



# **Review of Harris County's Indigent Defense Systems for Juveniles**

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## MISSION

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

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## **Summary of Findings / Recommendations / Additional Observations**

Pursuant to Section 79.037(a)(3) of the Texas Government Code and Title 1 Rule §174.28 of the Texas Administrative Code, Texas Indigent Defense Commission staff conducted an on-site review of the Harris County juvenile courts' public appointment system between October 17 and October 20, 2011. Below is a summary of the findings, recommendations, and additional observations. The full report follows this section.

### **Core Requirement 1. Conduct prompt detention hearings.**

**Finding:** Based on our observations of detention hearings and the Harris County Indigent Defense plan, Harris County has procedures to conduct prompt detention hearings and to inform parents/guardians prior to the detention hearing of the right to appointed counsel.

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

**Finding:** Harris County's indigent defense plan meets statutory provisions regarding standards of indigence for juveniles.

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

**Finding:** Harris County maintains records showing that attorneys on the appointment list meet the minimum qualifications listed under the local indigent defense plan. Several of the attorneys on the list are even board certified in juvenile law.

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

**Finding:** For cases in which the juvenile is detained, Harris County has effective procedures to make timely appointments of counsel.

**Recommendation:** For cases in which the juvenile is not detained, Harris County must implement procedures that ensure timely appointments of counsel.

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

**Finding:** The juvenile courts' procedures for appointing counsel comport with the Commission's rule on the distribution of appointments among attorneys.

### **Statutory Data Reporting**

**Finding:** As mandated by Section 79.036(e) of the Texas Government Code, Harris County submitted data to the Commission that listed juvenile cases in which counsel was appointed and their associated expenses in each court that payment was made.

### **County Indigent Defense Plans**

**Finding:** As mandated by Section 79.036(a) of the Texas Government Code, Harris County timely completed its indigent defense plans, which describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were listed in the plans.

### **Additional Observations**

A number of private attorneys who were appointed and paid with county funds to represent juvenile offenders had caseloads far in excess of nationally recommended guidelines. Without proper caseload controls, the rendering of adequate representation may be compromised. Whether adequate representation was provided in these instances is beyond the scope of this review.

## Methodology

The policy monitoring site review for Harris County’s juvenile systems was conducted by Texas Indigent Defense Commission staff between October 17 and October 20, 2011. When reviewing a county’s juvenile indigent defense processes, staff review the following core requirements of the Fair Defense Act (FDA):

- **Conduct prompt detention hearings.**
- **Determine indigence according to standards directed by the indigent defense plan.**
- **Establish minimum attorney qualifications.**
- **Appoint counsel promptly.**
- **Institute a fair, neutral, and non-discriminatory attorney selection process.**
- **Promulgate a standard attorney fee schedule and payment process.**

Staff also reviews the number of cases that individual attorneys receive as well as whether a county has met its statutory data reporting and plan submission requirements.

In this report, the term “monitor” is used to refer to actions conducted by Commission staff. The monitor met with the following persons: district judges handling juvenile cases; the court manager for juvenile cases; the juvenile probation department; a prosecutor of juvenile cases; defense attorneys handling juvenile cases; and the public defender office. The monitor also observed juvenile detention hearings and juvenile dockets. The monitor examined the following records: the jurisdiction’s indigent defense plan; juvenile case files from the clerk’s office; auditor data showing attorney payments in juvenile cases; JIMS data showing attorney appointments in juvenile and criminal cases; and data showing total cases disposed by top attorneys in the County.

## Selected Indigent Defense Statistics for Juvenile Cases

**Table 1: Select Juvenile Indigent Defense Statistics**

Harris County	2008	2009	2010	2011	Texas 2011
<b>2010 Census Population</b>	4,092,459	4,092,459	4,092,459	4,092,459	25,145,561
<b>Juvenile Cases Added<sup>1</sup></b>	14,003	11,892	10,646	9,991	29,496
<b>Juvenile Trial-Level Cases Paid<sup>2</sup></b>	9,655	10,535	8,609	7,521	53,739
<b>Juvenile Appeals Paid</b>	0	3	2	3	50
<b>Juvenile Attorney Fees<sup>3</sup></b>	\$2,509,744	\$2,391,476	\$2,237,968	\$2,031,153	\$12,608,797
<b>Juvenile Investigator Expenses</b>	\$29,060	\$28,310	\$29,596	\$18,469	\$279,040
<b>Juvenile Expert Witness Expenses</b>	\$13,000	\$7,030	\$34,355	\$40,674	\$430,778
<b>Juvenile Other Direct Expenses</b>	\$18,365	\$16,039	\$7,046	\$24,150	\$228,104
<b>Total Juvenile Expenditures</b>	\$2,570,168	\$2,442,855	\$2,308,965	\$2,114,445	\$13,546,719
<b>Juvenile Jury Trials<sup>4</sup></b>	1	2	9	3	78

<sup>1</sup> As reported by the Office of Court Administration (OCA) from the State fiscal year (September – August).

