as passed by the 77<sup>th</sup> General Session of the Texas Legislature in 2001, as it amends the Texas Code of Criminal Procedure.*

This language meets the requirement of 1 Tex. Admin. Code § 174.22.

### **Conflicts of Interest -- Requirement met.**

The contract states:

**Conflict:** *In the event of a conflict of interest between Attorney and any indigent criminal defendant, Attorney shall immediately present such evidence to the Court and, if allowed, be permitted to withdraw from further representation. Such withdrawal shall not affect the other terms of this contract.*

This language meets the requirement of 1 Tex. Admin. Code § 174.23.

### **Investigation and Experts -- Requirement met.**

The contract states:

**Investigators and Experts Compensation:** *Attorney shall be reimbursed for reasonable and necessary expenses, including expenses for investigators and mental health and other experts pursuant to Article 26.05, Texas Code of Criminal Procedure. Prior Court approval for these expenses should be obtained whenever possible.*

This language meets the requirement of 1 Tex. Admin. Code § 174.24.

### **Compensation and Payment Processes -- Requirement met.**

The contract states:

**Compensation:** *Attorney agrees to accept \$8333 per month to serve as Contract Public Defender. In addition, Attorney agrees to accept an additional compensation amount not to exceed \$3000 annually to pay for required Continuing Legal Education requirements, registrations and travel expenses.*

Furthermore,

#### ***Standards of Performance:***

*(d) Attorney must submit a monthly invoice to be approved by the Court for payment.*

This language meets the requirement of 1 Tex. Admin. Code § 174.25.

### **Summary of comparison of felony contract with Contract Defender Rules**

The County's contracts for indigent defense services comport with the Commission's administrative rule requirements, except for the requirement that each contract include a maximum case or workload that may be handled pursuant to the contract. However, some of the contracts that were submitted with the felony courts' indigent defense plan were older contracts that did not include all of the recently added terms that are in the sample contract found in Appendix K. Those older contracts continue on a month-to-month term basis and can be amended at the end of any month. The older contracts must be amended to meet the Commission's administrative rules and submitted with the indigent defense plan.

**Recommendation for Requirement 7: Ensure contract meets Contract Defender Rules.**

**Recommendation 9:** The contracts for indigent defense services need to include a maximum number of cases or workload each attorney may be required to handle pursuant to the contract as required by 1 Tex. Admin. Code § 174.21. All felony defender contracts must be updated at the end of their terms to comply with the Commission’s Contract Defender Rules under 1 Tex. Admin. Code §§ 174.15 - 174.25.

**Requirement 8: Statutory data reporting.**

**Local Practices Compared to Statutory Provisions -- Requirement met.**

- The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:
- In each district, statutory county, and appellant court;
  - In cases for which a private attorney is appointed for an indigent defendant;
  - In cases for which a public defender is appointed for an indigent defendant;
  - In cases for which counsel is appointed for an indigent juvenile; and
  - For investigation expenses, expert witness expenses, or other litigation expenses.

According to Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners’ court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. The data is to be submitted in the form and manner prescribed by the Commission and is to include an analysis of the amount expended by the county. The auditor’s office completed the annual indigent defense expense report in a timely manner.

**Requirement 9: County indigent defense plan submission.**

**-- Requirement met but local practices do not always comport with written procedures.**

The Fair Defense Act (FDA) requires the adoption and publication of written plans for appointment of counsel in criminal and juvenile cases. It requires the local administrative judges and juvenile board chairman to submit these plans to the Commission no later than November 1 of each odd-numbered year pursuant to Section 79.036, Government Code. This is also a requirement to be eligible to receive grant funds from the Commission. As mandated by Section 79.036 of the Texas Government Code, Jefferson County completed its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. However, our review found that these written procedures were not always followed.

## Summary of Review

This review is a full monitoring assessment of Jefferson County's indigent defense practices, and as such, it supersedes the previous limited scope review of the contract defender system. The Commission compared County procedures with the requirements of the FDA and identified the following areas that need attention. The report found that the written procedures in the indigent defense plan met statutory requirements, but that these procedures were not always followed.

The County must implement the following procedures to meet statutory requirements: a procedure to ask all Article 15.17 arrestees whether they want to request counsel; a procedure to provide reasonable assistance in completing necessary paperwork to those requesting counsel at the time of the Article 15.17 hearings and to transmit requests for counsel to the appointing authority; a procedure to promptly rule on all requests for counsel according to the standards set in the indigent defense plan; and a procedure to ensure that waivers of counsel meet Article 1.051 requirements. In addition, the County must include maximum caseload or workload thresholds in its contracts with defense attorneys and must amend all existing contracts so that all contracts meet the requirements set in our Contract Defender Rules. This report also commends the County for implementing methods to: accurately track indigent defense cases and expenses; manage attorney appointment lists and track annual CLE hours; promptly conduct Article 15.17 hearings; and to promptly appoint counsel for juveniles.

## Summary of Recommendations

The County must respond in writing to how it will address each of these recommendations:

### **Requirement 1: Conduct prompt and accurate magistration proceedings.**

**Recommendation 1:** Per Article 15.17(e), in each case in which an arrestee is taken before a magistrate under Article 15.17(a), a record must be made of:

- (1) the magistrate informing the arrestee of the right to request appointment of counsel;
- (2) the magistrate asking the arrestee whether he/she wants to request appointment of counsel; and
- (3) whether the arrestee requested appointment of counsel.

**Recommendation 2:** Persons brought before a magistrate on out-of-county warrants are not exempt from Article 15.17 requirements. These persons must receive all Article 15.17 warnings and must be asked whether they want to request counsel. Article 15.17(a) requires that the requests for counsel be transmitted to the appointing authority, which would be the appointing authority of the county issuing the warrant.

**Recommendation 3:** Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the forms for requesting counsel at the time of the hearing. These forms are to be transmitted to the appointing authority within 24 hours of the request being made. A method must be put in place to provide these forms to arrestees at the time of the Article 15.17 hearing, to ensure reasonable assistance in completing the forms, and to transmit them to the appointing authority within 24 hours.

### **Requirement 2: Determine indigence according to standards directed by the indigent defense plan.**

**Recommendation 4:** The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence.

**Requirement 3: Establish minimum attorney qualifications.**

No recommendations. County practices and procedures comport with statutory requirements.

**Requirement 4: Appoint counsel promptly.**

**Recommendation 5:** The felony courts must promptly rule upon all requests for counsel, whether the defendant remains in jail or makes bond.

**Recommendation 6:** The misdemeanor courts must put in place a method to promptly rule upon requests for counsel.

**Recommendation 7:** In accordance with Article 1.051(f-1) and (f-2), the misdemeanor courts must implement procedures to ensure that all requests for counsel are ruled upon prior to any waiver of counsel.

**Recommendation 8:** Based upon in-court observations and interviews with local staff, the misdemeanor courts do not determine indigence within statutory time frames set forth in state law or in the local indigent defense plan. The actual practices must comport with written procedures for determining indigence and appointing counsel.

**Requirement 5: Institute a fair, neutral, and non-discriminatory attorney selection process.**

No recommendations. County practices and procedures comport with statutory requirements.

**Requirement 6: Promulgate standard attorney fee schedule and payment process.**

No recommendations. County practices and procedures comport with statutory requirements.

**Requirement 7: Ensure contracts meets Contract Defender Rules.**

**Recommendation 9:** The contracts for indigent defense services need to include a maximum number of cases or workload each attorney may be required to handle pursuant to the contract as required by 1 Tex. Admin. Code § 174.21. All felony defender contracts must be updated at the end of their terms to comply with the Commission's Contract Defender Rules under 1 Tex. Admin. Code §§ 174.15 - 174.25.

**Requirement 8: Statutory data reporting.**

No recommendations. County practices and procedures comport with statutory requirements.

**Requirement 9: County indigent defense plan submissions.**

No recommendations, but written procedures do not always comport with practice.

**Conclusion**

The monitor appreciated the professionalism and assistance provided by Jefferson County officials and staff. Jefferson County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to the Commission's findings.

## Appendix A - Summary of Indigent Defense Statistics

A summary of indigent defense statistics, which were submitted by the County to the Commission and to the Office of Court Administration (OCA), is shown below. The table shows appointment rates for the court systems as well as respective expenditure data.<sup>59</sup>

**Table 1: Indigent Defense Statistics for Jefferson County**

Jefferson County	2001 Baseline	2010	2011	2012	2013	Texas 2013
Population Estimate	251,455	252,273	252,273	253,398	254,574	26,251,278
Felony Cases Paid		2,027	1,852	1,780	2,023	272,990
Felony Cases Added		3,704	3,468	3,452	3,504	192,045
Felony Appointment Rate		54.7%	53.4%	51.6%	57.7%	70.4%
Felony Attorney Fees		\$1,289,969	\$1,237,343	\$1,161,037	\$1,522,429	\$96,567,898
Total Felony Expenditures		\$1,343,237	\$1,351,943	\$1,376,518	\$1,864,370	\$109,898,236
Misdemeanor Cases Paid		690	348	236	265	549,030
Misdemeanor Cases Added		6,165	6,880	9,184	5,726	228,357
Misdemeanor Appointment Rate		11.2%	5.1%	2.6%	4.6%	41.6%
Misdemeanor Attorney Fees		\$159,787	\$80,858	\$55,475	\$59,750	\$36,880,978
Total Misdemeanor Expenditures		\$161,565	\$81,077	\$56,123	\$61,375	\$37,705,538
Juvenile Cases Paid		645	537	506	485	33,504
Juvenile Cases Added		368	282	383	259	48,114
Juvenile Attorney Fees		\$218,000	\$213,755	\$129,975	\$123,128	\$10,468,296
Total Juvenile Expenditures		\$218,116	\$213,755	\$129,975	\$123,587	\$11,196,726
Total Attorney Fees	\$1,157,582	\$1,778,699	\$1,627,356	\$1,437,525	\$1,752,357	\$149,496,691
Total ID Expenditures	\$1,320,921	\$1,892,254	\$1,785,240	\$1,709,463	\$2,142,233	\$217,068,685
Total ID Expenditures per Population	\$5.25	\$7.50	\$7.08	\$6.75	\$8.41	\$8.27
Formula-Based Grant Disbursements		\$114,459	\$154,900	\$113,204	\$182,704	\$19,883,998
Recoupment of Fees from Defendants		\$66,208	\$89,602	\$62,446	\$76,763	\$12,321,042

<sup>59</sup> These indigent defense statistics reflect changes made to past Indigent Defense Expense Reports by the auditor but do not reflect changes to data reported to OCA by the clerks' offices.

## **Appendix B – Letter from Senator Ellis and Representative Deshotel**





## The Legislature State of Texas

February 11, 2013

The Honorable Jeff Branick  
County Judge, Jefferson County Texas  
Jefferson County Courthouse  
1149 Pearl Street  
Beaumont, Texas 77701

Dear Judge Branick:

Over our careers in public service, we have made a commitment to ensuring the Constitutional promise that all people are treated equally under the law. Of course, an integral part of securing that promise, as outlined in the Sixth Amendment, is that all Texans receive adequate legal representation to protect their rights in the courtroom.

In that spirit, we are writing to express our concerns regarding the indigent defense system in Jefferson County. According to reports, attorney appointment rates are very low in both felony and misdemeanor cases. In FY12, the appointment rate in felony cases was only 33%, while the statewide figure was 71%. In misdemeanor cases the disparity is even starker; with Jefferson County appointing counsel to defendants in only 2% of cases compared to a statewide figure of 40%.

Williamson County was recently sued by the Texas Fair Defense Project for failing to appoint counsel to indigent defendants in misdemeanor cases when its appointment rate was at 8% (higher than that of Jefferson County). After several years of litigation they reached a settlement agreement with the county agreeing to change their processes and the appointment rate has now risen to near the statewide figure.

We also understand that the Texas Indigent Defense Commission has been to Jefferson County to review the contract system used by district courts. The Commission found that Jefferson County's practice of removing counsel if a defendant makes bond does not comply with Article 26.04(m) or (p) of the Code of Criminal Procedure. Article 26.04(m) disallows the courts from considering whether the defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances. Article 26.04(p) presumes that persons determined to be indigent remain indigent unless there is a material change in the defendant's financial circumstances. We hope that Jefferson County addresses these issues and implements a meaningful financial screening process based on the local plans' criteria for indigence and does not simply remove attorneys from their appointed cases when defendants make bond.

