



Review of Erath County's Indigent Defense Systems

September 6 – 9, 2011



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BACKGROUND

In January 2002, the Texas Fair Defense Act (FDA) became effective after its passage by the 77th Texas Legislature in 2001. The FDA established an organization, the Texas Task Force on Indigent Defense (Task Force), to oversee the provision of indigent defense services in Texas. In the 82nd Texas Legislative Session, a bill was passed that changed the name of the organization to the Texas Indigent Defense Commission (Commission) and gave greater independence to the Commission.

The mission of the Commission is to provide 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 Commission is required to monitor local jurisdictions' compliance with the Fair Defense Act ("FDA").¹ 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.

Core Requirements of the Fair Defense Act

1. Conduct prompt and accurate magistration 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.

Methodology

The policy monitoring site review for Erath County was conducted by Joel Lieurance between September 6 and September 9, 2011. The monitor met with the following persons: the district judge, the county court-at-law judge, the auditor's office, a justice-of-the-peace, and the pre-trial services department. The monitor observed magistrate's warnings and a misdemeanor docket. The monitor examined the following records:

- Jurisdiction's indigent defense plan
- Magistrate's warning forms to determine the time from arrest to magistration and to determine whether all Article 15.17 requirements are part of standard procedures
- Affidavits of indigence and orders appointing attorneys to determine the time from request to appointment of counsel
- Payment data from the auditor's office showing the number of cases paid to each attorney in order to determine the distribution of appointments

¹ Tex. Gov't Code § 79.037(b).

Summary of Commendations / Recommendations

Based upon the Commission's program assessment, Erath County has many effective processes for ensuring that the County meets Texas' indigent defense requirements. These effective processes include a fair appointment system, accurate record keeping systems, and indigent defense plans having all their required elements. The County was challenged in ensuring that all persons requesting counsel at magistration have their requests promptly forwarded to the appointing authority and in ensuring timely appointment of counsel in felony cases as well as juvenile cases where a detention hearing is held before the petition is filed.

The commendations and recommendations from the report are listed below. The County does not need to respond to the report's commendations but must respond to how the report's recommendations will be addressed.

Commendations:

- The misdemeanor court follows Article 1.051(f-2) of the Code of Criminal Procedure by not encouraging defendants to communicate with the prosecutor until the defendant has been advised of the right to appointed counsel and has been given a reasonable opportunity to request appointed counsel. The court also follows Article 1.051(g) by warning pro se defendants of the dangers of self representation and requiring a waiver of counsel prior to a guilty plea.
- The monitor's sample of misdemeanor case files showed that Erath County had very timely appointments of counsel in FY2010.
- The misdemeanor court's procedures for appointing counsel results in an even distribution of appointments between attorneys.
- The felony court's procedures for appointing counsel results in an even distribution of appointments between attorneys.
- The juvenile court's procedures for appointing counsel results in an even distribution of appointments between attorneys.
- Erath County's procedures for appointing counsel appear to ensure that individual attorneys do not receive excessive appointed caseloads.
- As mandated by Section 79.036 of the Texas Government Code, the Erath County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.
- As mandated by Section 79.036 of the Texas Government Code, Erath County timely completed its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

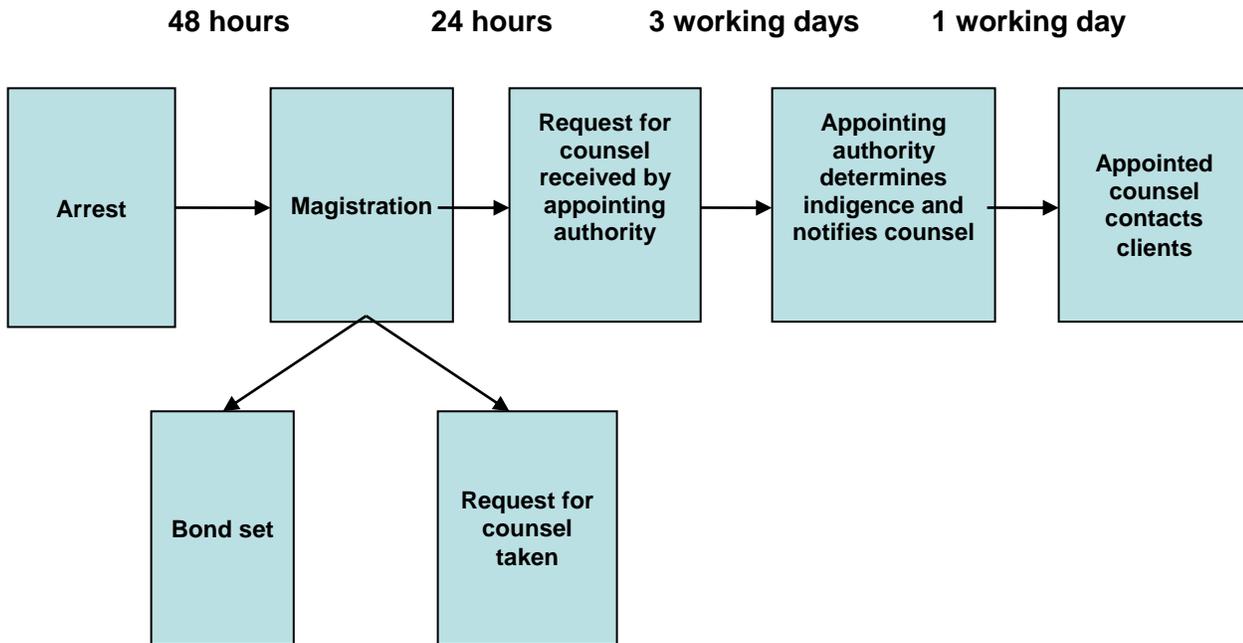
Recommendations:

- Erath County must implement procedures to ensure that arrestees are given assistance in completing necessary forms for requesting counsel at the time of magistration and must then forward these requests to the appointing authority within 24 hours of the request being made.
- Erath County must implement procedures to accept and transmit requests for counsel for persons arrested on out-of-county warrants.
- Erath County must implement procedures to maintain documentation showing that attorneys on the adult appointment lists met their minimum CLE requirements and attorneys on the juvenile appointment list met their minimum CLE requirements.
- Erath County must implement processes that ensure timely appointment of counsel in felony cases.
- Erath County must implement processes that ensure timely appointment of counsel for juveniles when there is a detention hearing and there is a decision to detain the juvenile.

