



2023 Biennial Indigent Defense Countywide Plan Instructions

October 12, 2023

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Not later than November 1 of each odd-numbered year, every county is mandated by the Texas Legislature to submit to the Texas Indigent Defense Commission (TIDC): (1) a copy of its countywide indigent plan(s) and procedures and any revisions to the plan or forms previously submitted; or (2) a verification that the plan and forms previously submitted remain in effect. These instructions govern the submission of the plans due to be submitted to the TIDC on or before Wednesday, November 1, 2023, pursuant to Section 79.036 of the Texas Government Code. Completion of this process is necessary for your county to maintain eligibility to receive grant funds awarded by TIDC.

Contract Defender Systems

Judges who have contract attorneys providing representation to indigent defendants in any cases need to upload the current, signed contracts on the “Forms” tab of the plan submission website.

Plan Submission Instructions

To simplify plan submission, we will send an email to each of the judges responsible for submitting an existing plan (or set of plans) with a hyperlink directly to their plan (or plans) after logging into the system.

Family Protection Cases (CPS) judicial plans

Judicial plans for the provision of court-ordered representation for appointments made in suits affecting the parent-child relationship are also required to be submitted by November 1, 2023. Instructions for the submission of those plans is being sent to the local administrative district judges in each county and are available alongside the indigent defense plan submission instruction on TIDC’s website at <https://www.tidc.texas.gov/oversight/submit-data-and-reports/>.

Summary of Steps to Submitting/Verifying the 2023 Countywide Indigent Defense Plan

1.	<p>Click the hyperlink in the email from the TIDC. Please follow the <u>Alternative Instructions</u> in the next section if you do not have an email address on file with us or if you want to submit your plan before receiving the email.</p>
2.	<p>Enter your username and password. To obtain username and/or password information, review the <u>User Profile Management</u> section following this summary.</p>
3.	<p>Update contact information for local officials as needed and ensure that out-of-county arrest contacts are listed. To effectively implement Article 15.18(a-1), Code of Criminal Procedure, accurate entry of out-of-county arrest contacts is critical. Providing contact information for the out-of-county arrest contacts allows other counties to timely relay requests for counsel to your county.</p> <p>NOTE: If you are no longer the administrative judge/juvenile board chair connected to a plan, please contact PPRI via e-mail (tidc@tamu.edu) or telephone 979-845-6754 so that the materials and email may be sent to the new judge to complete the submission process.</p>
4.	<p>Click the “Edit/Submit Plan” button to edit the plan/submit the plan.</p>
5.	<p>Click the appropriate tab for each section of the plan to be amended and enter text.</p>
6.	<p>Click the Forms tab to upload a new or revised form.</p> <p>NOTE: Because plan forms are public records, <u>they cannot be deleted</u>. Documents in need of removal from the Forms tab must be archived by PPRI. In some cases, archival takes place automatically: when a replacement form is saved in the place of an existing form and the files share the exact common name and type (e.g., .doc or .docx), the new document will appear in place of the old file. For archival-related questions or to request the archival of a document, please email your request to tidc@tamu.edu.</p>
7.	<p>Click the “Submit” button on the plan submission tab and you are finished.</p> <p>NOTE: <u>In cases where a plan covers more than one county</u> there may be multiple officials designated to complete the submission (e.g. different local administrative district judges or juvenile board chairs for the counties covered by a single plan). All the officials will be listed on the plan submission website.</p>

User Profile Management

The Texas A&M University Public Policy Research Institute (PPRI) manages the collection, storage, and retrieval of data for the TIDC. PPRI is available to assist local officials with completing the plan submission/verification process, as well as with updating contact information and local officials listed on the website. If a person other than the recipient of this letter needs to obtain a username and password please contact PPRI via e-mail (tidc@tamu.edu) or telephone 979-845-6754. Please be aware that PPRI will not provide usernames and passwords over the phone. Individuals using personal e-mail accounts may be asked to provide additional information to verify their identity.

Alternate Submission Instructions

Follow these instructions if you wish to submit a plan without waiting for the email or do not have an email address on file with the TIDC:

- 1) Log onto <http://tidc.tamu.edu>.
- 2) Enter your username and password (see User Profile Management, above, on obtaining this information from PPRI).
- 3) Update contact information for local officials and out-of-county arrest contacts, as needed.
- 4) Under the “ID Plan” heading on the left side of screen click “Verify/Amend County/District/Juvenile Plan,” as appropriate.
- 5) Click the appropriate tab for the section of the plan to be amended and enter the text
- 6) Click the “Forms” tab and upload forms.
- 7) Click the “Plan Submission” tab and then click the “Submit” button. This completes the plan submission.