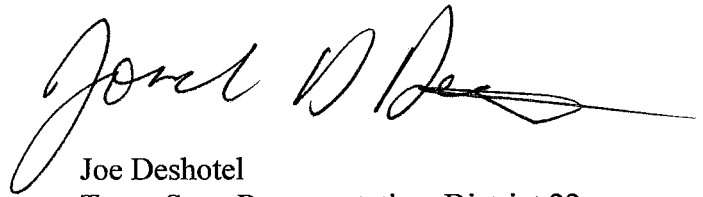
It was also reported that a practice of removing and replacing contract attorneys from cases if their clients refuse to plead guilty and instead request a trial, is a common practice in Jefferson County. This practice undermines the continuity of representation that Texas law requires under Article 26.04(j)(2).

We realize the numerous responsibilities Commissioner's Court undertakes, and the sincere effort you all put into working for better a Jefferson County. We look forward to working together to bring Jefferson County in compliance with Texas law in its indigent defense practices, and, more importantly, to helping ensure a system of justice that treats all people equally and fairly under the law.

Sincerely,



Rodney Ellis  
Texas State Senator, District 13



Joe Deshotel  
Texas State Representative, District 22

CC:  
Jefferson County Commissioners Court  
Jefferson County District Judges

## **Appendix C – Letter from Judge Branick**

Jefferson County Courthouse  
P.O. Box 4025  
Beaumont, Texas 77704



Beaumont (409) 835-8466  
Pt. Arthur (409) 727-2191 Ext. 8466  
Facsimile (409) 839-2311

**RECEIVED**

APR 29 2013

JEFF R. BRANICK  
County Judge

April 22, 2013

Mr. James D. Bethke  
Executive Director  
TIDC  
209 West 14<sup>th</sup> Street, Room 202  
Austin, Texas 78701

Dear Mr. Bethke:

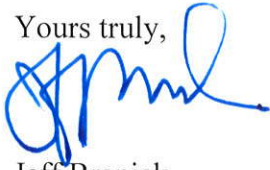
I, along with Judges Stevens, Walker and Flores, appreciated the opportunity to visit with you and members of the Indigent Defense Commission staff on Friday. After listening to everyone in attendance at the meeting I believe that prior criticisms of our system for affording counsel for indigent defendants were flawed for several reasons: 1.) a failure on our part to properly account for each case in which appointed counsel served; 2.) a lack of understanding by your staff during an earlier visit of how the various courts assure counsel is appointed in every case; and, 3.) a lack of understanding of how our misdemeanor bond amounts, which are probably the lowest in the State, affects rates of appointment of counsel.

Having said all of this, I (and all of the other judges) remain committed to assuring that Jefferson County is in compliance with the Fair Defense Act. In the event that there are failures, weaknesses or cracks in our system that have the effect of denying counsel to those accused of violations of criminal law, then we would like to identify and rectify any such problems.

For this reason, I am inviting you to appoint a team from your staff to spend the necessary time in our county to conduct an audit of our system. I am hopeful that when this examination is done both the Texas Indigent Defense Commission and Jefferson County will fully understand how our system operates and whether or not it requires substantive changes in our appointment system.

Please review your staff's work schedule and let me know if such an examination is a possibility. I look forward to speaking with you soon.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Jeff Branick', written over the 'Yours truly,' text.

Jeff Branick  
County Judge

## Appendix D – Appointed Caseloads in Jefferson County

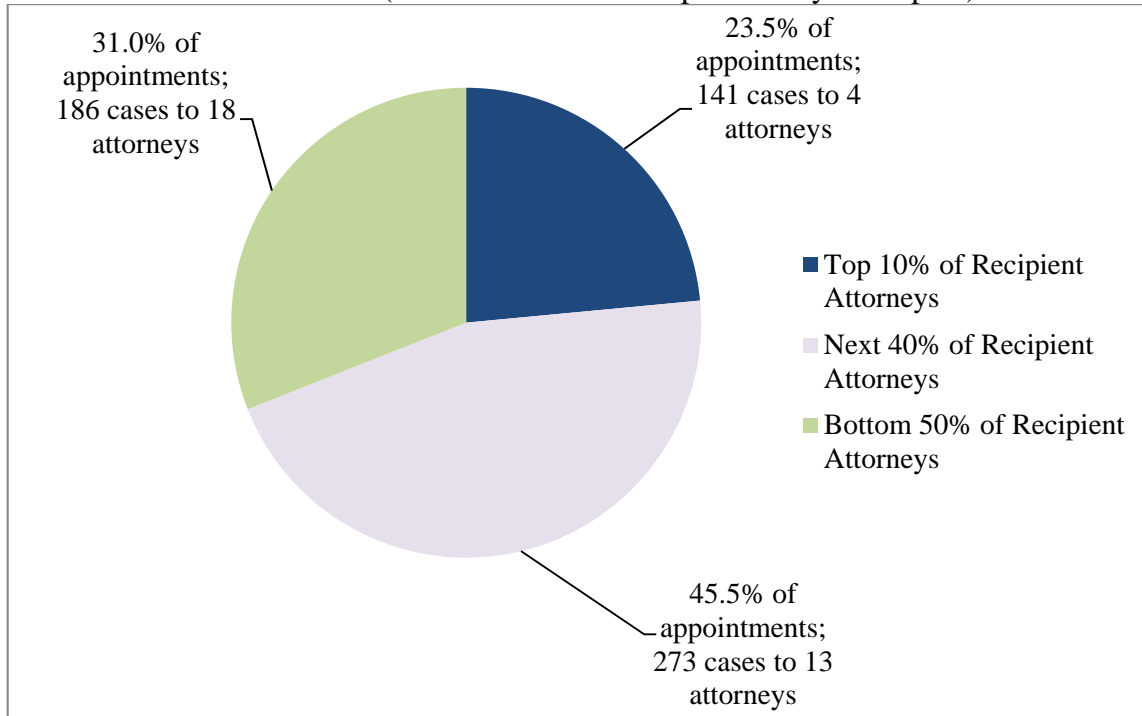
(based on cases paid in FY13)

Attorney	Total Felony Cases (including capital murder)	Total Misdemeanor Cases	Total Juvenile Cases	Total Appeals	Number of NAC Attorneys Required	Attorney Fees Paid
David Barlow	141	-	-	17	1.62	\$109,508
Donald Duesler	237	-	-	-	1.58	\$100,008
C Haden Cribbs Jr.	207	6	25	-	1.52	\$192,208
Brack Jones Jr.	191	-	3	-	1.29	\$104,950
Mike VanZandt	188	-	-	-	1.25	\$100,008
Sheigh Summerlin	182	8	-	-	1.23	\$101,350
Raquel West	163	2	-	-	1.09	\$100,308
Thomas Burbank	60	2	24	9	0.89	\$44,933
Gaylyn Cooper	24	19	16	14	0.85	\$35,000
Terrence Holmes	14	5	15	15	0.78	\$21,610
Douglas Barlow	9	1	-	15	0.66	\$252,006
Jack Lawrence	-	4	18	9	0.46	\$8,525
Charles Rojas	23	20	26	-	0.33	\$22,500
Langston Adams	25	4	22	-	0.29	\$17,825
Kevin Laine	24	8	20	-	0.28	\$25,781
Ryan Matuska	18	4	28	-	0.27	\$18,850
Bruce Cobb	-	2	-	6	0.25	\$3,000
Joel Vazquez	17	10	21	-	0.24	\$45,613
John D. West	27	8	-	-	0.2	\$17,700
Nathan Reynolds Jr.	28	4	-	-	0.2	\$15,500
Steve Johnson	16	5	14	-	0.19	\$13,225
Audwin Samuel	26	5	-	-	0.19	\$10,700
James Makin	27	-	-	-	0.18	\$95,416
Lairon Dowden Jr.	-	6	33	-	0.18	\$11,225
David Grove	25	5	-	-	0.18	\$23,213
Luke Nichols	20	11	2	-	0.17	\$15,725
Alex Bill III	22	5	-	-	0.16	\$15,600
Travis Evans	19	3	5	-	0.16	\$13,550
Ryan Gertz	23	1	-	-	0.16	\$19,975
Ronald Plessala	-	-	30	-	0.15	\$6,075
Kevin Sekaly	7	7	17	-	0.15	\$12,069
Anita Provo	-	-	29	-	0.15	\$6,260
Norman Desmarais Jr.	3	7	21	-	0.14	\$7,900
John Macey	16	11	-	-	0.13	\$10,405

Attorney	Total Felony Cases (including capital murder)	Total Misdemeanor Cases	Total Juvenile Cases	Total Appeals	Number of NAC Attorneys Required	Attorney Fees Paid
Linda Cansler	5	1	18	-	0.13	\$8,325
Cullen Kiker	17	3	-	-	0.12	\$17,873
Glen Crocker	-	-	24	-	0.12	\$5,900
Phillip Dowden	-	-	24	-	0.12	\$6,075
Sean Villery-Samuel	13	13	-	-	0.12	\$12,950
Mike Laird	14	10	-	-	0.12	\$10,500
Marva Provo	-	3	22	-	0.12	\$5,200
A. Mark Faggard	13	3	4	-	0.11	\$9,500
J D Hamm	13	-	5	-	0.11	\$10,425
Ronald Lanier	15	3	-	-	0.11	\$8,800
Jason Nicks	15	-	-	-	0.1	\$9,350
Carolyn Wiedenfeld	12	2	-	-	0.09	\$6,950
Bruce Smith	12	-	-	-	0.08	\$8,600
Scott Renick	8	1	-	-	0.06	\$4,665
Catherine Bruney	-	-	8	-	0.04	\$4,950
Rife Kimler	5	1	-	-	0.04	\$7,975
Dustin Galmor	-	10	-	-	0.03	\$1,800
Allen Parker	-	9	-	-	0.02	\$1,600
Jonathan Stovall	-	-	4	-	0.02	\$1,950
Laurie Perozzo	-	7	-	-	0.02	\$1,750
Antoine Freeman	-	6	-	-	0.02	\$1,500
Mike Cichowski	-	6	-	-	0.02	\$1,400
Susan Oliver	-	-	3	-	0.02	\$975
Tonya Toups	-	-	3	-	0.02	\$675
Antoinette Bradley	2	-	-	-	0.01	\$750
Peter Doyle	-	5	-	-	0.01	\$1,050
Donald Boudreaux	-	4	-	-	0.01	\$1,000
Karla Rogers	-	4	-	-	0.01	\$1,050
Gerald Bourque	1	-	-	-	0.01	\$0
Christopher Sachitano	-	1	-	-	0	\$300

## Appendix E – Breakdown of Attorney Appointment Distributions

**Figure 1: Distribution of Appointments to Non-Capital Felony Attorneys**  
(based on FY13 non-capital felony cases paid)

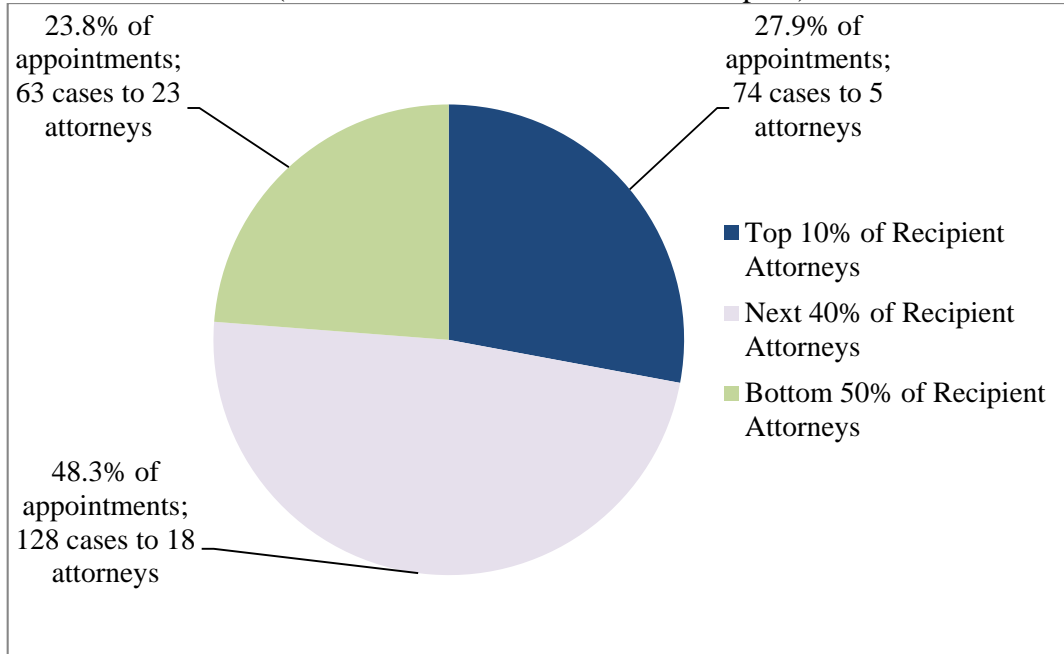


Attorney	Felony Assigned Counsel Cases Paid (not including capital murder cases or contract cases)	Category
Thomas Burbank	60	Top 10%
Nathan Reynolds Jr.	28	Top 10%
John D. West	27	Top 10%
Audwin Samuel	26	Top 10%
David Grove	25	Next 40%
Langston Adams	25	Next 40%
Gaylyn Cooper	24	Next 40%
Kevin Laine	24	Next 40%
Charles Rojas	23	Next 40%
Ryan Gertz	23	Next 40%
Alex Bill III	22	Next 40%
Luke Nichols	20	Next 40%
Travis Evans	19	Next 40%
Ryan Matuska	18	Next 40%
Cullen Kiker	17	Next 40%
James Makin	17	Next 40%
Joel Vazquez	16	Next 40%