Non-mandatory Recommendation: Erath County could benefit from a central repository for including all relevant information about a case from the time of arrest until case disposition.

Overview of Erath County's Indigent Defense System

Fair Defense Act Timeline Model for Counties with Populations Under 250,000



Adults arrested in Erath County are brought to the County Jail and receive magistrate's warnings every morning. The magistrate's warnings are conducted by one of two justices-of-the-peace who ask each arrestee (for charges with a penalty level of a class B misdemeanor or higher) whether the arrestee wants to request counsel. If the arrestee requests counsel, the arrestee is given the appropriate forms to request counsel, and the pre-trial services department collects those forms at a later date. When the forms are collected, they are immediately transferred to either the district or county court-at-law judge, who then makes a prompt determination of indigence.

Persons appearing in court at their initial appearance without counsel are told of the procedures for requesting counsel and are given an opportunity to request counsel. In misdemeanor cases, counsel can be waived by the defendant if the defendant has been told the procedures for requesting counsel but wants to waive his right to counsel and proceed pro se.

Erath County uses a rotational system for determining which attorney gets appointed to a case. Cases are distributed very evenly between attorneys. Once appointed, the attorney continues with the case through disposition and then submits a fee voucher for payment.

A summary of indigent defense statistics, which were submitted by the County to the Commission through the Office of Court Administration (OCA), follows on the next page. The tables show appointment rates for the court systems as well as respective expenditure data.

Erath County	2001 Baseline	2007	2008	2009	2010	Texas 2010
Population Estimate	32,983	34,420	35,581	35,351	37,890	25,145,561
Felony Cases Added		482	542	439	470	277,254
Felony Cases Paid		184	155	122	129	192,076
Felony Appointment Rate		38.17%	28.60%	27.79%	27.45%	69.28%
Felony Attorney Fees		\$90,016	\$106,088	\$59,114	\$60,897	\$99,207,719
Total Felony Expenditures		\$92,916	\$109,418	\$64,706	\$72,377	\$112,185,902
Misdemeanor Cases Added		987	916	1,031	789	586,357
Misdemeanor Cases Paid		134	142	146	182	226,961
Misdemeanor Appointment Rate		13.58%	15.50%	14.16%	23.07%	38.71%
Misdemeanor Attorney Fees		\$22,725	\$25,575	\$36,325	\$48,263	\$34,693,843
Total Misdemeanor Expenditures		\$22,725	\$25,575	\$36,325	\$49,472	\$35,395,081
Juvenile Cases Added		21	21	25	8	39,721
Juvenile Cases Paid		21	27	25	11	54,711
Juvenile Attorney Fees		\$4,100	\$5,850	\$6,725	\$2,778	\$10,882,201
Total Juvenile Expenditures		\$4,100	\$5,850	\$6,725	\$2,778	\$11,611,994
Total Attorney Fees	\$69,503	\$116,841	\$137,513	\$102,164	\$112,687	\$151,249,162
Total ID Expenditures	\$69,503	\$119,741	\$140,843	\$107,756	\$125,377	\$195,063,848
Increase In Total Expenditures over Baseline		72.28%	102.64%	55.04%	80.39%	119.84%
Total ID Expenditures per Population	\$2.11	\$3.48	\$3.96	\$3.05	\$3.31	\$8.09
Formula + Equalization Grant Disbursement		\$20,995	\$20,887	\$20,496	\$20,838	\$23,762,676
Recoupment of Fees from Defendants		\$27,441	\$22,405	\$21,060	\$27,082	\$11,448,724

Program Assessment

In the assessment that follows, the core requirements of the FDA are listed with a description of statutory provisions and are compared to the County's performance with regard to each requirement. If the County's practices appeared to meet the respective statutory provision, a box to the left of the provision is checked. The local processes are then described, and commendations and recommendations are made regarding these processes. The local indigent defense plans are listed in Appendix B (adult plan) and Appendix C (juvenile plan).

Core Requirement 1. Conduct prompt and accurate magistration proceedings:

Local Practices Compared to Adult Statutory Provisions

- The accused must be brought before a magistrate within 48 hours of arrest.²
 - 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.³
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.⁴
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.⁵
- 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.⁶
- 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 250,000.⁷
- 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.⁸

² Tex. Code Crim. Proc. art. 14.06(a). This box is not checked because the monitor was not able to verify timely magistrate warnings from County records.

³ Tex. Code Crim. Proc. art. 17.033.

⁴ Tex. Code Crim. Proc. art. 15.17(a).

⁵ *Id.*

⁶ Tex. Code Crim. Proc. art. 15.17(e).

⁷ Tex. Code Crim. Proc. art. 15.17(a). This box is not checked, because the magistrate is not the appointing authority.

⁸ *Id.*

Jurisdiction's Process

In Erath County, there are two justices-of-the-peace who conduct magistrate's warnings every morning at the Erath County jail. The magistrates give all warnings required by Article 15.17 of the Code of Criminal Procedure. If an arrestee requests counsel, the request is noted. Pre-trial services will then provide the arrestee with the appropriate forms for requesting counsel. Pre-trial services staff later collect these forms by going to the jail daily to gather completed forms. The forms are immediately forwarded to the appointing judge for a determination of indigence. In many instances, inmates will not complete the forms until days after initially making the request for counsel. If the inmate makes bond, the forms may not be completed at all even if a request for counsel was made to the magistrate.