Detailed Instructions

Below are detailed instructions on how to complete the plan submission process:

- 1) **Log into <http://tidc.tamu.edu> or click link from email and log in.**
 - Enter your Username and Password
 - If you do not know your username or password, you may use the username and password recovery options on the homepage of the website,

<https://tidc.tamu.edu>. Please contact PPRI through e-mail (tidc@tamu.edu) or by phone at 979-845-6754 for technical assistance using the website.

➤ Sign in

- The official responsible for submission of the plan (Local Administrative District Judge, Local Administrative Statutory County Court Judge/County Judge, or Chair of the Juvenile Board) must log in to the PPRI website using his/her unique username and password. This official is the only one who may complete the submission process; however, a designee may make updates to the plan at the official's direction. Once the designee submits changes to the plan an email will be sent to the appropriate official or officials for them to approve the submission.

2) Update contact information for local officials as needed and ensure that correct out-of-county arrest contacts are listed.

- Verify and update the contact information for the officials responsible for the plans.
 - Use the “Change” button when the person listed is no longer the designated official and to change contact information for a person.
- Ensure that the out-of-county arrest contacts are listed.
 - The out-of-county arrest contact is the person who should be contacted to arrange for appointment of counsel in your county when a person is arrested in another county based on an arrest warrant or directive to apprehend issued in your county on behalf of your jurisdiction (District, County, or Juvenile Courts) as described at the top of these instructions. This information is posted on the TIDC's website for easy access by magistrates who are now required to forward counsel requests to the appointing authority in the county issuing the warrant under Article 15.18(a-1), Code of Criminal Procedure. A county may wish to set up a general email account for this purpose.

3) Click the “Edit/Submit Plan” button to make changes to and then submit the plan (if you clicked the link in the email).

- If you logged on to the website directly, select “Verify/Amend County/District/Juvenile Plan,” depending on which plan(s) you are responsible for submitting.

4) Click the appropriate tab for the section of the plan to be amended and enter text.

- Select the plan section tab(s) where you want to make changes to your plan.

5) Click the “Forms” tab to upload a new or revised form(s).

- Select the type of form(s) to be uploaded, click “Browse” to locate the document on your computer, and then click “Upload”.
 - Use this function to upload the new documents if applicable to your jurisdiction and to upload revised forms (such as new attorney fee schedules or contracts for indigent defense services).
 - Forms are public records and they cannot be deleted. Documents in need of removal from the Forms tab must be archived by PPRI.
 - In some cases, archival takes place automatically: when a replacement form is saved in the place of an existing form and the files share the exact common name and type (e.g., .doc or .docx), the new document will appear in place of the old file.
 - For archival-related questions or to request the archival of a document, please email PPRI your request (tidc@tamu.edu).

6) When you complete all updates go to the “Plan Submission” tab and click the “Submit” button.

7) Approval/Verification of plan by statutorily designated official.

- If the person who completes the submission process is not the official designated by statute to make the submission, an email will then be generated to that official with a link to this page that the official must click to approve the submission.
- The following are the officials designated to submit the plans:

- The local administrative district judge is the designated official to submit the plan for the district courts trying felony cases.¹
 - The local administrative statutory county judge (or county judge if no statutory county judge) is the designated official to submit the plan for the county courts trying misdemeanor cases.²
 - If the two levels of court submit a joint plan, then the local administrative district judge is the designated official to submit the plan.³
 - The chair of the juvenile board is the official designated to submit the juvenile board's plan.⁴
- In cases where a plan covers more than one county there may be multiple officials designated to complete the submission.
- For example, if a plan is submitted for three counties but the submitting judge is the local administrative district judge in only two of the counties, then the local administrative district judge of the third county would also have to approve the submission. This would be done via an automatic email to that judge in the process described above.

8) Plan Amendments and New Forms

- We want to make sure the information we publish on our website is current. Although the mandatory plan submission process is only every other year, we strongly encourage you to continue to submit any changes to your plan or forms as they occur.
- You may do so in the same manner as the original plan submission by selecting the appropriate section(s) of your plan to amend or form to replace.
 - Whenever a change is submitted, the system will automatically archive the prior version for later reference and note the date of the change and who made it.