Attorney	Felony Assigned Counsel Cases Paid (not including capital murder cases or contract cases)	Category)
John Macey	16	Bottom 50%
Steve Johnson	16	Bottom 50%
Jason Nicks	15	Bottom 50%
Ronald Lanier	15	Bottom 50%
Mike Laird	14	Bottom 50%
Terrence Holmes	14	Bottom 50%
A. Mark Faggard	13	Bottom 50%
J D Hamm	13	Bottom 50%
Sean Villery-Samuel	13	Bottom 50%
Bruce Smith	12	Bottom 50%
Carolyn Wiedenfeld	12	Bottom 50%
Scott Renick	8	Bottom 50%
Kevin Sekaly	7	Bottom 50%
Linda Cansler	5	Bottom 50%
Rife Kimler	5	Bottom 50%
Douglas Barlow	3	Bottom 50%
Norman Desmarais Jr.	3	Bottom 50%
Antoinette Bradley	2	Bottom 50%
Totals	600	

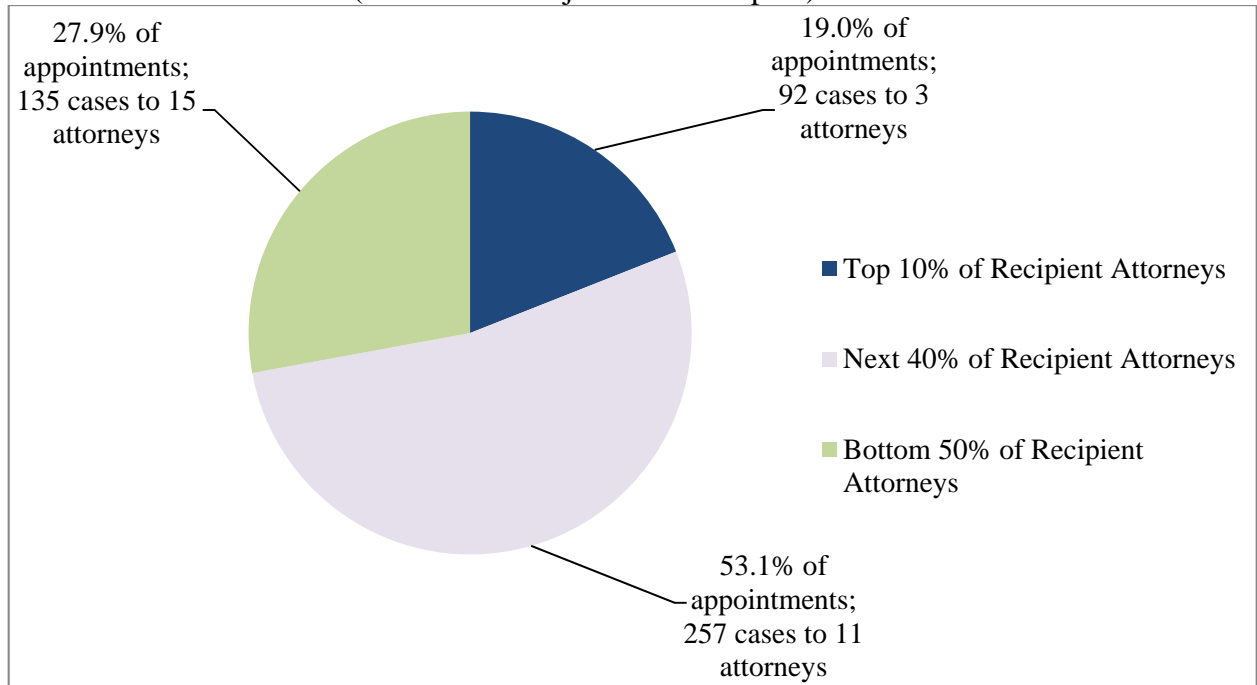
**Figure 2: Distribution of Appointments to Misdemeanor Attorneys**  
(based on FY13 misdemeanor cases paid)



Attorney	Misdemeanor Assigned Counsel Cases	Category
Charles Rojas	20	Top 10%
Gaylyn Cooper	19	Top 10%
Sean Villery-Samuel	13	Top 10%
John Macey	11	Top 10%
Luke Nichols	11	Top 10%
Dustin Galmor	10	Next 40%
Joel Vazquez	10	Next 40%
Mike Laird	10	Next 40%
Allen Parker	9	Next 40%
John D. West	8	Next 40%
Kevin Laine	8	Next 40%
Sheigh Summerlin	8	Next 40%
Kevin Sekaly	7	Next 40%
Laurie Perozzo	7	Next 40%
Norman Desmarais Jr.	7	Next 40%
Antoine Freeman	6	Next 40%
C Haden Cribbs Jr.	6	Next 40%
Lairon Dowden Jr.	6	Next 40%
Mike Cichowski	6	Next 40%

Attorney	Misdemeanor Assigned Counsel Cases	Category
Alex Bill III	5	Next 40%
Audwin Samuel	5	Next 40%
David Grove	5	Next 40%
Peter Doyle	5	Next 40%
Steve Johnson	5	Bottom 50%
Terrence Holmes	5	Bottom 50%
Donald Boudreaux	4	Bottom 50%
Jack Lawrence	4	Bottom 50%
Karla Rogers	4	Bottom 50%
Langston Adams	4	Bottom 50%
Nathan Reynolds Jr.	4	Bottom 50%
Ryan Matuska	4	Bottom 50%
A. Mark Faggard	3	Bottom 50%
Cullen Kiker	3	Bottom 50%
Marva Provo	3	Bottom 50%
Ronald Lanier	3	Bottom 50%
Travis Evans	3	Bottom 50%
Bruce Cobb	2	Bottom 50%
Carolyn Wiedenfeld	2	Bottom 50%
Raquel West	2	Bottom 50%
Thomas Burbank	2	Bottom 50%
Christopher Sachitano	1	Bottom 50%
Douglas Barlow	1	Bottom 50%
Linda Cansler	1	Bottom 50%
Rife Kimler	1	Bottom 50%
Ryan Gertz	1	Bottom 50%
Scott Renick	1	Bottom 50%
Totals	265	

**Figure 3: Distribution of Appointments to Attorneys in Juvenile Matters**  
(based on FY13 juvenile cases paid)



Attorney	Juvenile Cases Paid	Category
Lairon Dowden Jr.	33	Top 10%
Ronald Plessala	30	Top 10%
Anita Provo	29	Top 10%
Ryan Matuska	28	Next 40%
Charles Rojas	26	Next 40%
C Haden Cribbs Jr.	25	Next 40%
Glen Crocker	24	Next 40%
Phillip Dowden	24	Next 40%
Thomas Burbank	24	Next 40%
Langston Adams	22	Next 40%
Marva Provo	22	Next 40%
Joel Vazquez	21	Next 40%
Norman Desmarais Jr.	21	Next 40%
Kevin Laine	20	Next 40%
Jack Lawrence	18	Bottom 50%
Linda Cansler	18	Bottom 50%
Kevin Sekaly	17	Bottom 50%
Gaylyn Cooper	16	Bottom 50%

Attorney	Juvenile Cases Paid	Category
Terrence Holmes	15	Bottom 50%
Steve Johnson	14	Bottom 50%
Catherine Bruney	8	Bottom 50%
J D Hamm	5	Bottom 50%
Travis Evans	5	Bottom 50%
A. Mark Faggard	4	Bottom 50%
Jonathan Stovall	4	Bottom 50%
Brack Jones Jr.	3	Bottom 50%
Susan Oliver	3	Bottom 50%
Tonya Toups	3	Bottom 50%
Luke Nichols	2	Bottom 50%
Totals	484	

## **Appendix F – District Court Indigent Defense Plan**

### **Jefferson District Courts Plan**

#### **Preamble**

*8/24/2012*

INTRODUCTION; This Plan is for the **Jefferson County Criminal District Courts**.

**Criminal Courts Board:** The Jefferson County Criminal Courts Board is composed of the judges of the Criminal and 252nd District Courts. The Board by majority vote will elect a Chairman. The Chairman shall preside at all Board meetings and hearings and announce any Board decisions. The Board may periodically impose policies, procedures and guidelines to implement this plan and guarantee effective representation to all indigent felony offenders, in accordance with Art. 26.04 CCP. In the event of a tie vote, the Local Administrative Judge will temporarily appoint a District Judge to serve on the Board for the sole purpose of resolving that particular issue.

**Counsel Coordinator:** A Counsel Coordinator will be designated by the Criminal Courts Board. All questions, issues and problems must be directed to the Counsel Coordinator for resolution. The Counsel Coordinator shall also:

1. Maintain and update the list of attorneys qualified to receive appointments;
2. Investigate and track attorney qualifications;
3. Manage arraignment procedures;
4. Track cases and assignments to prevent duplication;
5. Organize and administer waiver of indictment procedures;
6. Supervise and monitor attorney fee payments;
7. Receive and investigate complaints against appointed attorneys;
8. Maintain the rotation schedule of appointed attorneys;
9. Coordinate with the Office of Court Administration and the Texas Indigent Defense Commission;
10. Ensure compliance with the policies and standards of the Texas Indigent Defense Commission;
11. Assist in the County Reporting Plan and obtaining Technical Report Grants; and
12. Perform all other duties designated by the Criminal Courts Board.

#### **Prompt Magistration**

*8/16/2012*

##### **A. Arresting Officer Responsibilities**

- i. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.

ii. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

iii. Release of defendants arrested without warrant

1. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.

2. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.

3. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

#### B. Magistrate Duties

i. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.

ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:

1. Advise the accused of the accusation against him/her and any affidavit filed therewith;

2. Admonish the accused of:

a. The right to retain counsel;

b. The right to remain silent;

c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;

d. The right to terminate an interview at any time;

e. The right not to make a statement and that any statement made by the accused may be used against him/her; and

f. The right to an examining trial.

3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel;

4. Inquire as to whether accused is requesting that counsel be appointed;

5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing;

6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

iii. In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

1. If probable cause has not been determined by a magistrate:

a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.

b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.

c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.

v. The magistrate shall record the following:

1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.

2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.

3. Whether the accused requested appointment of counsel

vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Counsel Coordinator. (the appointing authority) The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.

vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence based upon the defendant's completion of the affidavit of indigence (Model Version 3, adopted 11/15/06-Task Force on Indigent Defense) and appoint counsel if the defendant is indigent within three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.

viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

ix. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the clerk to be put into the case file.

### **Indigence Determination Standards**

*8/16/2012*

A. Definitions, as used in this rule:

i. "Indigent" means a person who is not financially able to employ counsel.

ii. "Net household income" means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law



or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.

iii. “Household” means all individuals who are actually dependent on the accused for financial support.

iv. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

## B. Eligibility for Appointment

i. An accused is presumed indigent if any of the following conditions or factors are present:

1. At the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
2. The accused’s net household income does not exceed \_100\_% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.

ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused’s dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charge(s),
2. anticipated complexity of the defense,
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused’s dependents;
5. accused’s income,
6. source of income,
7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

iii. Factors NOT to be considered in determining indigence:

1. The accused’s posting of bail or ability to post bail may not be considered in determining whether the accused is indigent except to the extent that it reflects the defendant’s financial circumstances as measured by the considerations listed herein.

2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

iv. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:

1. Determining if accused is (or is not) indigent; or

2. Impeaching direct testimony of accused regarding the accused's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the time lines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.

iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.

1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or

b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.