This process does not follow Article 15.17(a)'s requirement that "the magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time". Neither does it meet another requirement set in Article 15.17(a):

the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

Under the current process, an arrestee may request counsel from the magistrate, but the arrestee may not be able to complete the necessary forms at the time of magistration because the arrestee is not given reasonable assistance in completing the forms. When the forms are completed, the transmittal to the appointing authority will likely be more than 24 hours after the request for counsel was initially made. This late transmittal appears to be causing late appointments of counsel.

Recommendation: Erath County must implement procedures to ensure that arrestees are given assistance in completing necessary forms for requesting counsel at the time of magistration and must then forward these requests to the appointing authority within 24 hours of the request being made.

Timeliness of Warnings

In an attempt to document the timeliness of magistrate's warnings, the monitor examined 80 magistration forms from one of the justices-of-the-peace.⁹ The forms listed the date and time of the magistrate's warnings. However, the records in the justice-of-the-peace's office did not include the date and time of arrest. Applicable records could not be found in the clerks' offices either because the records in the county and district clerks' offices did not include magistration forms. As a result, the monitor could not determine whether magistrate's warnings were timely because the County does not have a central repository for including all relevant information about a case from the time of arrest until case disposition.

Non-mandatory Recommendation: Erath County could benefit from a central repository for including all relevant information about a case from the time of arrest until case disposition.

⁹ The forms were selected for review covering a period between January and March 2010. Forms were not selected randomly but were selected in a semi-sequential manner.

While the monitor could not verify the timeliness of magistrate’s warnings, the County’s process for conducting magistrate warnings every morning would seem to ensure that magistrate warnings are almost always timely.

Percentage of Requests at Magistration

Of the 80 magistration forms reviewed, 49 were for misdemeanor offenses and 31 for felony offenses. The misdemeanor magistration forms showed that 9 persons requested counsel and 37 persons did not request counsel (20% request rate). Three of the misdemeanor forms had no mark listed as to whether the arrestee requested counsel. These three forms were for out-of-county arrests. The felony magistration forms showed that 17 persons requested counsel and 13 persons did not request counsel (57% request rate). One of the felony forms had no mark listed as to whether the arrestee requested counsel. This form was for an out-of-county arrest.

Article 15.18(a) of the Code of Criminal Procedure requires that persons arrested under warrants from outside counties receive magistrate warnings described in Article 15.17. Article 15.18 states:

(a) A person arrested under warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. ...

Article 15.17 makes no exceptions to the warnings provided for persons arrested on out-out-county warrants. Requests for counsel are to be taken as described in Article 15.17(a). A record is to be made of whether the arrestee is requesting counsel as described in Article 15.17(e). Finally the request is to be transmitted to the appointing authority is described in Article 15.17(a). On its website, the Commission lists contacts for sending out-of-county requests for counsel (<https://tidc.tamu.edu/Main/Main.asp>). To find these contacts, click on the county from which the respective warrant was issued and view the “Out Of County Arrest Contacts” section.

<p>Recommendation: Erath County must implement procedures to accept and transmit requests for counsel for persons arrested on out-of-county warrants.</p>
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Core 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.¹⁰
- ☑ State the financial standard(s) to determine whether a defendant is indigent.¹¹
- ☑ List factors courts the court will consider when determining whether a defendant is indigent.¹²

Jurisdiction's Plan

According to the County's adult indigent defense plan (see Appendix B),

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 130% 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.*

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.¹³
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.¹⁴
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.¹⁵

Jurisdiction's Plan

According to the County's juvenile indigent defense plan (see Appendix C), the standard of indigence is the same for juvenile as for adults, except that the standard applies to the person responsible for the juvenile.

¹⁰ Tex. Code Crim. Proc. art. 26.04(l)-(r).

¹¹ Tex. Code Crim. Proc. art. 26.04(l).

¹² Tex. Code Crim. Proc. art. 26.04(m).

¹³ Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

¹⁴ Tex. Code Crim. Proc. art. 26.04(l).

¹⁵ Tex. Code Crim. Proc. art. 26.04(m).

Core 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.¹⁶
 - 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.¹⁷
- Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.¹⁸

Local Practices Compared to Juvenile Statutory Provisions

- Establish objective qualification standards for attorneys for three levels of conduct.¹⁹
 - Conduct indicating a need for supervision or delinquent conduct (no TYC possible);
 - Delinquent conduct (TYC possible); and
 - Determinate sentence or discretionary transfer to criminal court proceedings have been initiated.
- 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.²⁰
- 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.²¹

Jurisdiction's Process:

At the time of the monitor's visit, the County did not maintain documentation showing that attorneys on the adult appointment lists received at least six hours of criminal law CLE annually (as required by the local indigent defense plan) or that attorneys on the juvenile list received at least six hours of juvenile law CLE annually (as required by the local indigent defense plan). During the monitor's visit, the County began implementing processes for maintaining CLE records.

Recommendation: Erath County must implement procedures to maintain documentation showing that attorneys on the adult appointment lists met their minimum CLE requirements and attorneys on the juvenile appointment list met their minimum CLE requirements.

¹⁶ Tex. Code Crim. Proc. art. 26.04(d).

¹⁷ 1 TAC §§174.1-174.4.

¹⁸ Tex. Code Crim. Proc. art. 26.04(d).

¹⁹ Tex. Fam. Code § 51.102(a),(b)(2).

²⁰ 1 TAC §§174.1-174.4.

²¹ Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d). The monitor did not examine actual attorney applications to be on the appointment list. The box is checked because each judge clearly had appointment lists that they followed.

Core 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 250,000.²²
- 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.²³
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.²⁴

Jurisdiction's Process

Observation of Misdemeanor Docket:

On September 7, 2011, the monitor observed a misdemeanor docket that was scheduled to include 53 defendants. For some of these defendants, this was the initial appearance. A few others received appointed counsel at the previous docket and were put on this docket to ensure that the defendant had met with his/her attorney. As part of the misdemeanor court's practices, if a defendant has counsel, and the attorney notifies the court that the defendant's appearance is not required, the defendant is typically excused from the docket. The majority of defendants with counsel appeared to have asked to be excused from this docket.