¹ TEX. GOV'T CODE § 79.036(b)(1)

² TEX. GOV'T CODE § 79.036 (b)(2)

³ TEX. GOV'T CODE § 79.036 (c)

⁴ TEX. GOV'T CODE § 79.036 (d)

- As with the original submission, if the person submitting the change is not the designated official, an email to that official will be generated so that they may approve the submission.

Notes related to making changes to your plan:

- **Minimum Plan Requirements** — If you make changes to your plan, please be sure to review the minimum plan requirements for that section. These will appear above the text boxes for each section. TIDC staff will review all amended sections to make sure they still meet these requirements. A complete listing of requirements for both adult and juvenile plans follows these instructions.
- **Caseload Standards** — While not mandatory, a local plan may wish to reference the indigent defense caseload guidelines published by the TIDC when setting maximum allowable attorney caseloads.⁵ The guidelines, which resulted from caseload studies mandated by the 83rd Texas Legislature, help establish maximum allowable caseloads that allow an attorney to give each indigent defendant the time and effort necessary to ensure effective representation.
 - The following links will direct officials to the guidelines for misdemeanor/felony cases, juvenile cases, and appellate cases:
 - [Guidelines for Indigent Defense Caseloads](#)
 - [Juvenile Addendum](#)
 - [Appellate Addendum](#)
- **Review Plan Templates** — Immediately below the required elements are a listing of “Available Templates.” These templates provide sample language that meet the requirements for that plan section and were created based on a review of all existing indigent defense plans. For counties that participate in the Regional Public Defender for Capital Cases (RPDO), we have provided sample language under the “Attorney Selection” heading to account for assignment of capital cases to the RPDO. Click “View” and a new window will appear with the text for your review and to potentially copy and paste into your plan. If you use the plan templates, be sure to insert text in

⁵ For certain indigent defense delivery systems, the Code of Criminal Procedure and TIDC rules require the setting of maximum allowable caseloads. See TEX. CODE CRIM. Proc. arts. 26.044(c-1)(3), 26.047(c)(3), and 1 TAC §174.121.

the blanks to indicate your policy decision, such as the number of CLE hours required for attorneys.

- **Enter Text into Appropriate Plan Sections** — Edit the text of your plan in the text box shown below the plan requirements and plan templates. When you have completed entering the text for a section, save it by clicking the  button on the left side of the toolbar. Continue to the next section you wish to review or edit by clicking the appropriate tab. You may leave the plan submission page and come back later to complete the process prior to submitting- just be sure you have saved the text in each section using the  button.
- **Upload Forms Used in the Indigent Defense Process** — Upload forms by clicking the “Forms” tab.
 - There are nine categories of forms plus an “other” category:
 - Magistrate’s Warning Form
 - Affidavit of Indigence
 - Attorney Application for Appointment
 - Attorney Fee Schedule
 - Attorney Fee Voucher
 - Waiver of Counsel
 - Public Defender Plan or Proposal
 - Managed Assigned Counsel Plan of Operation
 - Contracts for Indigent Defense Services
 - Other Forms
 - As with the text in the plans, we have provided a variety of sample form templates that you may adopt and use as part of your own plan. Click “View” and a new window will appear with the form for your review. You may also save the form to your own computer if you would like to alter it in some way prior to uploading it. Click “Insert name Template” to upload and use the template form.
 - You may also upload a form directly from your computer by first selecting the appropriate document type for each form to be uploaded by clicking the bubble adjacent to that category (e.g. attorney fee voucher). Then click “Browse” to

locate the file containing the form on your computer or network. The forms will be automatically labeled based on the type you select. If you upload a form in the “Other Forms” category, please provide a description of the form in the text box provided. This, along with the county name and court level, will be used as its name when displaying the form on the website. Then click “Upload” and the form will be uploaded and immediately appear below under “Plan Document Folder” heading. Based on prior submissions we anticipate forms being submitted in at least the first six categories for most adult plans submitted and first five categories for juvenile plans. An attorney fee schedule⁶, an attorney fee voucher⁷, and an affidavit of indigence⁸ are required by statute or administrative rule and must be included as part of your plan submission. Additionally, a public defender plan or proposal⁹, managed assigned counsel plan of operation¹⁰, and any contracts for indigent defense services¹¹ are required to be submitted if your jurisdiction uses those service delivery systems. If you do not have an electronic copy of a form, then you may scan it into a PDF file and upload it in the manner described above.

⁶ TEX. CODE CRIM. Proc. art. 26.05(b).