2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### **Minimum Attorney Qualifications**

*12/18/2013*

An alternative program method using "public defenders" and a system of rotation may be used in appointing legal counsel for indigent defendants. Only attorneys who volunteer will be considered for appointment on felony cases as either Public Defenders or Rotation Attorneys. All applicants must meet the following minimum qualifications to be considered:

FOR TRIAL APPOINTMENTS:

1. A minimum of 5 years experience or 10 felony jury trials; AND
2. A minimum of 25% of practice in criminal law matters; AND
3. A minimum of 15 hours of certified CLE credit annually in criminal law matters. No self study hours will be counted; AND
4. In the last 5 years, never have been found to provided ineffective representation by an appellate court or a Bar disciplinary committee OR if so, after providing details receive a waiver from the Criminal Courts Board; AND
5. Receive approval from the Criminal Courts Board by majority vote.

#### FOR APPELLATE APPOINTMENTS:

1. A minimum of 5 years experience OR 10 appellate cases; AND
2. List the name, offense, cause number and court for all felony appellate cases in the last 5 years up to a maximum of 10; AND
3. A minimum of 25% of practice in criminal law matters; AND
4. Meet the same CLE requirements as Trial Attorneys; AND
5. Meet the same ineffective assistance test as Trial Attorneys; AND
6. Receive approval from the Criminal Courts Board.

#### ATTORNEY REPORTING INSTRUCTIONS AND FORM

Beginning in 2014, Article 26.04(j) of the Code of Criminal Procedure will require all attorneys who accept appointments in adult criminal and juvenile delinquency cases to submit an annual statement that describes the percentage of their practice time that is dedicated to work on those appointed cases. Attorneys must submit this statement to each county in which they accept appointments, and the county will forward the information contained in the attorney practice-time statements to the Texas Indigent Defense Commission. The Commission will add this information to other indigent defense information that is made available to the public via the Commission website.

Every year, an attorney is required to submit a practice-time statement to each county in which the attorney accepted an appointment in an adult criminal or juvenile delinquency case during a fiscal year period that begins on October 1 and ends on September 30. The statement is due no later than October 15 immediately following the close of each fiscal year. For example, if, during the fiscal year that begins on October 1, 2013 and ends on September 30, 2014, an attorney who accepts appointments in County A and County B must submit separate practice-time statements to County A and to County B by October 15, 2014.

The statement submitted to each county must describe (1) the percentage of an attorney's total practice time (time spent in legal practice in all jurisdictions) that was dedicated to work on trial and appeal appointments in adult criminal cases in that county's district and county courts during the fiscal year beginning on the preceding October 1; and (2) the percentage of an attorney's total practice time that was dedicated to work on trial and appeal appointments in juvenile delinquency cases (cases alleging delinquent conduct or conduct indicating a need for supervision) in that county's district and county

courts during the fiscal year beginning on the preceding October 1. The percentages reported in the practice-time statement submitted to each county should not include time dedicated to work on appointments to cases (such as CPS cases and guardianship cases) that are not adult criminal or juvenile delinquency cases, and should not include time dedicated to federal criminal appointments.

The attorney **SHALL** submit the practice-time statement via the Commission's electronic attorney reporting portal, on the attached Commission reporting form, or on any other physical or electronic form specified by the county that captures all of the information requested on the Commission form. A county may require attorneys who accept appointments in that county to use a specific method to submit their practice-time statements. However, the statement should provide percentages that are as accurate as possible given the attorney's chosen case management system.

Attorneys who keep time records for all or a portion of their caseload may use those records to calculate their practice-time percentages or, in the case of partial records, to complete some of the lines on the worksheet. Time records will provide the most accurate method for calculating practicetime percentages.

Attorneys who do not keep time records may consider using a case-counting methodology to calculate practice-time percentages. This methodology involves looking at the number and types of cases in an attorney's total caseload, and calculating practice time percentages based on the number of cases in different case type categories. An attorney may keep track of the number and types of different cases the attorney handles during an entire fiscal year, or may choose to base the calculation on the number of cases the attorney has open at a specific point in time.

Attorneys who do not keep time records or use the case counting methodology will be encouraged to use the worksheet to help them consider all of the types of cases they handle when calculating their practice-time percentages. The worksheet will be designed to help attorneys avoid over- or under-estimating the percentage of time they spend on appointments and report to the county.

## PENALTIES

Penalties for failing to submit a required practice-time statement by the October 15 due date may be prescribed by the judges trying criminal cases in each county. Penalties may include an attorney's removal from the list of attorneys eligible to receive future court appointments.

## TEXAS INDIGENT DEFENSE COMMISSION ATTORNEY REPORTING FORM

\_\_\_\_\_ County, Texas

Under Article 26.04(j), Code of Criminal Procedure, attorneys are required to report to each county in which they accept appointments the percentage of their total practice time that is dedicated to appointed adult criminal cases and juvenile delinquency cases in that county. This form must be submitted annually to each county no later than October 15. Please see the Attorney Reporting Instructions published by the Commission for additional information about this form.

1. During the preceding fiscal year (October 1 – September 30), \_\_\_% of my total practice time was dedicated to work on adult criminal cases in which I was appointed to represent the defendant in \_\_\_\_\_ County, Texas.

2. During the preceding fiscal year (October 1 – September 30), \_\_\_% of my total practice time was dedicated to work on juvenile delinquency cases (cases alleging delinquent conduct or conduct indicating a need for supervision) in which I was appointed to represent the juvenile in \_\_\_\_\_ County, Texas.

3. The percentage of practice time reported was determined primarily by:

Time records;

Case counts;

Combination of time records and case counts.

Other \_\_\_\_\_

---

Attorney Name \_\_\_\_\_ State Bar of Texas No. \_\_\_\_\_

---

Attorney Signature \_\_\_\_\_ Date \_\_\_\_\_

### **Prompt Appointment of Counsel**

*8/16/2012*

The Counsel Coordinator will appoint a "Public Defender" or Rotation Attorney to represent each qualified indigent defendant at arraignment. In compliance with Art. 26.04 CCP, the appointed attorney shall make contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable after the attorney is appointed.

The "Public Defender" or Rotation Attorney shall continue to represent the defendant until the case is disposed of or unless relieved by the court or replaced by other counsel after a finding of good cause is entered in the record. If a "Public Defender" is relieved, the trial judge shall immediately appoint another "Public Defender" or Rotation Attorney as a replacement. The replacement attorney shall make every reasonable effort to contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable.

If a defendant is released from custody prior to the appointment of counsel, the determination of indigence will be heard at the first trial court appearance, if necessary. If the defendant is determined to be indigent, a "Public Defender" or Rotation Attorney will be immediately appointed. The

appointed attorney shall make contact with and interview the defendant in the same manner as if the defendant was in custody.

A "Public Defender" may not receive appointments to represent indigents in any other court without the specific approval of the appointing judge. A "Public Defender" may have a limited private practice but priority must always be given to cases pending in the Court of the appointing judge.

Each appointed attorney is to become familiar with this plan.

## **Attorney Selection Process**

*8/16/2012*

### **FELONY CASES;**

Attorneys will be selected and appointed on a rotation basis from the Master list unless a "Public Defender" is used in the case.

### **DEATH PENALTY CASES:**

Once a capital indictment is returned where the State seeks the death penalty, only attorneys approved by a local selection committee created for the Second Administrative Judicial Region will be appointed as provided in Art. 26.052 CCP.

### **PUBLIC DEFENDERS:**

Each Court may designate one or more attorneys as "Public Defenders" on a monthly fee basis. In addition to required qualifications, each "Public Defender" must be selected based on demonstrated past professional skill and performance in the representation of defendants in felony cases.

In selecting "Public Defenders", the Court shall consider at least the following factors when evaluating applicants:

1. The experience and qualifications of the applicant
2. Applicant's past performance in representing defendants in felony criminal cases.
3. Applicant's disciplinary history with the State Bar.
4. Applicant's ability to professionally, ethically and effectively comply with assignments.

The Board may approve contracts with "Public Defenders" who meet all of the Board requirements and enter into an agreement for services. The Board shall enter such agreement only if it complies with these qualifications and standards and all applicable laws governing professional service agreements entered into by counties.

All procedures shall meet the requirements of Title 1, Part 8, Chapter 174, Subchapter B of the Texas Administrative Code concerning Contract Defender Program Requirements.

Each "Public Defender" shall perform any duties designated by the appointing judge designed to insure prompt, effective and professional representation of indigent felony defendants.

### **Fee and Expense Payment Process**

*1/2/2013*

- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.
- B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.
  - i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
  - ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.
    - 1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
    - 2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.
- C. Payment of Expenses:
  - i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.
  - ii. Procedure With Prior Court Approval:
    - 1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:
      - a. The type of investigation to be conducted or the type of expert to be retained;
      - b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
      - c. An itemized list of anticipated expenses for each investigation and/or each expert.
    - 2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
      - a. State the reasons for the denial in writing;
      - b. Attach the denial to the confidential request; and

- c. Submit the request and denial as a sealed exhibit to the record.
- iii. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

**FEE PAYMENT SCHEDULE;**

For "Public Defenders"; An amount not to exceed \$8333 per month per attorney

For Rotation Attorneys:

Disposition:

Plea of Guilty or Dismissal: Single Case \$800; Multiple Cases \$900; State Jail Single Case \$600; State Jail Multiple Cases: \$700.

Out of Court Hours: \$75/hour with authorized time sheet

Trial: \$500 per half day

Appeal:

\$750 for appeal of a single case Jury Trial; \$850 Multiple Cases Jury Trial; \$1500 for appeal of multiple cases on the same defendant. \$10,000 for appeal of a capital case where the death penalty is assessed. \$250 Non trial and motion to revoke probation.

Death Penalty Cases:

Lead Counsel, \$1500 per half day in trial. Second Chair, \$1000 per half day in trial. An additional amount for trial preparation when documented and approved in advance by the trial judge.

Investigator/Expert Witness:

Expenses incurred with prior Court approval shall be reimbursed if the request is reasonable. Expenses incurred without prior Court approval shall be reimbursed if the expense is reasonably necessary and reasonably incurred.

Interpreters:

If the defendant does not speak English or is deaf or blind, the Court shall obtain the services of an appropriate interpreter to be present during all court proceedings and at all meetings between the Public Defender or Rotation Attorney and the defendant. The Court will pay all reasonable costs involved.

Fee Payment Voucher;

All fee claims must be submitted on a voucher approved by the Board and that can be obtained from the Counsel Coordinator or Court Clerk.

**Miscellaneous**

*8/16/2012*

**CONPLAINTS:**



All complaints against a "Public Defender" or Rotation Attorney will be referred to the Counsel Coordinator for investigation. All complaints will be reviewed periodically. An appointed attorney may be removed by a majority vote of the Criminal Courts Board. The attorney must receive notice of the complaint and have the opportunity to be heard by the Board before any decision is made. The Board may appoint one experienced defense attorney to be present during the hearing and advise the Board. All such hearings will be closed. All proceedings and the Board's vote will be confidential. The attorney is entitled to be represented by Counsel at the hearing and the results of the Board vote will be given to the the attorney and the person filing the complaint.

#### SUSPENSION OR REMOVAL:

A "Public Defender" or Rotation Attorney who fails to properly and professionally follow all of the rules and procedures adopted by the Courts or fails to provide timely and effective representation may be suspended or removed from the qualified list by majority vote of the Board. Removed attorneys may reapply one year after removal or earlier if permitted by the Board.

#### APPEALS:

A "Public Defender" or Rotation Attorney may appeal any matters regarding this plan to the Criminal Courts Board.

#### WAIVERS:

Each Trial Court retains authority to waive or alter any portion of this plan in exceptionally justified cases or when determined necessary for the fair and impartial administration of justice. To insure prompt and effective representation, any judge may depart from this plan in exceptional circumstances when the interest of justice require.