Those defendants who did not have counsel at the hearing were brought before the judge and were warned of the dangers of representing oneself. Each defendant was then asked if he/she intended to retain counsel, wanted appointed counsel, or intended to go forward pro se. If the defendant wanted to retain counsel, the defendant was given a re-set to hire counsel. If the defendant wanted to request counsel, the defendant was told to speak with pre-trial services so that appropriate paperwork may be completed. Two defendants requested counsel at this docket. If the defendant wants to represent himself/herself, the defendant is then told to speak with the prosecutor to see if a deal can be reached. Five defendants from this docket pled pro se. Prior to the pleadings, all five of these defendants were again warned of the dangers in representing oneself and then signed waivers of counsel.

Commendation: The misdemeanor court follows Article 1.051(f-2) of the Code of Criminal Procedure by not encouraging defendants to communicate with the prosecutor until the defendant has been advised of the right to appointed counsel and has been given a reasonable opportunity to request appointed counsel. The court also follows Article 1.051(g) by warning pro se defendants of the dangers of self representation and requiring a waiver of counsel prior to a guilty plea.

²² Tex. Code Crim. Proc. art. 1.051(c).

²³ Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

²⁴ Tex. Code Crim. Proc. art. 1.051(f-2).

Misdemeanor Appointments:

The monitor examined 110 cases that were filed in FY2010 (October 2009 – September 2010) to determine the timeliness of counsel appointments in misdemeanor cases.²⁵ Of the 110 misdemeanor case files reviewed, 32 involved assigned counsel (see Appendix D for a summary of the file review). Thirty of these appointments were timely (97% timely).²⁶ The one appointment that was not timely occurred six working days after the request for counsel. See the table below showing the number of working days from request for counsel until appointment. The percent of persons receiving timely appointment of counsel in misdemeanor cases was higher than in felony cases. The reason for this difference may be that misdemeanor requests for counsel are often made in court and not at magistration.

Erath Misdemeanor Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	31		
Appointment / Denial of Indigence Occurred in:			
0 work days		20	61.3%
1 work day + 24 hour transfer		6	19.4%
2 work days + 24 hour transfer		3	9.7%
3 work days + 24 hour transfer		1	3.2%
Timely appointments		30	96.8%
Late Appointments		1	3.2%

Commendation: The monitor’s sample of misdemeanor case files showed that Erath County had very timely appointments of counsel in FY2010.

Felony Appointments:

The monitor examined 81 cases that were filed in FY2010 (October 2009 – September 2010) to determine the timeliness of counsel appointments in felony cases (see Appendix D for a summary of the file review).²⁷ Of the 81 felony case files reviewed, 41 involved assigned counsel. Thirty-four (34) of these requests had a timely appointment of counsel (83% timely). The monitor’s sample of felony case files was below the Commission’s threshold (sample that is at least 90% timely) for presuming that a jurisdiction has a process for making timely appointments of counsel. The root cause of these late appointments appeared to be that there is not a process to ensure that all requests for counsel made at magistration are transmitted to the appointing authority within 24 hours of the request (as required

²⁵ Files were from the county clerk’s office. In selecting files, the monitor began with a case filed in September 2010 and attempted to go back in time and pick every third file that was on the rack at the time of selection. The months for the sample did not cover the entire year but rather the period from February 2010 through September 2010.

²⁶ In one of the appointed counsel cases, the time from request to appointment of counsel could not be determined.

²⁷ Files were from the district clerk’s office. In selecting files, the monitor began with a case filed in October 2009 and attempted to go forward in time and pick every third file that was on the rack at the time of selection. The end of the fiscal year was reached before the 81 samples were completed and so the monitor began again with a case from October 2009.

by Article 15.17 of the Code of Criminal Procedure). See the table below showing the number of working days from request for counsel until appointment.

Erath Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	41		
Appointment / Denial of Indigence Occurred in:			
0 work days		18	43.9%
1 work day + 24 hour transfer		8	19.5%
2 work days + 24 hour transfer		5	12.2%
3 work days + 24 hour transfer		3	7.3%
Timely appointments		34	82.9%
Late Appointments		7	17.1%

Recommendation: Erath County must implement processes that ensure timely appointment of counsel in felony cases.

Local Practices Compared to Juvenile Statutory Provisions

- 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.²⁸
- 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.²⁹

Juvenile Appointments:

Erath County has few attorneys who are interested in representing indigent juveniles. When an attorney is appointed for a juvenile, the attorney is expected to continue representing the juvenile through the entire case proceedings, including detention hearings and motions to modify the disposition. In instances when a petition is filed, the County has five working days from the service of the petition on the juvenile to appoint counsel. In these instances, the County has processes in place to make timely appointments of counsel. However, in the event that a detention hearing is required without a case being filed, the County struggles to quickly find an attorney to represent the juvenile.

The monitor examined case files for eleven juveniles with case filing activity occurring during FY2010 (October 2009 – September 2010). All eleven juveniles had timely appointments of counsel with regard to their case dispositions. Four of the eleven juveniles faced detention hearings in which there were decisions to detain the juveniles. Two of these juveniles had counsel appointed either prior to the hearing or on the day of the hearing. The other two juveniles had counsel appointed on the day after the detention hearing. Section 51.10(c) of the Family Code requires counsel to be appointed

²⁸ Tex. Fam. Code § 51.10(c).

²⁹ Tex. Fam. Code § 51.10(c)-(d).

immediately if there is a decision to detain the juvenile. While Section 51.10(c) requires immediate appointment of counsel if there is a decision to detain the juvenile, the appointments made the day after the detention hearing still would have allowed the attorney to quickly make a request for a de novo detention hearing as set out in Section 54.10(n) of the Family Code.

Erath Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Juvenile Case Files Examined	11		
Number of cases with detention hearings listed in case files		4	
Number of cases with a decision to detain the juvenile and an attorney was appointed by the date of the detention hearing		2	50%
Petitions filed		11	
Petitions filed where juvenile received counsel within 5 working days of being served:		11	100%

Recommendation: Erath County must implement processes that ensure timely appointment of counsel for juveniles when there is a detention hearing and there is a decision to detain the juvenile.