<sup>2</sup> As reported by the County to the Commission for the typical county fiscal year (October – September). Cases paid often exceed cases added because juveniles are entitled to representation at detention hearings. These detention hearings often occur in situations where no case is filed.

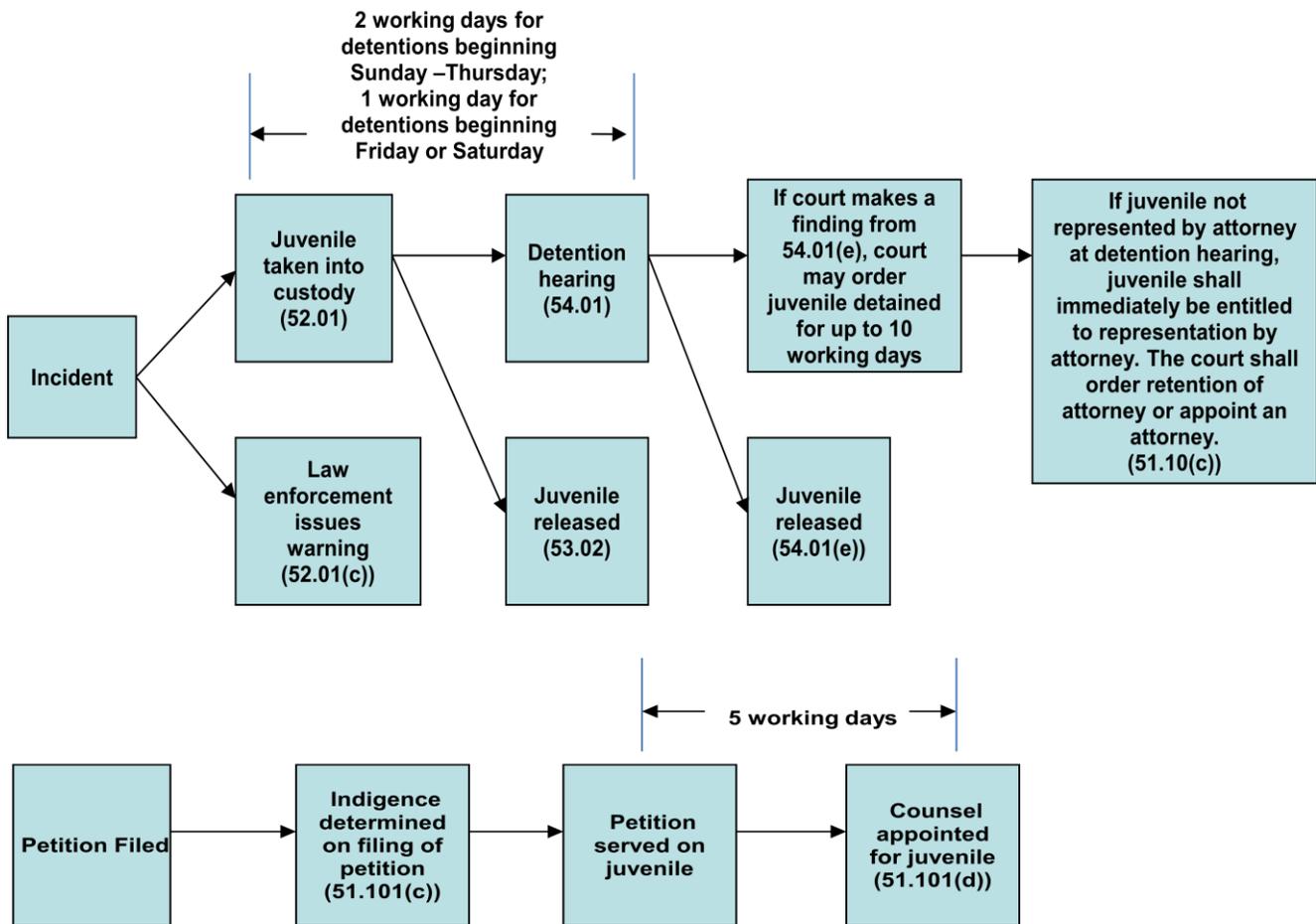
<sup>3</sup> This includes attorney fees in appeals cases. For State totals, public defender expenses are included.