ADOPTED August 16, 2012 by the Criminal Courts Board:

Judge John Stevens, Criminal District Judge

Judge Layne Walker, 252nd District Court Judge

### **Plan Documents**

Jefferson District Court Appointment Of Counsel.pdf (2/5/2010 3:27:03 PM) [view](#)

Jefferson District Court Attorney Application for Appointment.pdf (2/5/2010 3:25:02 PM) [view](#)

Jefferson District Court Attorney Fee Schedule.doc (12/14/2012 3:41:43 PM) [view](#)

Jefferson District Court Attorney Fee Voucher.pdf (2/5/2010 3:25:40 PM) [view](#)

Jefferson District Court Contracts for Indigent Defense Services.pdf (1/2/2014 1:46:52 PM) [view](#)

Jefferson District Court Jefferson District Court Updated Attorney Fee Schedule.doc (11/4/2010 3:10:58 PM) [view](#)

Jefferson District Court Jefferson District Court Updated Attorney Fee Voucher.doc (11/4/2010 3:12:29 PM) [view](#)



## Appendix G – County Court Indigent Defense Plan

### Jefferson County Courts Plan

#### Preamble

4/9/2010

## **INDIGENT DEFENSE PLAN OF JEFFERSON COUNTY COURTS AT LAW 2 & 3 FOR THE TIMELY AND FAIR APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS**

#### Prompt Magistration

11/3/2010

##### A. Arresting Officer Responsibilities

- i. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.
- ii. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.
- iii. Release of defendants arrested without warrant
  1. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
  2. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.
  3. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

##### B. Magistrate Duties

- i. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.
- ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:
  1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
  2. Admonish the accused of:
    - a. The right to retain counsel;
    - b. The right to remain silent;

- c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
  - d. The right to terminate an interview at any time;
  - e. The right not to make a statement and that any statement made by the accused may be used against him/her; and
  - f. The right to an examining trial.
3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
  4. Inquire as to whether accused is requesting that counsel be appointed.
  5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.
  6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.
- iii. In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.
1. If probable cause has not been determined by a magistrate:
    - a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
    - b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
    - c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.
- iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
- v. The magistrate shall record the following:
1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
  2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
  3. Whether the accused requested appointment of counsel
- vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Carolyn Latiolais. (the appointing authority) The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.

vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence and appoint counsel if the defendant is indigent within three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.

viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

ix. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the clerk to be put into the case file.

### **Indigence Determination Standards**

*11/3/2010*

#### **A. Definitions, as used in this rule:**

i. “Indigent” means a person who is not financially able to employ counsel.

ii. “Net household income” means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.

iii. “Non-exempt assets and property” means cash on hand, stocks and bonds, and accounts at financial institutions.

iv. “Household” means all individuals who are actually dependent on the accused for financial support.

v. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

#### **B. Eligibility for Appointment**

i. An accused is presumed indigent if at the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

ii. An accused is also considered indigent if the accused meets any one of the following three criteria AND meets the asset test set out in subsection iii below:

1. the accused’s net household income does not exceed 125 % of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;

2. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or

3. The difference between the accused's monthly net household income and reasonable necessary expenses is less than \$2500. Reasonably necessary expenses should include but are not limited to: rent or mortgage, food/groceries, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone).

iii. In addition to meeting one of the criteria under section ii above, an accused is considered indigent only if the value of non-exempt assets and property owned by the accused does not exceed the greatest of the following:

a. \$2,500;

b. \$5,000 in the case of an accused whose household includes a person who is 60 years or older, disabled, or institutionalized; or

c. Double the estimated cost of obtaining competent private representation for the offense with which the accused is charged.

iv. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charge(s),

2. anticipated complexity of the defense,

3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;

4. the amount needed for the support of the accused and the accused's dependents;

5. accused's income,

6. source of income,

7. assets and property owned,

8. outstanding obligations,

9. necessary expenses,

10. the number and ages of dependents, and

11. spousal income that is available to the accused.

v. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.

2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

vi. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

- i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
  - 1. Determining if accused is (or is not) indigent; or
  - 2. Impeaching direct testimony of accused regarding the accused's indigence.
- iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.
- iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.
  - 1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
    - a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
    - b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
  - 2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.
- v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### **Minimum Attorney Qualifications**

*10/25/2013*

- A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:
  - i. Misdemeanor Qualification Requirements:
    - 1. All attorneys on the appointment list must ensure all information on their application is correct;
    - 2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;

3. An attorney shall submit by October 15<sup>th</sup> each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form via the Texas Indigent Commission website and as prescribed by the Texas Indigent Defense Commission. [Art. 26.04(j)(4), CCP]

4. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

5. An attorney may not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last 5 years;

6. An attorney must maintain an office capable of receiving email, fax, and telephone calls;

7. An attorney must have the ability to produce typed motions and orders;

8. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

vi. Appeal Qualification Requirements - An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or

2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or

3. Have submitted an appellate writing sample approved by a majority of the judges; or

4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

vii. Mental Health Case Qualification Requirements:

1. An attorney must meet general requirements for misdemeanor appointments;

2. An attorney must be knowledgeable concerning criminal law and the Texas Mental Health Code.

## B. Approval for Appointment Lists

i. Misdemeanor List and Misdemeanor Mental Health List – An attorney must be approved by a majority of the Statutory County Court Judges hearing criminal cases.



- C. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges. Failure to submit required Attorney Reporting Form as required by Article 26.04(j)(4), CCP will result in removal from one or more appointed lists by a majority vote of the judges.
- D. Reinstatement to Appointment Lists
  - i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.
  - ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.
- E. Duties of Appointed Counsel - Appointed Counsel shall:
  - i. Notify the court within 72 hours of the receipt of appointment;
  - ii. Make every reasonable effort to:
    - 1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
    - 2. Interview the defendant as soon as practicable after the attorney is appointed;
  - iii. Represent the defendant until:
    - 1. Charges are dismissed;
    - 2. The defendant is acquitted;
    - 3. Appeals are exhausted; or
    - 4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
  - iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
  - v. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
  - vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
  - vii. Be prepared to try the case to conclusion either with or without a jury;
  - viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
  - ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
  - x. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
  - xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
  - xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

### **Prompt Appointment of Counsel**

A. Prompt Appointment of Counsel

- i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
- ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
- iii. Appointment Authority
  1. If the case has been filed in the trial court, the appointing authority is the judge of that court.

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

- i. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.
- ii. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:
  1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
  2. Waived or has waived the opportunity to retain private counsel.
- iii. The attorney representing the state may not:
  1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
  2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
    - a. Has been given a reasonable opportunity to retain counsel; or
    - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this \_\_\_ day of \_\_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

iii. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

### **Attorney Selection Process**

*11/3/2010*

- A. The appointing authority will identify which of the appointment lists, discussed in the Section III (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:
  - i. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients’ language, if one is available;
  - ii. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
  - iii. Other good cause exists for varying from the list.
- B. Once appointed, an attorney’s name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney’s name appears on the list shall remain next in order on the list.
- C. Judicial Removal from Case:
  - i. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
    - 1. Counsel’s failure to appear at a court hearing;
    - 2. Counsel’s failure to comply with the requirements imposed upon counsel by this plan;
    - 3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
    - 4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
    - 5. The defendant requests an attorney, other than trial counsel, for appeal; or
    - 6. The defendant shows good cause for removal of counsel, including counsel’s persistent or prolonged failure to communicate with the defendant.

- ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

### **Fee and Expense Payment Process**

*11/3/2010*

- A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.
- B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.
  - i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.
  - ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.
    - 1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.
    - 2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.
- C. Payment of Expenses:
  - i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.
  - ii. Procedure With Prior Court Approval:
    - 1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:
      - a. The type of investigation to be conducted or the type of expert to be retained;
      - b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
      - c. An itemized list of anticipated expenses for each investigation and/or each expert.
    - 2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
      - a. State the reasons for the denial in writing;

- b. Attach the denial to the confidential request; and
  - c. Submit the request and denial as a sealed exhibit to the record.
- iii. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

### **Miscellaneous**

*11/3/2010*

## **REMOVAL FROM APPOINTMENT LISTS**

Repeated failure to contact or interview clients in timely manner, submission of an improperly documented request for payment, repeated failure to fulfill the duties required by law, rules, local rules or ethical provisions for providing reasonable assistance of counsel, or other good cause, may result in removal of an attorney's name from the lists.

### **Plan Documents**

Jefferson County Court Affidavit of Indigence.pdf (4/9/2010 11:45:17 AM) [view](#)  
Jefferson County Court Affidavit of Itemized Attorney Expenses.pdf (4/9/2010 11:54:31 AM) [view](#)  
Jefferson County Court Attorney Application for Appointment.pdf (4/9/2010 11:49:07 AM) [view](#)  
Jefferson County Court Attorney Fee Schedule.pdf (4/9/2010 11:49:57 AM) [view](#)  
Jefferson County Court Attorney Fee Voucher.pdf (4/9/2010 11:50:53 AM) [view](#)  
Jefferson County Court Jefferson County Court Updated Attorney Fee Schedule.doc (11/3/2010 12:42:54 PM) [view](#)  
Jefferson County Court Magistrates Warning Form.pdf (4/9/2010 11:44:22 AM) [view](#)

NO. \_\_\_\_\_

THE STATE OF TEXAS VS

IN THE COUNTY COURT AT LAW NO. \_\_\_\_\_

JEFFERSON COUNTY, TEXAS

OFFENSE \_\_\_\_\_

DATE OF ALLEGED OFFENSE \_\_\_\_\_

APPLICATION FOR COURT APPOINTED ATTORNEY

Every question on this form must be answered. Failure to do so could result in the application not being considered. If you need assistance, notify the person in charge of taking this application. You must answer each question truthfully; failure to do so could subject you to additional criminal charges.

1. LAST NAME \_\_\_\_\_ FIRST NAME \_\_\_\_\_ MIDDLE \_\_\_\_\_
2. ADDRESS \_\_\_\_\_  
Number and Street City State Phone
3. MARRIED \_\_\_\_\_ SINGLE \_\_\_\_\_ DIVORCED \_\_\_\_\_ SEPARATED \_\_\_\_\_
4. IF MARRIED, NAME OF SPOUSE \_\_\_\_\_
5. NUMBER OF CHILDREN UNDER 18 \_\_\_\_\_ AGES \_\_\_\_\_
6. IF YOU HAVE CHILDREN UNDER 16, ARE THEY LIVING WITH YOU? \_\_\_\_\_
7. ARE YOU PAYING? \_\_\_\_\_ RECEIVING? \_\_\_\_\_ CHILD SUPPORT? IF SO, HOW MUCH? \_\_\_\_\_
8. ARE YOU EMPLOYED? \_\_\_\_\_ IF YES, NAME OF EMPLOYER \_\_\_\_\_
9. WHAT IS YOUR HOURLY SALARY? \_\_\_\_\_ HOW MANY HOURS PER WEEK? \_\_\_\_\_
10. ARE YOU RECEIVING BENEFITS FROM SOCIAL SECURITY, WORKER'S COMPENSATION, UNEMPLOYMENT OR ANY OTHER SOURCE WHATSOEVER? YES \_\_\_\_\_ NO \_\_\_\_\_ IF YES, STATE THE AMOUNT, FROM WHOM RECEIVED, FREQUENCY OF PAYMENT, AND DATE PAYMENTS END \_\_\_\_\_

11. NAMES OF EMPLOYERS FOR LAST TWO YEARS AND MONTHLY SALARY FOR EACH. \_\_\_\_\_
12. HOW MUCH HAVE YOU EARNED THIS YEAR? \$ \_\_\_\_\_ LAST YEAR? \$ \_\_\_\_\_
13. IF YOU ARE LIVING WITH SPOUSE, IS HE OR SHE EMPLOYED? \_\_\_\_\_ IF YES, WHAT IS NAME OF EMPLOYER AND SALARY? \_\_\_\_\_
14. LIST ALL ASSETS AND THEIR VALUES OWNED BY YOU AND/OR YOUR SPOUSE.

<u>ASSET</u>	<u>VALUE</u>	<u>MORTGAGE</u>	<u>MONTHLY PAYMENT</u>
REAL ESTATE	\$ _____	\$ _____	\$ _____
FURNITURE			
AUTO			
TRUCK			
BOAT			
CHECKING ACCT			
SAVINGS ACCT			
OTHER			

15. NAMES OF ALL CREDITORS (FIRMS AND PERSONS YOU OWE MONEY TO), AND HOW MUCH YOU OWE TO EACH. \_\_\_\_\_

16. NAMES, ADDRESSES, AND PHONE NUMBERS OF TWO PEOPLE WHO WILL ALWAYS KNOW YOUR WHEREABOUTS. \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, I have been advised by \_\_\_\_\_ of my right to representation by counsel in the prosecution of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.

DEFENDANT  
OVER  
"D"

THE STATE OF TEXAS

COUNTY OF JEFFERSON Know all men by these presents:

Before me, the undersigned authority, on this day personal appeared  
(Print Name) \_\_\_\_\_  
who upon his/her oath deposed and said "I am the applicant in the foregoing Application for  
Court Appointed Attorney, and state that all my answers on the application are true and correct."

SWORN TO AND SUBSCRIBED BEFORE ME on this the \_\_\_\_ day of \_\_\_\_\_  
20\_\_.

\_\_\_\_\_  
Magistrate

ORDERS OF THE COUNTY COURT AT LAW

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, came on to be considered the foregoing  
application, and the court, after reading the application, and examining the defendant, is of the  
opinion that the application should be and is hereby GRANTED, and an attorney will be  
appointed to represent the defendant, as per order on file .