Core 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 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.³⁰
- 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.³¹
- Alternative appointment method:³²
 - 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.
- For a contract defender program, the county must meet contract defender standards.³³

³⁰ Tex. Code Crim. Proc. art. 26.04(a). Only one of the boxes in this section needs to be met to meet statutory requirements.

³¹ Tex. Code Crim. Proc. art. 26.044.

³² Tex. Code Crim. Proc. art. 26.04(g)-(h).

³³ 1 TAC §§174.10-174.25.

Jurisdiction's Process

Misdemeanors:

The statutory county court judge makes all misdemeanor appointments of counsel. He follows the appointment wheel and generally appoints the top attorney on the list. Sometimes attorneys become unavailable and do not wish to receive appointments for a period of time. In those instances when an unavailable attorney is at the top of the list, the judge makes a note that he is skipping the top attorney for good cause.

The monitor examined the distribution of FY2010 misdemeanor cases paid as received from the auditor's office and found that nine attorneys had received payments for 220 cases in FY2010. The top attorney (or top 11.1% of recipient attorneys) received 20.9% of available cases, **or 1.9 times this attorney's representative share of appointments**. This distribution of cases falls well within the Commission's administrative rules of presuming that a jurisdiction's attorney selection process is fair, neutral, and non-discriminatory. See Appendix A for a pie chart describing this distribution.

Commendation: The misdemeanor court's procedures for appointing counsel results in an even distribution of appointments between attorneys.

Felonies:

The district court judge makes all felony appointments of counsel. He follows the appointment wheel and generally appoints the top attorney on the list.³⁴ The monitor examined the distribution of FY2010 felony cases paid as received from the auditor's office and found that nine attorneys had received payments for 127 cases in FY2010. The top attorney (or top 11.1% of recipient attorneys) received 21.3% of available cases, **or 1.9 times this attorney's representative share of appointments**. This distribution of cases falls well within the Commission's administrative rules of presuming that a jurisdiction's attorney selection process is fair, neutral, and non-discriminatory. See Appendix A for a pie chart describing this distribution.

Commendation: The felony court's procedures for appointing counsel results in an even distribution of appointments between attorneys.

Juveniles:

The statutory county court judge makes all juvenile appointments of counsel. He follows the appointment wheel and generally appoints the top attorney on the list. According to the court administrator, very few attorneys in the County are interested in taking juvenile appointments. The monitor examined the distribution of FY2010 juvenile cases paid as received from the auditor's office and found that five attorneys had received payments for seven cases in FY2010. The top attorney (or top 20% of recipient attorneys) received 28.6% of available cases, **or 1.4 times this attorney's**

³⁴ In felony cases, Erath County has an appointment list for state jail felony and third degree felony cases and another list for first and second degree felony cases. An attorney may have the relevant experience for the state jail / third degree felony list but not be eligible for the first / second degree felony list. This analysis of the distribution of appointments does not take the use of separate lists into account and so may overstate the impact of the top 10% of recipient attorneys. The fact that Erath County still fell well within the Commission's thresholds is a strong testament to the fairness of the appointment system.

representative share of appointments. This distribution of cases falls well within the Commission’s administrative rules of presuming that a jurisdiction’s attorney selection process is fair, neutral, and non-discriminatory. See Appendix A for a pie chart describing this distribution.

Commendation: The juvenile court’s procedures for appointing counsel results in an even distribution of appointments between attorneys.

Appointed Caseloads

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 following table.³⁵

NAC Caseload Standards

Type of Case	Maximum caseload
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 good 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 in work required by cases within a category. For example a case involving felony homicide may require significantly more work than a burglary case.

In Erath County, based on the number of cases paid by the auditor in FY2010, no attorney approached the caseload threshold established by NAC for their appointed caseload. Eleven different attorneys received a criminal or juvenile appointment, and the highest appointed caseload was about a quarter of the maximum total recommended caseload. This does not mean that no attorney exceeded the threshold as neither cases from other jurisdictions, retained cases, nor civil cases were included in this analysis. However, the fact that no attorney’s appointed caseload exceeded the NAC standard could be interpreted as a sign that attorneys are mindful of their caseloads when accepting appointed cases. See the following table.

³⁵ National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

Listing of Attorney Caseloads

Attorney	Misdemeanor Cases Paid	Felony Cases Paid	Juvenile Cases Paid	Appointed Caseload as a Portion of the NAC standard
Andrew Ottaway	1	3	0	2.3%
Angie Hadley	0	15	0	10.0%
Blake Thompson	40	17	2	22.3%
Chester Ball	14	1	1	4.7%
Coan & Elliott	24	27	0	24.0%
Frederick Sander	37	0	1	9.8%
Hedrick Thomas	0	6	0	4.0%
Matthew Mills	37	0	2	10.3%
Scott Ball	46	12	1	20.0%
Warren & Allen	19	23	0	20.1%
William C Jones	2	23	0	15.8%

Commendation: Erath County’s procedures for appointing counsel appear to ensure that individual attorneys do not receive excessive appointed caseloads.

Core 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.³⁶
- No payment shall be made until the judge approves payment after submission of the attorney fee voucher.³⁷
- 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.³⁸
- Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.³⁹

³⁶ Tex. Code Crim. Proc. art. 26.05(b). These boxes are checked because the County appears to have a standard process for attorneys to request payment and to receive only payments that were approved by the appointing judge. The monitor did not go through individual vouchers to ensure that statutory requirements were followed.

³⁷ Tex. Code Crim. Proc. art. 26.05(c).

³⁸ *Id.*

³⁹ Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).

Jurisdiction's Process

The monitor interviewed the auditor's office and the auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

Commendation: The auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

Statutory Data Reporting

Local Practices Compared to Statutory Provisions

- ☑ 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, county, statutory county, and appellate 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
 - ☑ • For investigation expenses, expert witnesses 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 timely completed the annual indigent defense expense report and maintained supporting data.