<sup>4</sup> As reported by OCA for the State fiscal year. This includes retained and appointed cases.

# Overview of Harris County’s Indigent Defense System for Juveniles

**Figure 1: Statutory Timeline for Juveniles**

(relevant Texas Family Code references are listed in parentheses)



When juveniles are apprehended by law enforcement in Harris County, they are often released to their parents/custodians instead of being brought to intake (about two thirds of juveniles for whom a referral is given). The remaining juveniles are given a risk assessment by juvenile probation at intake prior to a detention hearing. Low risk persons are released, while high risk persons are brought before a judge at a detention hearing to decide whether to continue detention for up to ten working days. About one third of those brought to intake are released prior to a detention hearing. Juvenile detention costs the County about \$270 per day for each juvenile detained. **The County is to be commended for making a concerted effort to only detain juveniles when there is a demonstrated risk. According to the juvenile probation office, the utilization of the risk assessment saved the County about \$2.4 million in lower detention expenses between March 2009 and October 2011.**

All persons who receive their initial detention hearing are represented by counsel. Juveniles who request counsel (or rather the persons responsible for the juveniles) are screened for indigence when they are brought to intake. In the vast majority of initial detention hearings, the juvenile is found to be indigent and receives appointed counsel who is chosen by court coordinators based upon a rotating wheel. The appointed attorney is required to visit the juvenile in detention prior to the hearing, and if the juvenile wants to contact the attorney, this desire is forwarded to the attorney on the case.

The attorney appointed for the initial detention hearing, as a general rule, represents the juvenile through the remainder of the case.

When a petition is filed against a juvenile and the juvenile has not been taken into custody, a risk assessment is conducted after the petition is filed. For these juveniles, the financial screening is typically conducted over the phone. The petition is often served at the initial appearance. Counsel is usually appointed at this same appearance.

In State Fiscal Year 2011 (September 2010 through August 2011) Harris County added 9,991 new juvenile cases to the docket and disposed 9,760 cases.<sup>5</sup> From this total, there were 3,874 findings of delinquent conduct; 2,046 deferred prosecutions; 43 transfers to the adult court; 6 findings of no delinquent conduct; 7 dismissals; 74 modifications to dispositions denied; 730 modifications to dispositions granted; and 2,980 other adjudication findings. In reaching these dispositions, the County attempts to match the problems the juvenile faces with appropriate resources to deal with the problems. To establish this resource matching, the courts operate four specialty dockets: a gang court; a mental health court; a girls court (for victims of abuse); and a drug court.

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<sup>5</sup> These statistics were reported to OCA and can be queried at <http://card.txcourts.gov/ReportSelection.aspx>.

## Program Assessment

In the assessment that follows, the core requirements of the FDA are listed with a description of statutory provisions and 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 described, and findings and recommendations are made regarding these processes. The local indigent defense plan for juvenile cases is listed in Appendix A.

### Core Requirement 1. Conduct prompt detention hearings.

#### Local Practices Compared to Statutory Provisions

- If a child is taken into custody, the court must hold detention hearing by the second working day, or the first working day if detained on a Friday or a Saturday.<sup>6</sup>
- Prior to the detention hearing, the court must inform the parents of the child's right to appointed counsel if they are indigent.<sup>7</sup>

#### Jurisdiction's Process

According to the local indigent defense plan, the time for detention hearings to be held follows the requirements set out in Section 54.01 of the Family Code. Prior to the detention hearing, the plan requires that the court inform the parents/guardians of the juvenile's right to counsel and to appointed counsel if indigent. In practice, for detained juveniles, queries regarding indigence are performed prior to the hearing by the juvenile probation department.

**Finding:** Based on our observations of detention hearings and the Harris County Indigent Defense plan, Harris County has procedures to conduct prompt detention hearings and to inform parents/guardians prior to the detention hearing of the right to appointed counsel.