⁷ TEX. CODE CRIM. Proc. art. 26.05(c).

⁸ 1 TAC § 174.51.

⁹ TEX. GOVT CODE § 79.036(a)(2)

¹⁰ TEX. GOVT CODE § 79.036(a)(3)

¹¹ TEX. GOVT CODE § 79.036(a)(4)

Adult Minimum Plan Requirements

1. Conduct prompt and accurate magistration proceedings.
 - Accused must be brought before magistrate within 48 hours of arrest* [Art. 14.06(a), CCP]
 - Magistrate must inform and explain right to counsel and right to appointed counsel to accused [Art. 15.17(a), CCP]
 - Magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused. [Art. 15.17(a), CCP]
 - Record must be made of:
 - Magistrate informing the accused of the accused's right to request appointment of counsel [Art. 15.17(e)(1), CCP]
 - Magistrate asking whether accused wants to request appointment of counsel [Art. 15.17(e)(2), CCP]
 - Whether the person requested court appointed counsel [Art. 15.17(e)(3), CCP]
 - If authorized to appoint counsel, magistrate must do so within 1 working day after receipt of request for counsel in counties with a population of 250,000 or more and within 3 working days in counties under 250,000 [Art. 15.17(a), CCP]
 - If not authorized to appoint counsel, magistrate within 24 hours must transmit or cause to be transmitted to the appointing authority an accused's request for counsel [Art. 15.17(a), CCP]
 - For a person arrested on an out-of-county warrant, the magistrate must ask if the person wants to request counsel, inform the person of the procedures for requesting counsel, and ensure the person is provided reasonable assistance in completing the necessary forms for requesting counsel in the county issuing the warrant. [Art. 15.18(a-1), CCP]
 - Requests for counsel made by persons arrested on out-of-county warrants must be transmitted to the appointing authority of the county issuing the warrant within 24 hours of the request being made. [Art. 15.18(a-1), CCP]

* Note: Person arrested for 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 [Art. 17.033, CCP]

2. Determine indigence according to standards directed by the indigent defense plan.
 - Detail procedures used to determine whether a defendant is indigent [Art. 26.04(l)-(r), CCP]
 - State financial standard(s) to determine whether a defendant is indigent [Art. 26.04(l), CCP]
 - List factors courts will consider when determining whether a defendant is indigent [Art. 26.04(m), CCP]
3. Establish minimum attorney qualifications.
 - Establish objective qualification standards for attorneys [Art. 26.04, CCP]

- Standards must require attorneys to complete at least 6 hours of continuing legal education pertaining to criminal law during each 12-month reporting period (see 1 TAC §§174.1-174.4)
- Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30 [Art. 26.04(j)(4), CCP]
- Attorneys must be approved by majority of judges to be placed on the appointment list [Art. 26.04, CCP]

4. Appoint counsel promptly.

- Incarcerated persons: After receipt of request for counsel, counsel must be appointed within 1 working day in counties with a population of 250,000 or more and 3 working days in counties under 250,000 [Art. 1.051(c), CCP]
- Persons out of custody: Counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first [Art. 1.051(j), CCP] (See also, *Rothgery v. Gillespie County*)
- Persons arrested in other counties on local warrants must be appointed counsel within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. [Art. 1.051(c-1), CCP]
- Persons arrested on out-of-county warrants must be appointed counsel if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. [Art. 1.051(c-1), CCP]
- Procedures for defendants to obtain the necessary forms to request counsel and to submit these forms to the appointing authority at any time after the initiation of adversary judicial proceedings. [1 TAC § 174.51]
- Advise unrepresented defendants of the right to counsel and procedures for obtaining counsel [Art. 1.051(f-2), CCP]

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

- Rotational method: Must appoint attorneys from among next five names on 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 [Art. 26.04(a), CCP]
- Public Defender: Must provide for the priority appointment any public defender's office [Art. 26.04(a) & (f), CCP], include the process for appointment of any public defender's office [Art. 26.04(a), CCP], and meet the requirements in Article 26.044, CCP.
- Alternative method [Art. 26.04(g)-(h), CCP]:
 - Must be established by vote of two-thirds of the judges
 - Must be approved by presiding judge of administrative judicial region
 - Must allocate appointments reasonably and impartially among qualified attorneys

- For contract defender program, must meet contract defender standards (see 1 TAC §§174.10 – 174.25)