Commendation: As mandated by Section 79.036 of the Texas Government Code, the Erath County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.

County Indigent Defense Plans

The Fair Defense Act (FDA) requires the adoption and publication of written plans for appointment of counsel in criminal and juvenile cases. It also 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 new Commission.

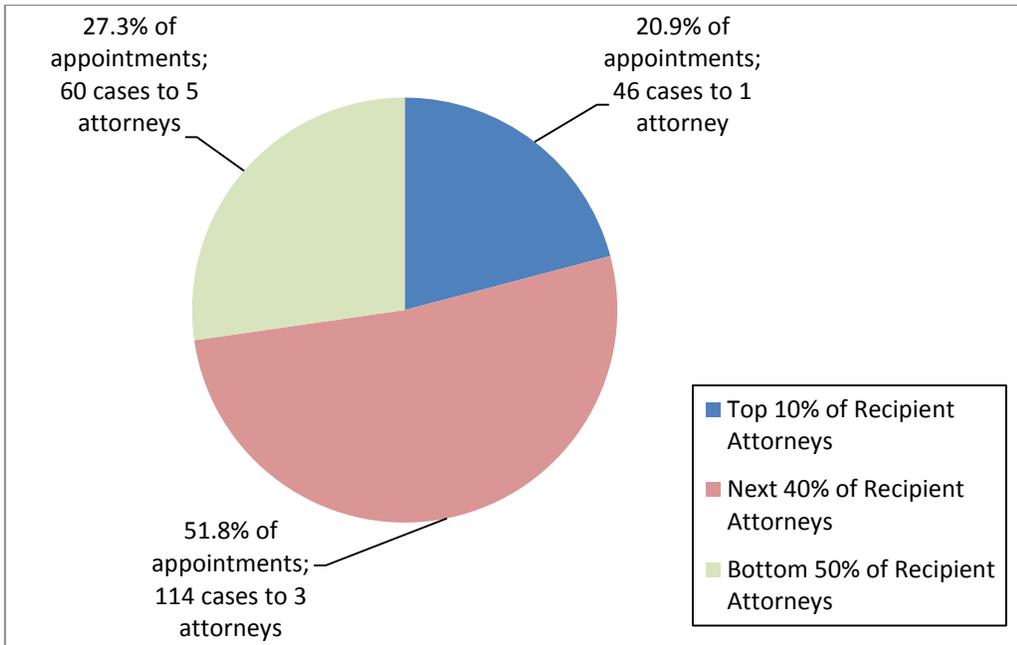
Commendation: As mandated by Section 79.036 of the Texas Government Code, Erath County timely completed its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

Conclusion

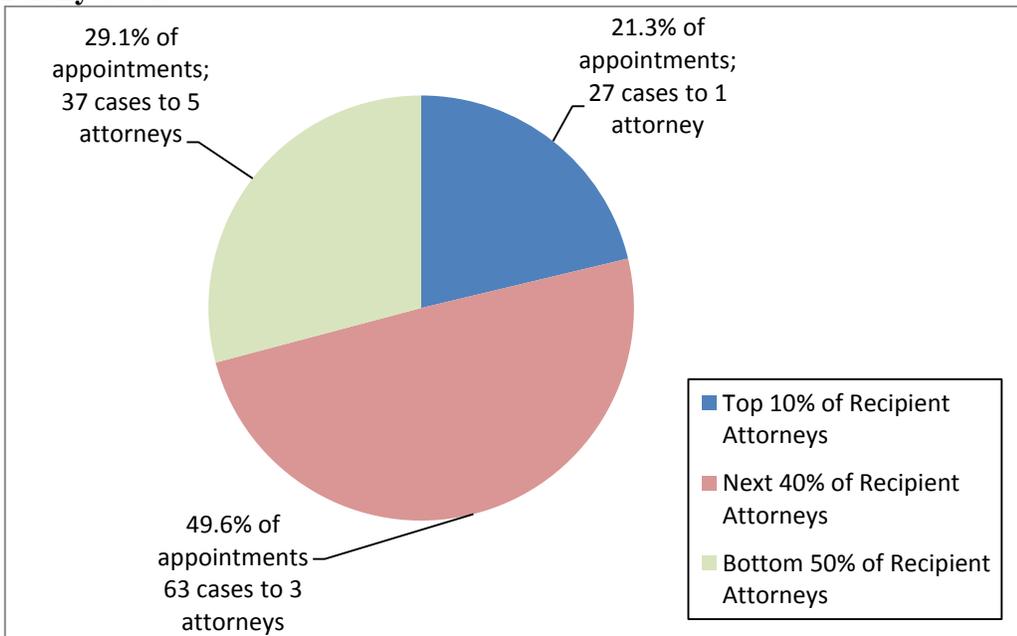
The monitor was impressed with Erath County's dedication to indigent defense. The monitor enjoyed meeting with court personnel and was impressed with the commitment to serving the community.