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<sup>6</sup> Tex. Family Code § 54.01(a). The Commission requires this item to be in the local indigent defense plan, but did not review records showing the time from initial detention until the detention hearing. This box is not checked because we did not review records showing the time from initial detention until the hearing.

<sup>7</sup> Tex. Family Code § 54.01(b).

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

### **Indigent Defense Plan Compared to Statutory Provisions**<sup>8</sup>

- ☑ Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>9</sup>
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>10</sup>
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>11</sup>

### **Jurisdiction's Plan**

The juvenile plan presumes that the juvenile is indigent if the person responsible for the juvenile has an income below 125 percent of the Federal Poverty Guidelines. The plan also presumes indigence if the person responsible for the juvenile has financial liabilities that are more than his/her assets, or if the responsible person is financially unable to pay for an attorney qualified to represent the juvenile for the offense which is charged.

**Finding:** Harris County's indigent defense plan meets statutory provisions regarding standards of indigence for juveniles.

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

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

- ☑ Establish objective qualification standards for attorneys for three levels of conduct.<sup>12</sup>
  - 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.<sup>13</sup>
- ☑ Attorneys must be approved by a majority of the Juvenile Board or judges on the Juvenile Board to be placed on or removed from the appointment list.<sup>14</sup>

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<sup>8</sup> Regarding determinations of indigence, the monitor typically reviews whether the plan meets statutory requirements rather than whether the courts properly applied the local standard of indigence. However, if in the monitor's observations, he finds that the court does not appear to follow relevant statutes, he notes these observations.

<sup>9</sup> Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>10</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>11</sup> Tex. Code Crim. Proc. art. 26.04(m).

<sup>12</sup> Tex. Fam. Code § 51.102(a),(b)(2).

<sup>13</sup> 1 TAC §§174.1-174.4.

<sup>14</sup> Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d).

**Jurisdiction’s Process:**

According to the local indigent defense plan, the jurisdiction has an appointment list consisting of three trial levels and an appellate level for attorney appointments in juvenile matters. The lowest trial level (Level C) allows attorneys to represent juveniles in CINS cases or in delinquent conduct cases where TYC commitment is not possible. The next level (Level B) allows attorneys to represent juveniles in cases of delinquent conduct in which commitment to TYC without a determinate sentence is an authorized disposition. The highest level (Level A) allows attorneys to represent juveniles in cases in which determinate sentence proceedings or proceedings for discretionary transfer to criminal court have been initiated.

All attorneys must meet the baseline requirements set for Level C attorneys, and attorneys on the two higher levels must meet more stringent requirements. All attorneys must receive at least twelve CLE hours in juvenile law annually. Level B attorneys must have at least three years experience in juvenile litigation and have either handled fifty misdemeanor juvenile stipulations or have tried to conclusion four juvenile trials. Level A attorneys must have at least four years experience in juvenile litigation and have handled one hundred juvenile stipulations, including six juvenile trials. Appellate attorneys must meet all Level A requirements and be either board certified in juvenile law or have personally authored at least three appellate briefs.

The monitor examined whether attorneys on the appointment list as of October 20, 2011, had completed their CLE hours as required by the indigent defense plan. The monitor found that there were 66 attorneys on the appointment list on October 20, 2011. The list used to be much larger (on October 28, 2010, the list contained 101 attorneys), but the judges have recently reduced the size of the list. All attorneys on the list met the CLE requirements. The attorneys appeared to be very well qualified, with eight of the attorneys noting on their application that they were board certified in juvenile law.<sup>15</sup> See the following table for totals that depict the number of attorneys approved for each level on the appointment list.<sup>16</sup>

**Table 2: Attorneys on Juvenile Appointment Lists**

Level of appointment list	Number of attorneys
A	31
B	22
C	13
Appellate	9

**Finding:** Harris County maintains records showing that attorneys on the appointment list meet the minimum qualifications listed under the local indigent defense plan. Several of the attorneys on the list are even board certified in juvenile law.

<sup>15</sup> The total number of attorneys that were board certified could actually be larger as the question about board certification was posed to those attorneys wishing to handle appeals. Attorneys not wishing to handle appeals would have had no reason to list their board certification.

<sup>16</sup> All appellate attorneys were also approved for a trial-level list. This means that the sum of Level A, B, and C attorneys will equal the total number of attorneys on the appointment list.