\_\_\_\_\_  
Judge Presiding

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, came on to be considered the foregoing  
application, and the court, after reading the application, and examining the defendant, is of the  
opinion that the application should be and is hereby DENIED.

\_\_\_\_\_  
Judge Presiding

## **Appendix H – Juvenile Indigent Defense Plan**

### **Jefferson Juvenile Board Plan**

#### **Preamble**

*10/31/2013*

## **JEFFERSON JUVENILE BOARD PLAN FOR QUALIFICATION OF AND APPOINTMENT OF ATTORNEYS TO REPRESENT INDIGENT JUVENILES**

#### **Preamble**

As required by the Texas Fair Defense Act, the Juvenile Board of Jefferson County, Texas approves the following plan for the qualification of and appointment of attorneys to represent indigent juveniles. This plan is effective November 1, 2013 and supersedes previous versions of the plan.

#### **Juvenile Board of Jefferson County, Texas**

The Juvenile Board of Jefferson County, Texas consists of the county judge and the district judges of Jefferson County, Texas. The board meets periodically in accordance with the Texas Open Meetings Act. The board elects a chairman, who is responsible for the administrative duties of the board. The board may impose policies, procedures and guidelines to implement this Juvenile Board Plan and guarantee effective representation to juveniles whose families may be indigent.

#### **Definitions**

As used in this plan, the following terms and phrases will have the following meanings, and terms and phrases not defined below shall have the meanings given them by the Texas Family Code section 51.02:

1. “Board” means the Juvenile Board of Jefferson County, Texas;
2. “Judge” means a judge sitting as a juvenile court judge;
3. The pronouns “he,” “him,” and “his” refers to individuals of both genders;
4. “Child” and “juvenile” refer to a person 10 years of age or older and under 17 years of age, or to a person 17 years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age;
5. “CLE” means continuing legal education;
6. “Coordinator” means the person designated by the board to perform duties assigned in this plan;
7. “TFC” means Texas Family Code;
8. “Parent” means the child’s mother and/or father, but does not include a parent whose parental rights have been terminated;
9. “TIDC” means Texas Indigent Defense Commission;
10. “Counsel” and “attorney” are interchangeable.

#### **Coordinator**

The chairman of the board, with the approval of the board, designates the court coordinator for the 317<sup>th</sup> District Court as the coordinator under this plan. The coordinator shall:

1. Maintain and update a list of attorneys qualified and approved to be appointed under this plan according to their designated categories;
2. Investigate and track attorney qualifications;
3. Manage intake procedures;
4. Track cases and assignments to avoid duplication;



5. Supervise and monitor attorney fee payments;
6. Receive and investigate complaints against attorneys;
7. Coordinate with the Office of Court Administration and other applicable agencies;
8. Ensure compliance with the policies and standards of the Task Force on Indigent Defense and applicable statutes;
9. Assist in reporting requirements and obtaining grants; and
10. Perform all other duties designated by the board.

### **Prompt Detention Hearings**

*10/31/2013*

#### **Prompt Detention Hearings**

A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where the child may not be detained for longer than six hours pursuant to Texas Family Code (TFC) 52.025, or the child must face another disposition authorized by TFC 52.02, including referral to the office designated by the board as intake for the juvenile court.

The intake officer shall process the child according to the requirements of TFC 53.01, and shall also inform the child and the child's parent of the child's right to appointed counsel if the parent is indigent, and shall provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, a detention hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed holiday, in which case the detention hearing shall be held on the first working day after the child is taken into custody.

Prior to the detention hearing, the court shall inform the parties of:

1. The child's right to counsel and to appointed counsel if the court determines the child's parent or other person responsible for the support of the child is indigent or otherwise qualifies for appointed counsel; and
2. The child's right to remain silent as to the alleged conduct.

### **Indigence Determination Standards**

*10/31/2013*

#### **Indigence Determination Standards, Appointment Plan, Procedure**

The juvenile probation department shall provide a form to request an appointed attorney to each child's parent or other person responsible for the support of the child. The request for appointed counsel form is for the purpose of determining the family's eligibility for appointment of counsel. No appointment of counsel shall be made without the parent or other person responsible for the support of the child completing and returning the form, unless this is waived by a judge, other than the appointment of the stand-by attorney described below. The form shall be sworn to under oath by the person completing the form.

The completed form shall be delivered to the coordinator by the juvenile probation department as soon as practicable for a judge to make a determination of whether the child qualifies for an appointed attorney.

The financial standards set forth below shall be used to determine whether a juvenile's family is indigent:

1. The family's net household income does not exceed 150% of the poverty guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register;

2. The family, at the time of requesting appointed counsel, is eligible to receive food stamps, Medicaid, TANF supplemental social security, or public housing;
3. The family does not meet the financial standards above but is otherwise unable to retain private counsel without substantial hardship to the family, taking into account the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the dependents living in the family home or entitled to support; and
4. If a member of the immediate family of the juvenile defendant is the alleged victim of the alleged offense and the juvenile defendant is personally unable to afford private counsel.

### **Minimum Attorney Qualifications**

*10/31/2013*

#### **Minimum Attorney Qualifications, Including Experience And CLE**

The coordinator shall compile and maintain a list of attorneys eligible to receive appointments to represent indigent juveniles. All attorneys licensed to practice law by the State Bar of Texas are eligible to apply for appointment.

This plan recognizes five levels of seriousness of juvenile charges, and also appeals: Child in Need of Supervision cases (CINS), delinquency cases with no TYC commitment possible, delinquency cases with TYC commitment possible, determinate sentence cases, certification cases, and appeals. Applicants must meet the minimum qualification standards set out below to be considered for appointment to juvenile cases, unless the applicant is otherwise approved by the board:

1. CINS cases: a minimum of one (1) year experience and participation as counsel/co-counsel on three (3) juvenile cases, and a minimum of six (6) hours of certified CLE credit in juvenile law each attorney reporting year;
2. Delinquency cases with no TYC commitment possible: a minimum of one (1) year of experience and participation as counsel/co-counsel on five (5) juvenile cases, and a minimum of 10 hours of certified CLE credit in criminal or juvenile law each attorney reporting year;
3. Delinquency cases with TYC commitment possible: a minimum of two (2) years of experience and participation as counsel/co-counsel on ten (10) juvenile cases, and a minimum of 15 hours of certified CLE credit in criminal or juvenile law each attorney reporting year;
4. Determinate sentence cases: a minimum of three (3) years of experience and participation as counsel/co-counsel on 15 juvenile cases, and a minimum of 15 hours of certified CLE credit in criminal or juvenile law each attorney reporting year;
5. Certification cases: a minimum of three (3) years of experience and participation as counsel/co-counsel on 20 juvenile cases, and a minimum of 15 hours of certified CLE credit in criminal or juvenile law each attorney reporting year;
6. Appeals: a minimum of two (2) years of experience and participation as counsel/co-counsel on ten (10) juvenile cases or participation as counsel or co-counsel in the appeal of three (3) juvenile cases, and a minimum of 15 hours of certified CLE credit in criminal or juvenile law each attorney reporting year.

Each of the above requirements of “certified CLE credit in criminal or juvenile law each attorney reporting year” must include at least six (6) hours in juvenile law, and the remaining hours may be in either juvenile or criminal law. Continuing legal education may include activities accredited under section 4, article XII, State Bar Rules, including self-study, teaching at an accredited continuing legal education activity, attendance at a law school class, or legal research-based writing.

An attorney currently certified in juvenile law by the Texas Board of Legal Specialization meets the CLE requirements.

### **Mandatory Reporting By Attorneys**

Attorneys must comply with two annual reporting requirements in order to remain on the appointment list. One report is the affidavit described below, to be filed with the coordinator regarding the attorney's CLE hours. The other report is the practice-time statement described below, to the Texas Indigent Defense Commission (TIDC) regarding the attorney's time spent working on juvenile appointed cases, including pleas, trials, and appeals.

1. Regarding the first reporting requirement, each attorney must annually submit an affidavit to the coordinator by October 1 of each year detailing the juvenile continuing legal education activities the attorney completed in the prior 12 months. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified by the Texas Board of Legal Specialization as a specialist in juvenile law. Attorneys may contact the coordinator regarding an acceptable format.

Continuing legal education activity completed in the 12 months immediately preceding the annual reporting due date may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum hourly requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

2. An attorney shall submit by October 15<sup>th</sup> each year starting October 15, 2014 a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission/form prescribed by the Texas Indigent Defense Commission to the court administration office in the county. The required form is available online at the TIDC website at <http://tidc.tamu.edu>.

### **Prompt Appointment of Counsel**

*10/31/2013*

#### **Appointment Of Counsel At First Detention Hearing**

Every juvenile shall be represented by an attorney at all hearings. The detention hearing may be conducted without the presence of the child's parent or other person responsible for the support of the child. However, in these cases the court must, prior to the detention hearing, appoint counsel or a guardian ad litem to represent the child.

An attorney is appointed to represent each juvenile at the first detention hearing under the procedure described below for appointing a stand-by attorney at all detention hearings.

The court shall provide the appointed attorney for the child access to all written matter to be considered by the court in making the decision on whether to detain the child. That appointed attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation. TFC 51.101(a).

Juveniles eligible for an appointed attorney who do not have detention hearings, and who have not hired an attorney, shall be appointed an attorney according to the provisions below for appointment of counsel for matters other than detention hearings.

#### **Stand-by Attorney Appointment Process**

A stand-by attorney shall be appointed to represent juveniles at all detention hearings as follows:

1. Appointments will be made on a true rotation basis from the coordinator's list of approved attorneys;
2. The appointed attorney shall be the stand-by attorney;
3. Appointments will be for a particular week, generally requiring attendance at hearings on Mondays, Wednesdays, and Fridays;
4. Stand-by attorneys must be present for detention hearings at 7:30 a.m.;
5. Stand-by attorneys will be paid one flat fee of \$350.00 for each day of detention hearings.

Once assigned a weekly appointment, if the assigned stand-by attorney is unable to attend the hearings, that attorney is responsible for finding a replacement who is on the coordinator's list of approved attorneys. Failure to have a replacement attorney appear, without good cause found by the district judge, will result in the appointed attorney being withdrawn from the list for the balance of the fiscal year.

All attorneys desiring to be on the stand-by list must give their names to the clerk of the 317th District Court and must maintain the minimum requirements and qualifications for attorneys accepting court appointments in juvenile cases as described below.

If an attorney has been appointed to represent a juvenile in a pending case, and a detention hearing becomes necessary, the stand-by attorney shall handle the detention hearing.

#### **Appointment Of Counsel For Matters Other Than Detention Hearings**

This provision describes the process for appointing attorneys to represent juveniles for all court proceedings other than detention hearings.

On all juvenile cases, if the juvenile's family has not hired an attorney to represent the juvenile, the juvenile court shall determine, on the filing of a petition, whether the child's family is indigent. This includes cases in which:

1. The child is released by intake;
2. The child is released at the initial detention hearing;
3. The case was referred to the court without the child in custody; or
4. The child is still in detention.

If the court finds the child's family is indigent, the court shall appoint an attorney to represent the child on or before the fifth (5<sup>th</sup>) working day after the date the petition for adjudication or petition for discretionary transfer hearing was served on the child, or on the fifth (5<sup>th</sup>) day after a motion or petition is filed seeking to modify disposition by committing the child to the Texas Youth Commission or placing the child in a secure correctional facility. The appointed attorney shall continue to represent the child until the case is terminated, the family retains an attorney, the court rules on the motion or petition, or a new attorney is appointed by the court. TFC 51.101(b), (c), (d), (e).

A judge shall consider the request for appointment of counsel. If approved, a different attorney will then be appointed to represent the juvenile in all court proceedings other than the detention hearings. The stand-by attorney shall continue to represent the juvenile at detention hearings.

The (new) appointed attorney will then be notified by the coordinator within one (1) working day of the date of appointment. If the juvenile is not released from the detention facility, the attorney appointed shall make every reasonable effort to contact the juvenile within one (1) working day of notice of appointment, and make every reasonable effort to interview the juvenile as soon as practicable after receiving notice of the appointment. The court may replace an attorney who does not comply with the requirement of diligent contact with the juvenile.

If a new case is filed on the juvenile when an appointed attorney is already representing the juvenile, the same attorney will be appointed to represent the juvenile on the new case.

### **Emergency Appointment**

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in juvenile law.

