

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