## Core Requirement 4. Appoint counsel promptly.

### Local Practices Compared to 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.<sup>17</sup>
- If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.<sup>18</sup>

### Jurisdiction's Process:

The monitor reviewed 180 juvenile cases (filed between January 2011 and October 2011) in order to determine the timeliness of appointments in Harris County.<sup>19</sup> Juveniles are entitled to counsel if they are the subject of a detention hearing (and there has been a decision to detain the juvenile) or if there is a petition filed against them and they are served with the petition. In Harris County, petitions are frequently filed in response to instances of juvenile misconduct, but juvenile detentions are not used as frequently. From the monitor's sample of juvenile cases, 22 of the 180 cases (12 percent of the sample) involved juvenile detention hearings with a decision to detain the juvenile.

The monitor examined the timeliness of appointments in cases that required an appointed attorney. Of the 22 cases in which there was a decision to detain the juvenile, all 22 juveniles had attorneys present for the initial detention hearings. Twenty (20) of the juveniles were represented by appointed counsel, and two were represented by retained counsel. Since all of these juveniles were represented by attorneys at the initial detention hearings, all appointments of counsel were timely.

**Table 3: Appointment Data for Detention Cases**

Juvenile Appointment Sample Data for Detention Cases	Sample Size	Number from sample	Percent
Case files examined with a detention order	22		
Cases with a decision to detain the juvenile and a retained attorney represented the juvenile		2	
Cases with a decision to detain the juvenile and an attorney was appointed by the date of the detention hearing		20	
<b>Timely appointments of counsel in detention hearings</b>		<b>20/20</b>	<b>100%</b>

**Finding:** For cases in which the juvenile is detained, Harris County has effective procedures to make timely appointments of counsel.

In Harris County, many juvenile offenses involve instances where the juvenile has not been held in detention but has been released back to his/her parents or to another responsible person. The prosecutor will later file a case but will not detain the juvenile before doing so. The juvenile may never

<sup>17</sup> Tex. Fam. Code § 51.10(c).

<sup>18</sup> Tex. Fam. Code § 51.10(c)-(d). This box is not checked because the monitor's sample did not meet our 90% threshold of timely appointments.

<sup>19</sup> Sixty cases were selected from each of the three courts handling juvenile matters. Cases were picked by selecting groups of five contiguous files from shelves in the clerk's office.

be seen by the intake office of the juvenile probation department, a common practice for juveniles who are detained. At the time the case is filed, no one in the County may be aware of the juvenile’s financial status. In Harris County, the juvenile probation department receives a copy of the petition and then attempts to contact the family in order to obtain the financial status of the family. After juvenile probation receives the information, it is forwarded to the court coordinators who can then appoint counsel. In contrast to those juveniles who are detained, gathering of financial information for out-of-custody juveniles may not be complete within the time frame required for the courts to appoint counsel (within five working days of serving the juvenile with a copy of the petition).

Of the cases examined by the monitor, the vast majority did not go to detention (88 percent did not go to detention). This means that the juvenile probation office and the juvenile courts will likely have very little contact with the juvenile prior to the case filing. Of the 180 cases examined, 155 received appointed counsel. Fifty-four percent (54 percent) of those cases received counsel within the five working days of service as required by Section 51.10 of the Family Code. After the monitor’s visit, the juvenile probation office became aware that their processes may not meet Section 51.10’s time requirements and sent a letter to the Commission stating that they would change the manner in which the juvenile probation office handles financial questionnaires. See Appendix D for a copy of this letter. See the following table for a summary of the timeliness of counsel appointments in situations when a petition is filed against the juvenile.

**Table 4: Appointment Data When a Petition Was Filed**

<b>Juvenile Appointment Sample Data for Cases in which a Petition was Filed</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Juvenile Case Files Examined	180		
Cases with retained counsel only		21	
Cases involving neither retained counsel nor appointed counsel <sup>20</sup>		4	
Cases involving appointed counsel <sup>21</sup>	155		
Cases where timeliness of appointment could not be determined <sup>22</sup>		6	
Cases in which an appointment occurred within five working days of serving the juvenile with the petition		80	
Cases in which an appointed occurred more than five working days after serving the juvenile with the petition		69	
<b>Timely appointments of counsel in cases in which a petition was filed</b>		<b>80/149</b>	<b>54%</b>

<sup>20</sup> One case involved the DA non-suiting before service could be completed. Three cases involved instances where there was no record of the juvenile being served with the petition but there was a note in the case file stating that the juvenile planned to retain counsel.