### **Attorney Selection Process**

*10/31/2013*

#### **Procedure For Including Attorneys On List**

Attorneys meeting the applicable above qualifications may apply for appointments to juvenile cases by completing the Jefferson Juvenile Board Attorney Application for Appointment form, which can be obtained from the coordinator in the 317<sup>th</sup> District Court or online at the Texas Indigent Defense Commission website at <http://tidc.tamu.edu>. For the attorney to receive appointments, the application must be approved by a majority of the Jefferson County Juvenile Board members. However, temporary approval of an attorney by a judge may be given pending juvenile board action within a reasonable time.

#### **Notifying Attorney Of Appointment**

The coordinator will notify the attorney of the appointment within one (1) working day of the date of appointment. If the juvenile is not released from the detention facility, the appointed attorney shall make every reasonable effort to contact the juvenile within one (1) working day of the notice of appointment, and shall make every reasonable effort to interview the juvenile as soon as practicable after receiving notice of the appointment.

#### **Fee and Expense Payment Process**

*10/31/2013*

#### **Attorney Fees For Detention Hearings, Final Hearings, Appeals**

Standby attorneys shall be paid a flat rate of \$350.00 per day for detention hearings.

Appointed attorneys shall be paid a fee of \$325.00 for an adjudication and disposition hearing in which the juvenile pleads "true".

For contested hearings and trials, appointed attorneys shall be paid \$325.00 per half day, plus up to an additional \$500.00 for trial preparation when approved by the judge, based upon a rate of \$50.00 per hour for up to 10 hours.

Appointed attorneys shall be paid a fee of \$1,000.00 per case for appeals.

#### **Investigative and Expert Expenses**

Counsel appointed in a non-capital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed according to the procedures set forth below.

When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

#### **Procedure With Prior Court Approval**

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:

1. Type of investigation to be conducted or the type of expert to be retained;
2. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
3. Itemized list of anticipated expenses for each investigation or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

1. State the reasons for the denial in writing;
2. Attach the denial to the confidential request; and
3. Submit the request and denial as a sealed exhibit to the record.

#### **Procedure Without Prior Court Approval**

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved. Denial of expenses will follow the procedure stated above. Texas Code of Criminal Procedure 26.05(d), 26.052(f), (g), (h).

#### **Itemized Attorney Fee Voucher**

An itemized attorney voucher form must be completed by the attorney, submitted, and approved by the judge before a payment is made to the attorney. A model attorney fee voucher promulgated by the Task Force on Indigent Defense is attached and is also available from the court. Texas Code of Criminal Procedure 26.05(c).

If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount. Texas Code of Criminal Procedure 26.05(c).

An attorney whose request for payment is disapproved or is not acted upon within 60 days of submission may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region

### **Miscellaneous**

*10/31/2013*

#### **Procedure For Removing Attorneys From List**

It is the responsibility of the juvenile board to ensure competent representation of juveniles. An attorney may be removed from the appointment list upon the vote of the majority of the members of the board on the request of any of its members for the following reasons:

1. Establishing a pattern of failure to diligently contact the child after appointment;
2. Failing to conduct himself or herself in a professional and ethical manner;
3. Being found by an appellate court or state bar disciplinary committee to have provided ineffective representation;
4. Failing to maintain minimum qualifications;
5. Failing to submit the practice-time statement annually online to TIDC on juvenile cases handled;
6. Failing to file annually with the coordinator an affidavit on the attorney's CLE;
7. Any other reason which the board deems to be good cause for removal.

A closed and confidential hearing before the board will be held to determine whether or not to remove the attorney from the appointment list. The attorney sought to be removed shall have the right to notice of the hearing and opportunity to be heard and to present evidence and testimony. The board's vote to determine whether or not to remove an attorney from or reinstate an attorney to the appointment list may be done only in the presence of board members.

The coordinator will provide notice to the attorney removed from the list within three (3) working days of the date of removal. The attorney removed shall have the right to seek reinstatement at a closed and confidential hearing before the board. The attorney may only be reinstated by a majority vote of the members of the board.

## **Plan Documents**

Jefferson Juvenile Board Affidavit of Indigence.pdf (4/6/2010 8:50:25 AM) [view](#)

Jefferson Juvenile Board Attorney Application for Appointment.pdf (4/6/2010 8:51:45 AM) [view](#)

Jefferson Juvenile Board Attorney Fee Schedule.doc (4/6/2010 9:15:51 AM) [view](#)

Jefferson Juvenile Board Attorney Fee Voucher.pdf (4/6/2010 8:51:15 AM) [view](#)

**Appendix I – County Court-at-Law #2: Affidavit of Indigence**



STATE OF TEXAS  
VS

DOCKET NO. 298398

COURT COUNTY COURT AT LAW #2

AA

OFFICIAL NOTIFICATION  
FINANCIAL AFFIDAVIT

IN ORDER TO COMPLETE THE APPLICATION FOR A COURT APPOINTED ATTORNEY  
THE FOLLOWING INFORMATION MUST BE FURNISHED WITH NO EXCEPTIONS:

\*\*\* PICTURE ID \*\*\*

Rent or mortgage receipts	_____
Assets	_____
Current credit card balance(s)	_____
Medical bills	_____
Other personal bills owed	_____
Defendant employment	_____
Spouse employment	_____
W-2 forms for last two years	_____
Current check stub	_____
Checking/Saving acct balance	_____
Dependents	_____
Food Stamps/TANF	_____
Child Support	_____
Unemployment Benefits	_____

IF THE ABOVE INFORMATION IS NOT FURNISHED BY THE DATE SHOWN BELOW,  
YOU ARE SUBJECT TO BE REMANDED TO JAIL.

DATE OF INDICTMENT	<u>0/00/0000</u>
NEXT SCHEDULED COURT DATE	<u>9/11/2013</u>
APPOINTMENT DATE AND TIME	<u>9/11/2013 10:00 AM</u>

\_\_\_\_\_  
DEFENDANT

SWORN TO AND SUBSCRIBED BEFORE ME on this the 11th day of September,  
2013, to certify which, witness my hand and seal of office.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

STATE OF TEXAS  
VS

DOCKET NO. 298398

COURT COUNTY COURT AT LAW #2

A A A

NEXT COURT DATE 9/10/2013

NAME A A A  
LAST FIRST MIDDLE

ADDRESS: 2 B

PHONE: 1

EMPLOYMENT

ARE YOU EMPLOYED? NO

IF YES, NAME AND ADDRESS OF EMPLOYER:

\_\_\_\_\_  
\_\_\_\_\_  
PHONE: \_\_\_\_\_

HOW MUCH DO YOU EARN PER MONTH? \$ \_\_\_\_\_

IF UNEMPLOYED, GIVE MONTH & YEAR OF LAST EMPLOYMENT: 00/0000

HOW MUCH DID YOU EARN PER MONTH? \$ \_\_\_\_\_

DO YOU RECEIVE UNEMPLOYMENT? NO

IF MARRIED, IS YOUR SPOUSE EMPLOYED? NO

HOW MUCH DOES YOUR SPOUSE EARN PER MONTH? \$ \_\_\_\_\_

ASSETS

SELF EMPLOYMENT \$ \_\_\_\_\_

FOOD STAMPS \$ \_\_\_\_\_

RETIREMENT \$ \_\_\_\_\_

TANF \$ \_\_\_\_\_

SAVINGS ACCOUNT \$ NO \_\_\_\_\_

WIC \_\_\_\_\_

BALANCE

CHECKING ACCOUNT \$ NO \_\_\_\_\_

BALANCE

DO YOU OWN? REAL ESTATE NO

AUTOMOBILE(S) NO

MAKE \_\_\_\_\_ MODEL \_\_\_\_\_

OTHER VALUABLE PROPERTY NO

DO YOU HAVE ANY OF THE FOLLOWING PENDING?

WORKMANS COMPENSATION NO

PERSONAL INJURY SUIT NO

PROBATE PROCEEDINGS NO

DEPENDANTS

MARITAL STATUS: SINGLE

TOTAL DEPENDANTS: \_\_\_\_\_

DEPENDANTS SUPPORTED BY YOU: \_\_\_\_\_

DEBTS

APARTMENT OR HOME:   \$ \_\_\_\_\_ RENT                   HOUSING \$ \_\_\_\_\_  
                                  \$ \_\_\_\_\_ MORTGAGE           COMPANY           \_\_\_\_\_

CREDITORS

PAYMENT

BALANCE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMENTS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I STATE THAT I UNDERSTAND THE INFORMATION REQUESTED AND SUPPLIED AND STATE THE INFORMATION IS TRUE TO THE BEST OF MY ABILITY. I FURTHER STATE THAT I AM MENTALLY COMPETENT AND THE INFORMATION IS VOLUNTARILY MADE. I FURTHER UNDERSTAND IF THE INFORMATION IS KNOWINGLY FALSE IN ANY MATERIAL MATTER, I WILL BE SUBJECT TO THE PENALTIES OF PERJURY.

\_\_\_\_\_  
DEFENDANT

SWORN TO AND SUBSCRIBED BEFORE ME on this the 11th day of September, 2013, to certify which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

ON THIS 11th DAY OF September, 2013, I HAVE BEEN ADVISED BY THE COUNTY COURT AT LAW #2 COURT OF MY RIGHT TO REPRESENTATION BY COUNSEL IN THE TRIAL OF THE CHARGE PENDING AGAINST ME. I CERTIFY THAT I AM WITHOUT MEANS TO EMPLOY COUNSEL OF MY OWN CHOOSING AND I HEREBY REQUEST THE COURT TO APPOINT COUNSEL FOR ME.

\_\_\_\_\_  
DEFENDANT

SWORN TO AND SUBSCRIBED BEFORE ME on this the 11th day of September, 2013, to certify which witness my hand and seal of office.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF TEXAS

**Appendix J – County Court-at-Law #3: Affidavit of Indigence**

**THE STATE OF TEXAS  
JEFFERSON COUNTY COURT AT LAW #3  
JOHN PAUL DAVIS, JUDGE**

Case Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Offense Charge: \_\_\_\_\_ Offense Date: \_\_\_\_\_

Defendant ( ) is ( ) is not being held in the Jefferson County Jail.  
Defendant ( ) did ( ) did not post a cash bond.

Home Address: \_\_\_\_\_

Home Telephone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_

**AFFIDAVIT OF INDIGENCE AND REQUEST  
FOR COURT-APPOINTED COUNSEL**

I, the undersigned, being duly sworn, say that I am the defendant in this case. I am asking for appointment of an attorney to represent me in this case because I cannot pay for an attorney now without causing substantial hardship to myself or my dependant family. The following information is true, and I ask the court to use the information to decide whether I can have an appointed attorney and payment of other costs at public expense. I understand that I can be required to document or verify this information. I understand failure to do so could result in my request being denied or, if counsel has already been appointed, the withdrawal of counsel. I understand that if I do not tell the truth I can be charged with a crime, and if convicted, I can be incarcerated.

**PLEASE PRINT CLEARLY AND COMPLETE EVERY LINE BELOW THAT IS APPLICABLE TO YOU.**

**Writing N/A or leaving application blank will result in a delay processing your request.**

**LIST THE FOLLOWING INFORMATION FOR EVERYONE LIVING IN YOUR HOUSEHOLD:**

NAME	RELATIONSHIP	AGE	MONTHLY INCOME	DEPENDANT
.....	.....	.....	.....	<input type="checkbox"/> YES <input type="checkbox"/> NO
.....	.....	.....	.....	<input type="checkbox"/> YES <input type="checkbox"/> NO
.....	.....	.....	.....	<input type="checkbox"/> YES <input type="checkbox"/> NO
.....	.....	.....	.....	<input type="checkbox"/> YES <input type="checkbox"/> NO

**YOU MUST PROVIDE PROOF OF INCOME OR AN ATTORNEY WILL NOT BE APPOINTED**

EMPLOYER ..... OCCUPATION .....  
ADDRESS ..... TELEPHONE # .....  
LENGTH OF EMPLOYMENT ..... AFTER TAX INCOME .....

SPOUSE'S EMPLOYER ..... OCCUPATION .....  
ADDRESS ..... TELEPHONE # .....  
LENGTH OF EMPLOYMENT ..... AFTER TAX INCOME .....

**OTHER INCOME FOR YOU AND OR SPOUSE IE: SOCIAL SECURITY, UNEMPLOYMENT, RETIREMENT, PUBLIC ASSISTANCE, CHILD SUPPORT, ETC.:**

DESCRIBE ..... AMOUNT .....  
DESCRIBE ..... AMOUNT .....