6. Fee and expense payment process.

- Payments shall be in accordance with a schedule of fees adopted by the judges [Art. 26.05(b), CCP]
- No payment shall be made until judge approves payment after submission of attorney fee voucher [Art. 26.05(c), CCP]
- If 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. [Art. 26.05(c), CCP]
 - 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
- Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred. [Arts. 26.05(d) & 26.052(h), CCP]

7. Forms.

- Magistrate’s Warning Form
- Affidavit of Indigence [1 TAC § 174.51]
- Attorney Application for Appointment
- Attorney Fee Schedule [Art. 26.05(b), CCP]
- Attorney Fee Voucher [Art. 26.05(c), CCP]
- Waiver of Counsel
- Public Defender Plan or Proposal [Sec. 79.036(a)(2), GC]
- Managed Assigned Counsel Plan of Operation [Sec. 79.036(a)(3), GC]
- Contracts for Indigent Defense Services [Sec. 79.036(a)(4), GC]
- Other Forms

CCP=Code of Criminal Procedure

GC=Government Code

TAC=Texas Administrative Code

Juvenile Minimum Plan Requirements

1. Conduct prompt detention hearing if child not released by intake.
 - If child taken into custody, then must hold detention hearing by second working day, or first working day if detained on Friday or Saturday [Sec. 54.01(a), FC]
 - Prior to detention hearing, court must inform child's parent or other person responsible for child's support of child's right to appointed counsel if they are indigent [Sec. 54.01(b), FC]
2. Determine indigence according to standards directed by the indigent defense plan.
 - Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent [Sec. 51.102(b)(1), FC & Art. 26.04(l)-(r), CCP]
 - State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent [Art. 26.04(l), CCP]
 - List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent [Art. 26.04(m), CCP]
3. Establish minimum attorney qualifications.
 - Establish objective qualification standards for attorneys for three levels of conduct [Sec. 51.102(a),(b)(2), FC]:
 - Conduct indicating a need for supervision or delinquent conduct (no TJJD possible);
 - Delinquent conduct (TJJD possible); and
 - Determinate sentence or discretionary transfer to criminal court proceedings has been initiated.
 - Standards must require attorneys to complete at least 6 hours of continuing legal education pertaining to juvenile law during each 12-month reporting period (see 1 TAC §§174.1-174.4)
 - Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30 [Art. 26.04(j)(4), CCP]
 - Attorneys must be approved by a majority of the Juvenile Board to be placed on the appointment list [Sec. 51.102(a), FC & Art. 26.04, CCP]
4. Appoint counsel promptly.
 - 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 [Sec. 54.01(b-1), FC]
 - 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 immediately be entitled to representation by an attorney [Sec. 51.10(c), FC]

- If not detained, attorney must be appointed on or before 5th working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served [Sec. 51.101(c)-(d), FC]
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
- Rotational method: Must appoint attorneys from among next five names on 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 [Art. 26.04(a), CCP]
 - Public Defender: Must provide for the priority appointment any public defender's office [Art. 26.04(a) & (f), CCP], include the process for appointment of any public defender's office [Art. 26.04(a), CCP], and meet the requirements in Article 26.044, CCP.
 - Alternative method [Art. 26.04(g)-(h), CCP]:
 - Must be established by vote of two-thirds of the juvenile board
 - Must be approved by presiding judge of administrative judicial region
 - Must allocate appointments reasonably and impartially among qualified attorneys
 - For contract defender program, must meet contract defender standards (see 1 TAC §§174.10 – 174.25)
6. Fee and expense payment process.
- Payments shall be in accordance with a schedule of fees adopted by the Juvenile Board [Art. 26.05(b), CCP]
 - No payment shall be made until judge approves payment after submissions on court's attorney fee voucher [Art. 26.05(c), CCP]
 - If 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 [Art. 26.05(c), CCP]
 - 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
 - Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred [Arts. 26.05(d) & 26.052(h), CCP]
7. Forms.
- Affidavit of Indigence
 - Attorney Application for Appointment
 - Attorney Fee Schedule [Art. 26.05(b), CCP]
 - Attorney Fee Voucher [Art. 26.05(c), CCP]
 - Public Defender Plan or Proposal [Sec. 79.036(a)(2), GC]
 - Managed Assigned Counsel Plan of Operation [Sec. 79.036(a)(3), GC]
 - Contracts for Indigent Defense Services [Sec. 79.036(a)(4), GC]
 - Other Forms

CCP=Code of Criminal Procedure FC=Family Code
 GC=Government Code TAC=Texas Administrative Code