<sup>21</sup> Two of these cases later had retained counsel.

<sup>22</sup> If the monitor could not determine when the juvenile was served with a petition, the timeliness of appointment could not be determined. In some cases, the case file did not show that the juvenile was served. In these cases, the juvenile was presumed to have been served at the initial appearance if there was a corresponding record of an attorney having been appointed within five working days of this date.

**Recommendation:** For cases in which the juvenile is not detained, Harris County must implement procedures that ensure timely appointments of counsel.

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

### **Local Practices Compared to 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.<sup>23</sup>
- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.<sup>24</sup>
- Alternative appointment method:<sup>25</sup>
  - The local processes must be established by vote of two-thirds of the judges.
  - The plan must be approved by presiding judge of administrative judicial region.
  - The courts must allocate appointments reasonably and impartially among qualified attorneys.
- For a contract defender program, the county must meet contract defender standards.<sup>26</sup>
- The top 10% of recipient attorneys receive less than three times their representative share of appointments.<sup>27</sup>

### **Jurisdiction's Process:**

Harris County has three district courts that handle juvenile delinquency cases. According to its indigent defense plan, the juvenile courts utilize an alternative system of appointing counsel. Under an alternative appointment system, the courts have wide discretion in setting appointment procedures, but appointments are to be reasonably and impartially allocated among qualified attorneys. According to the indigent defense plan, under the alternative system, attorneys in Harris County are appointed to juvenile delinquency cases in each court by individual appointment, term assignment, or by a combination of the two methods. It was reported that the public defender office would begin accepting appointments in juvenile cases in December 2011.

In examining whether a jurisdiction's procedures for making attorney appointments are fair, neutral, and non-discriminatory, the monitor looks at the distribution of attorney appointments. A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory

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<sup>23</sup> Tex. Code Crim. Proc. art. 26.04(a). Only one of the first four boxes in this section needs to be checked to meet statutory requirements.

<sup>24</sup> Tex. Code Crim. Proc. art. 26.044. At the time of our visit, the public defender had not yet begun accepting juvenile appointments.

<sup>25</sup> Tex. Code Crim. Proc. art. 26.04(g)-(h).

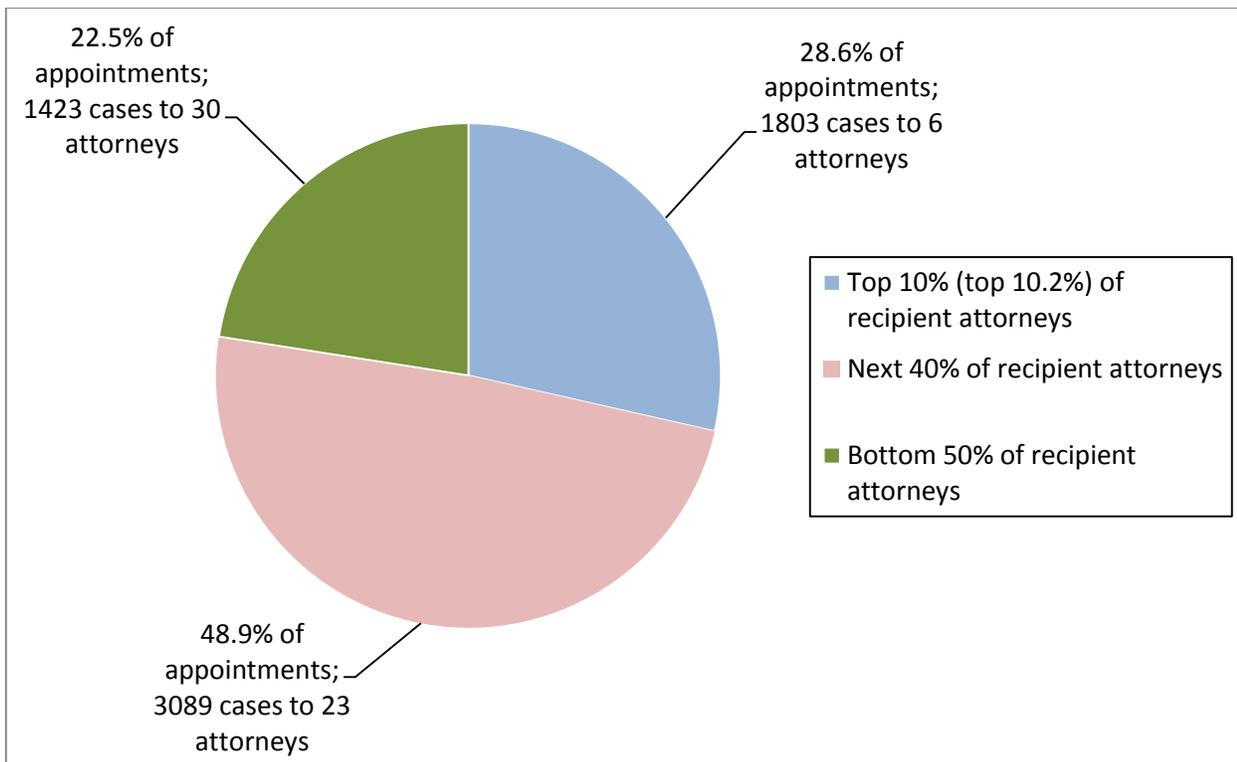
<sup>26</sup> 1 TAC §§174.10-174.25.