**PROPERTY AND ASSETS YOU, SPOUSE AND DEPENDANTS**

AVAILABLE CASH ..... SECURITIES, STOCKS, ETC .....  
SAVINGS ACCT # ..... BALANCE ..... BANK/BRANCH .....  
CHECKING ACCT # ..... BALANCE ..... BANK/BRANCH .....

**REAL ESTATE: ADDRESS, CITY      VALUE      AMOUNT OWED      MORTGAGE HOLDER**

.....

CREDIT CARD: CARD NAME/BANK                      ACCOUNT #                      EXPIRATION DATE

VEHICLE: MAKE/YEAR                      VALUE                      AMOUNT OWED                      LIEN HOLDER

OTHER PROPERTY OR ASSETS: IE: FURNITURE, BOATS, GUNS, JEWELRY ETC.:

MONEY OWED TO YOU OR SPOUSE BY OTHERS (TAX REFUND, RENTERS REFUND ETC.)

NAME OF DEBTOR                      AMOUNT OWED                      DATE EXPECTED

LIST ALL EXPENSES THAT ARE PAID MONTHLY BY YOU INDIVIDUALLY OR JOINTLY:

RENT/MTG \_\_\_\_\_ UTILITES \_\_\_\_\_ CREDIT CARD \_\_\_\_\_

CAR PAYMENT \_\_\_\_\_ CHILD SUPPORT \_\_\_\_\_ OTHER \_\_\_\_\_

IF YOU HAVE NO INCOME OR INCOME IS LESS THAN EXPENSES, PLEASE EXPLAIN HOW THESE ARE PAID, HOW YOU LIVE IE: STAY WITH RELATIVES/FRIENDS, HUD HOUSING, FOOD STAMPS, ETC.

HAVE YOU EVER HAD COURT-APPOINTED COUNSEL  YES  NO  
IF YES, WHEN AND WHERE \_\_\_\_\_

CHARGE (S) \_\_\_\_\_

List the names of 3 attorneys that you sought to represent you and the date of conference:

ATTORNEY NAME \_\_\_\_\_ DATE \_\_\_\_\_

ATTORNEY NAME \_\_\_\_\_ DATE \_\_\_\_\_

ATTORNEY NAME \_\_\_\_\_ DATE \_\_\_\_\_

IF I RECEIVE THE SERVICES OF COURT APPOINTED ATTORNEY, I AGREE TO REINBURSE THE COURT FOR REASONABLE ATTORNEY FEES AND COSTS PAID IN MY DEFENSE AS ORDERED BY THE COURT. I UNDERSTAND THAT MY AGREEMENT TO REIMBURSE THE COURT FOR MY ATTORNEY'S FEES AND COSTS APPLIES ONLY IF I AM FOUND GUILTY.

I ACKNOWLEDGE RECEIPT OF THE COURT APPOINTED ATTORNEY ADVICE OF RIGHTS FORM BY INITIALING AS FOLLOWS: \_\_\_\_\_.

I swear that the foregoing information and answers are true to the best of my knowledge and are given to induce the state to appoint counsel to represent me because I am currently unable to retain private counsel. I have made the statements on the financial affidavit and understand that I make them under the penalty of perjury the punishment for which is imprisonment for not more than seven years. This has also been explained to me by a court officer.

\_\_\_\_\_  
Date Applicant/Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, to certify which witness my hand and seal of office.

My commission Expires \_\_\_\_\_  
Affix Seal Notary Public, State of Texas

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_. I HAVE BEEN ADVISED BY THE COUNTY COURT AT LAW #3 OF BY RIGHT TO REPRESENTATION BY COUNSEL IN THE TRIAL OR THE CHARGE PENDING AGAINST ME. I CERTFY THAT I AM WITHOUT MEANS TO EMPLY COUNSEL OR MY OWN CHOOSING AND I HERBY REQUEST THE COURT TO APPOINT COUNSEL FOR ME.

\_\_\_\_\_  
Applicant/Affiant

SWORN TO AND SUBSCRIBED BEFORE ME on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, to certify which witness my hand and seal of office.

My commission Expires \_\_\_\_\_  
Affix Seal Notary Public, State of Texas

**FOR COURT USE**

- Application Approved.
- Application Denied.

\_\_\_\_\_  
Date Presiding Judge



BASIC RIGHTS CONCERNING COURT – APPOINTED COUNSEL

1. YOU HAVE A RIGHT TO HAVE AN ATTORNEY REPRESENT YOU ON THE CRIMINAL CHARGE (S) YOU ARE APPEARING IN COURT ON. IF HIRING AN ATTORNEY WOULD CREATE A SUBSTANTIAL HARDSHIP IN PROVIDING NECESSITIES FOR YOURSELF OR YOUR DEPENDANTS, THE COURT WILL APPOINT AN ATTORNEY TO REPRESENT YOU AT STATE EXPENSE.
2. IN ORDER FOR THE COURT TO DECIDE WHETHER YOU ARE ELIGIBLE FOR COURT-APPOINTED COUNSEL, YOU MUST SUBMIT A SWORN FINANCIAL STATEMENT WHICH LISTS INFORMATION ABOUT YOUR INCOME, EXPENSES, PROPERTY, AND DEPENDANTS FINANCIAL INFORMATION FOR YOUR SPOUSE, IF ANY MAY BE REQUIRED.
3. THE FINANCIAL INFORMATION PROVIDED TO THE COURT WILL BE VERIFIED. YOU AND YOUR SPOUSE MUST SIGN A RELEASE OF INFORMATION. THIS ALLOWS THE COURT TO OBTAIN INFORMATION FROM OTHERS TO CONFIRM YOUR FINANCIAL SITUATION. PLEASE BE SURE TO READ THE RELEASE CAREFULLY BEFORE TYOU SIHN IT, YOU MAY ALSO BE ASKED TO PROBIDE DOCUMENTATION OF DEBTS, PROPERTY, AND INCOME, (SUCH AS RECENT WAGE STUBS).
4. THE FINANCIAL STATEMENT ASKS FOR YOUR SOCIAL SECURITY NUMBER. ALTHOUGH YOU DO NOT HAVE TO PROVIDE THIS NUMBER, IT WILL HELP THE COURT VERIFY YOUR REQUEST FOR COUNSEL MORE QUICKLY AND MAKE SURE YOUR RECORDS ARE RECEIVED CORRECTLY.
5. INFORMATION YOU PROVIDE ON THE FINANCIAL STATEMENT GENERALLY IS CONFIDENTIAL. YOUR ADDRESS MAY BE RELEASED TO OTHER COURT STAFF TO UPDATE COURT RECORDS OR BE RELEASED, IF NECESSRY, FOR VERIFYING FINANCIAL INFORMATION. HOWEVER, IF THE COURT HAS REASON TO BELIEVE YOU KNOWINGLY FALSIFIED THE INFORMATION, YOUR FINANCIAL STATEMENT MAY BE SENT TO THE DISTRICT ATTORNEY TO REVIEW FOR POSSIBLE FILING OF FALSE SWEARING CHARGES. ALSO, FINANCIAL INFORMATION PROVIDED IN THE AFFIDAVIT OF INDIGENCE MAY BE USED IN A HEARING TO DETERMINE WHEATHER YOU ARE ELIGIBLE FOR COURT-APPOINTED COUNSEL AND FOR SENTENCING AND COLLECTION PURPOSES, IF NECESSARY.
6. IF YOUR FINANCIAL SITUATION IMPROVES DURING YOUR CASE, YOU MUST TELL YOUR ATTORNEY OR THE COURT. THE COURT MAY EITHER END THE APPOINTMENT OF COUNSEL, OR ORDER YOU TO REPAY SOME OR THE ENTIRE AMOUNT EXTENDED.

\_\_\_\_\_  
APPLICANT/AFFIANT

\_\_\_\_\_  
PRESIDING JUDGE



## **Appendix K – Sample Felony Defender Contract**

**PUBLIC DEFENDER CONTRACT**  
**252nd DISTRICT COURT**

**CONTRACT AGREEMENT**

This contract is agreed upon and entered into by the following parties: the 252nd District Court of Jefferson County, Texas ("Court") [appointing authority], Sheigh Summerlin ("Attorney") [contractor], and Jefferson County, Texas ("County") [contracting authority] for the purpose of providing legal representation and services to indigent defendants who appear before the Court.

In compliance with the Jefferson County Criminal District Courts Indigent Representation Plan ("Plan"), which is incorporated herein and expressly made a part hereof for all purposes, Attorney agrees to serve as a Contract Public Defender in the Court and to comply with all applicable Plan provisions.

Attorney certifies that she meets all the qualifications required to serve as a Contract Public Defender pursuant to the Plan.

**Scope of Contract:** In all criminal cases for which the Court has jurisdiction, Attorney agrees to represent indigent criminal defendants in all said cases assigned to Attorney in the Court with regard to all pre-trial matters which have not been assigned to indigent defendant trial counsel.

**Compensation:** Attorney agrees to accept \$8333.33 per month to serve as Contract Public Defender. In addition, Attorney agrees to accept an additional compensation amount not to exceed \$3000.00 annually to pay for required and reasonable Continuing Legal Education requirements, registrations, and travel expenses related thereto.

**Investigators and Experts Compensation:** Attorney shall be reimbursed for reasonable and necessary expenses, including expenses for investigators, and mental health and other experts pursuant to Article 26.05, Texas Code of Criminal Procedure. Prior Court approval for these expenses should be obtained whenever possible.

**Term of Contract:** This contract is in full force and effect on a **month-to-month basis** unless terminated by Attorney or by the Court. If this contract is terminated, Attorney will be relieved of all pending appointments and will not be required to continue representation in any case previously assigned.

**Contract Termination:** This contract may be terminated at-will by either Attorney or by the Court.

**Independent Contractor:** Attorney is not an employee of Jefferson County, but is an independent contractor who shall complete the requirements of this contract by

Attorney's own means and methods of work, and in accordance with Attorney's professional legal judgment. In the course of representing any indigent criminal defendant, Attorney shall be in exclusive control of her professional legal judgment and shall freely and independently exercise same in the best interests of her client, and Attorney shall not be subject to the control of or supervision by the Court, unless otherwise specified in this contract. The indigent criminal defendant is the Attorney's client, not Jefferson County and not the Court. Attorney shall provide reasonably competent, zealous legal services to each indigent criminal defendant in accordance with Attorney's responsibilities under the Texas Disciplinary Rules of Professional Conduct and the Texas Code of Criminal Procedure.

**Standards of Representation:**

(a) Attorney shall provide all services required by Senate Bill 7 as passed by the 77<sup>th</sup> General Session of the Texas Legislature in 2001, as it amends the Texas Code of Criminal Procedure.

(b) Attorney shall ensure continuity of representation of each indigent criminal defendant unless relieved or replaced in accordance with Article 26.04(j)(2), Texas Code Criminal Procedure.

(c) Attorney shall not re-assign, subcontract, or delegate any part of the services to be provided by Attorney under this contract unless first obtaining the approval of the Court. Any substitution of attorneys under this provision shall be made from the approved indigent appointment list for the Jefferson County Criminal District Courts.

(d) Attorney must submit a monthly invoice to be approved by the Court for payment.

(e) Attorney must maintain at least the minimum qualifications and requirements listed in the Plan.

(f) Attorney agrees to indemnify and hold harmless Jefferson County from any and all claims arising from the delivery of professional services under this contract.

(g) Attorney shall maintain an office in Jefferson county and the ability to receive facsimile and telephone communications 24 hours a day, 7 days a week.

(h) Attorney is prohibited from accepting any payments from any indigent criminal defendant, or any third party, for legal services provided in an assigned case.

(i) Attorney is prohibited from releasing confidential attorney-client information or work product related to any case covered by this contract except as permitted by the Texas Disciplinary Rules of Professional Conduct.

**Conflict:** In the event of a conflict of interest between Attorney and any indigent criminal defendant, Attorney shall immediately present such evidence to the Court and, if allowed, be permitted to withdraw from further representation. Such withdrawal shall not affect the other terms of this contract.

**Administration:** The Court will provide oversight and monitoring to assure that Attorney performs in accordance with the terms of this contract.

**Forum Selection With Regard to Disputes Between the Parties:** Venue of any proceedings arising under or with regards to this contract shall be in a court of competent jurisdiction in Jefferson County, Texas.

**Additional Terms and Conditions:**

(a) The cases handled under this contract shall all be non-capital.

(b) A determination that Attorney has provided false information in the materials submitted to the Court in response to, or as required under, the terms of the Plan will be grounds for immediate cancellation of this contract by the Court.

(c) Falsification of any report, invoice, or other documentation submitted by Attorney will be grounds for immediate cancellation of this contract by the Court.



Contract Public Defender [contractor]