Appendix A – Distribution of Appointments Across Court Levels

Misdemeanor Cases⁴⁰



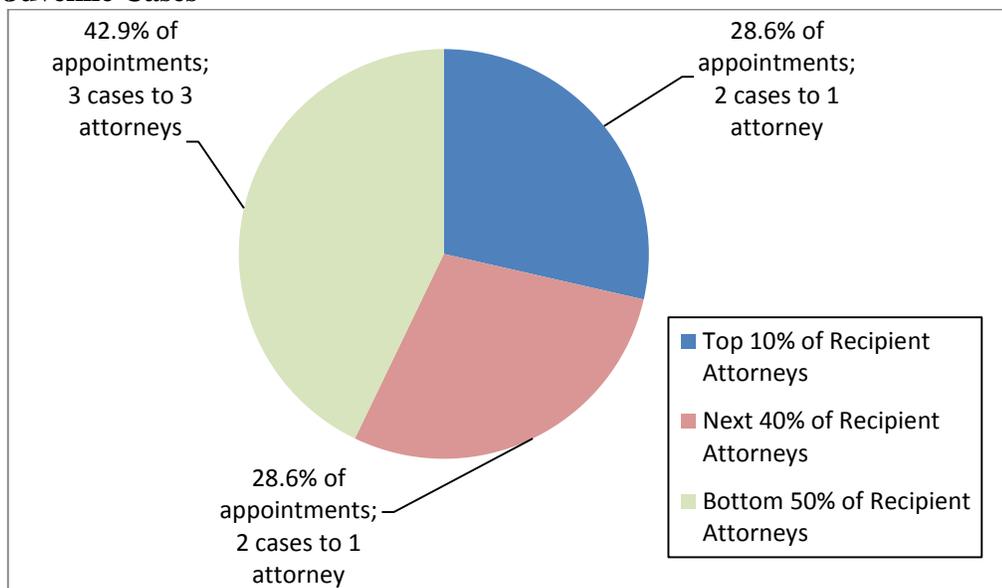
Felony Cases⁴¹



⁴⁰ The top 10% of recipient attorneys is really the top 11.1%. The next 40% of recipient attorneys is really the next 33.3%. The bottom 50% of recipient attorneys is really the bottom 55.6%.

⁴¹ The top 10% of recipient attorneys is really the top 11.1%. The next 40% of recipient attorneys is really the next 33.3%. The bottom 50% of recipient attorneys is really the bottom 55.6%.

Juvenile Cases⁴²



⁴² The top 10% of recipient attorneys is really the top 20%. The next 40% of recipient attorneys is really the next 20%. The bottom 50% of recipient attorneys is really the bottom 60%.

Appendix B – Erath County Adult Indigent Defense Plan

Erath District and County Courts Plan

Preamble

10/28/2009

The judges of the 266th District Court and the Statutory County Court at Law of Erath County, Texas, hereby adopt the following plan and local rules for prompt magistration; indigence determination standards; minimum attorney qualifications; prompt appointment of counsel; attorney selection process; and fee and expense payment process of appointed attorneys in the respective criminal courts of this county in accordance with the provisions of the Texas Fair Defense Act. The plan as contained herein is effective November 1, 2009.

Prompt Magistration

10/28/2009

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. The Justices of the Peace for all precincts of Erath County are designated to appoint counsel for indigent criminal defendants, in addition to the judges of the statutory county court at law and the district court. The magistrate or judge shall make a determination of indigence and appoint counsel, if the defendant is indigent, within three working days.
- vii. 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

10/29/2009

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 130% 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.
 - 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 timelines specified 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

10/28/2009

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 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;

4. An attorney must have a minimum one years experience in criminal law;
 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 two 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.
- ii. State Jail and Third Degree Felony Case Qualification Requirements
1. An attorney must meet general requirements for misdemeanor appointments;
 2. An attorney must have a minimum one year experience in criminal law or have participated as counsel/co-counsel in at least two felony criminal cases;
- iii. First and Second Degree Felony Case Qualification Requirements
1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.
 2. An attorney must have a minimum two years experience in criminal law or have participated as counsel/co-counsel in at least three felony criminal cases;
- iv. Capital Case Qualification Requirements:
1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
 2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
 3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
- v. 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.

B. Approval for Appointment Lists

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

- ii. State Jail and Third Degree Felony, First and Second Degree Felony List, Capital Case List, and Appeal List - An attorney must be approved for each list by a majority of the District 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.
- 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

10/28/2009

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 third 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 no case has been filed in the trial court, the appointing authority for misdemeanors is the judge of the statutory county court or the justices of peace for all precincts of the county.
 2. If no case has been filed in the trial court, the appointing authority for felonies is the district judge, the judge of the statutory county court, or the justices of peace for all precincts of the county.
 3. If the case has been filed in the trial court, the appointing authority is the judge of the respective court with jurisdiction of the case.

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. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. 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)”

iv. 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

10/26/2009

- 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. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
 - 5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 - 6. The defendant requests an attorney, other than trial counsel, for appeal; or
 - 7. 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

10/29/2009

- 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 60th 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.

Appendix C – Erath County Juvenile Indigent Defense Plan

**Erath Juvenile Board Plan
Prompt Detention Hearings**

10/27/2009

- A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according to the requirement of §53.01, Family Code, and shall also inform the child and the child’s parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then 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.
- B. Prior to the detention hearing the court shall inform the parties of the child’s right to counsel and to appointed counsel if they are indigent, and of the child’s right to remain silent as to the alleged conduct.
- C. The detention hearing may be conducted without the presence of the child’s parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.
- D. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision

Indigence Determination Standards

10/27/2009

Determination of Indigence for Juveniles-Primary

- A. Definitions, as used in this rule:
 - i. “Indigent” means a person who is not financially able to employ counsel.
 - ii. “Net household income” in the case of a child is the income of the child’s parents or other person determined responsible for the support of the child. 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 person determined responsible for the support of the child has no income or lesser income.
 - iii. “Household” means all individuals who are actually dependent on the child’s parent(s) or person(s) deemed responsible for the support of the child, 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. A child is presumed indigent if any of the following conditions or factors are present:
 1. At the time of requesting appointed counsel, a child is presumed indigent if the child's parent(s) or other person(s) determined responsible for the support of the child is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
 2. The net household income of the child's parent(s) or other person(s) determined responsible for the support of the child does not exceed 130 % of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
 3. The child's parent(s) or other person(s) determined responsible for the support of the child 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
- ii. The child who does not meet any of the standards above shall nevertheless be considered indigent if the child's parent(s) or other person(s) responsible for the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:
 1. the nature of the 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 child, the child's parent(s)/person(s) responsible, and other dependents of the child's parent(s)/person(s) responsible;
 5. child's parent(s)' income or the income of other person(s) determined responsible for the support of the child;
 6. source of income;
 7. assets and property owned by the child, child's parent(s), or other person(s) determined responsible for support of the child;
 8. outstanding obligations;
 9. necessary expenses; and
 10. the number and ages of any siblings of the child.
- iii. Factors NOT to be considered in determining indigence:
 1. The resources available to friends or relatives of the child, other than the child's parent(s) or other person(s) deemed responsible for the child, may not be considered in determining whether the child is indigent.
 2. Only the child's parent(s) or other person(s) responsible for the child and the child'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 child and the child's parent(s) or other person(s) responsible for the child to respond to questions about the child's household 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 child is (or is not) indigent; or

2. Impeaching direct testimony of the child or the child's parent(s)/person(s) responsible regarding the child'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.
- iv. A child determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the child's financial circumstances occurs.
 1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court. The child'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 child's parent(s)/person(s) responsible and the child's financial circumstances; or
 - b. Additional information regarding the child's parent(s)/person(s) responsible and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.
 2. If a child 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 child's parent(s) or other person(s) responsible for the child 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 child's parent(s) or other person(s) responsible for the child to pay during the pendency of the charges or, if found to have engaged in delinquent conduct or CINS, as court costs the amount that it finds the child's parent(s) or other person(s) responsible for the child is able to pay.

Minimum Attorney Qualifications

10/29/2009

Minimum Attorney Qualifications for Juveniles (Medium and Small Counties)

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- A. The Juvenile Board 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. General 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 complete a minimum of 6 hours of CLE in the area of juvenile law and procedure each year or related topics. 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 juvenile 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;

4. Must be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition;
5. 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 3 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 Juvenile Board 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.

ii. CINS Charges or Delinquent Conduct, and Commitment to TYC Is Not an Authorized Disposition:

1. Meet the General Requirements;
2. Must have a minimum 6 months of work experience in juvenile law;
3. Must have observed or participated in at least:
 - a. 0 stipulated juvenile adjudications;
 - b. 0 contested juvenile adjudications;
 - c. 2 juvenile dispositions; and
 - d. 2 detention hearings; and
4. Participated in at least 0 criminal or juvenile trial.

iii. Delinquent Conduct, and Commitment to TYC Without a Determinate Sentence Is an Authorized Disposition:

1. Meet General Requirements;
2. Have a minimum 2 years of work experience in juvenile law;
3. Participated in 3 criminal or juvenile cases, of which at least 0 was tried to a jury verdict; and

iv. Determinate Sentence Proceedings have been Initiated; or Proceedings for Discretionary Transfer to Criminal Court Have Been Initiated:

1. Meet General Requirements;
2. Have a minimum 2 years of work experience in juvenile law;
3. Participated in 5 criminal or juvenile cases, of which at least 1 were tried to a jury verdict;
4. Tried at least 3 criminal or juvenile case as lead counsel.

B. Approval for Appointment Lists - An attorney must be approved by a majority of the Juvenile Board for each appointment list for which the attorney applies.

C. Removal from Appointment List - The Juvenile Board 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.

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 child by the end of the first day after the date on which the attorney is appointed; and
 2. Interview the child as soon as practicable after the attorney is appointed;
- iii. Represent the child until:
 1. The case is terminated;
 2. The family retains an attorney;
 3. The attorney is relieved of his duties by the court or replaced by other counsel.
- iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense that may be reasonably and arguably available to the child;
- v. Brief the law of the case and be prepared to present any legal defense that may be reasonably and arguably available to the child;
- vi. Be prepared to negotiate with the prosecutor for the most favorable solution 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 keep the child informed of the status of the case; and
- x. Advise the child on all matters involving the case and such collateral matters as may reasonably be required to aid the client in making appropriate decisions about the case.
- xi. Perform the attorney's duty owed to the child in accordance with these procedures, the requirements of the Code of Criminal Procedure and the Family Code, 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

10/27/2009

Appoint Counsel Promptly for Juveniles

A. Appointment of Counsel for Children in Detention

- i. Prior to the detention hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.
- ii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.
- iii. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.
- iv. If the juvenile is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the juvenile's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain

counsel by appointing an attorney to represent the child and requiring that the child's parent or other responsible adult reimburse the court for attorneys' fees.

v. Upon appointment, the court administrator shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date.

vi. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.

vii. An attorney appointed for a detention hearing 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.

viii. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

B. Appointment of Counsel for Children not Detained at Intake

i. If the child is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that financial information may be gathered for a determination of indigence.

ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

- a. The date a petition for adjudication or discretionary transfer hearing has been served on the child; or
- b. A motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed.

iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

iv. The prosecuting attorney/court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

Attorney Selection Process

10/27/2009

Attorney Selection Process for Juveniles (Rotation)

A. The appointing authority will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child 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 child 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 child 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;
 - iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable; or
 - iv. 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 case involving a child 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 child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;
 - 4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 - 5. The child requests an attorney, other than trial counsel, for appeal; or
 - 6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child.
 - 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

10/27/2009

Fee and Expense Payment Process for Juveniles

- 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 the Juvenile Board.
- 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 60th 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:
 1. 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.

Appendix D – Summary Data from Felony and Misdemeanor Case File Review

		Number from Sample	Percentage
Felony		81	
	Initially appointed counsel ⁴³	39	48.1%
	Initially retained counsel ⁴⁴	42	51.9%
	Median days from arrest to defendant bonding		1
	Median days from arrest to case filing		99
	Median days from case filing to case disposition		122
Misdemeanor		110	
	Initially appointed counsel ⁴⁵	31	28.2%
	Initially retained counsel ⁴⁶	48	43.6%
	Pro Se	31	28.2%
	Median days from arrest to defendant bonding		0
	Median days from arrest to case filing		65
	Median days from case filing to case disposition		164

⁴³ Two persons switched from felony appointed counsel to felony retained counsel.

⁴⁴ Two persons switched from felony retained counsel to felony appointed counsel.

⁴⁵ Two persons switched from misdemeanor appointed counsel to misdemeanor retained counsel.

⁴⁶ One person switched from misdemeanor retained counsel to misdemeanor appointed counsel.