<sup>27</sup> 1 TAC §174.28.

attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10 percent of recipient attorneys does not exceed three times their respective share. If a county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year. The top 10 percent of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10 percent of the total list.<sup>28</sup>

The monitor found that 59 attorneys who handle juvenile matters in Harris County received appointments in FY2011 and were on both the appointment list from October 28, 2010, and the list from October 20, 2011. The number of appointments received by each attorney was obtained from Harris County’s JIMS system. The top 10.2% of these attorneys received 28.6% of the juvenile appointments, or 2.8 times their representative share. This is within the Commission’s threshold for presuming that a jurisdiction’s appointment system is fair, neutral, and non-discriminatory.

**Figure 2: Distribution of Attorney Appointments Across All Three Juvenile Courts**



The monitor also examined the distribution of appointments by individual court. The distribution of appointments was somewhat different in individual courts than the distribution in the aggregate (**By rule, the Commission’s recommendation only focuses on the aggregate**

<sup>28</sup> As an example of how this formula functions, if an attorney appointment list contains 42 attorneys, the monitor would check whether the top four attorneys received less than three times their representative share of appointments (no more than 28.6%) of appointments.

**distribution.**) Appointments in the 315<sup>th</sup> District Court were relatively even, with the top ten percent<sup>29</sup> of recipient attorneys receiving 2.3 times their representative share of cases. In the 313<sup>th</sup> District Court, the top ten percent<sup>30</sup> of recipient attorneys received 3.3 times their representative share. In the 314<sup>th</sup> District Court, the top ten percent<sup>31</sup> of recipient attorneys received 4.3 times their representative share of cases. See Appendix C for a list of appointments by individual juvenile court.

**Finding:** The juvenile courts' procedures for appointing counsel comport with the Commission's rule on the distribution of appointments among attorneys.

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

The monitor examined the County's indigent defense plan with regard to its fee schedule and payment processes. The monitor did not review individual fee vouchers to make a comparison with the County's fee schedule.

### **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.

#### **Jurisdiction's Process**

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 number of cases and 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. The Harris County Auditor's Office timely completed the annual indigent defense expense report and maintained supporting data.

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<sup>29</sup> This was actually the top 9.2% of recipient attorneys.

<sup>30</sup> This was actually the top 9.6% of recipient attorneys.

<sup>31</sup> This was actually the top 10.3% of recipient attorneys.

**Finding:** As mandated by Section 79.036(e) of the Texas Government Code, Harris County submitted data to the Commission that listed juvenile cases in which counsel was appointed and their associated expenses in each court that payment was made.

## County Indigent Defense Plans

The 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(a), Government Code. This is also a requirement to be eligible to receive grant funds from the new Commission.

**Finding:** As mandated by Section 79.036(a) of the Texas Government Code, Harris County timely completed its indigent defense plans, which describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were listed in the plans.

## Additional Observations

### Caseload Controls

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for attorneys taking public appointments, which are detailed in the following table.<sup>32</sup>

**Table 5: NAC Caseload Standards**

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

The NAC caseload standards are a widely referenced set of standards that 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 to assess 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

<sup>32</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

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. Several states have implemented caseload standards that are similar to the NAC standard but which have been adjusted to account for local factors. (See Appendix E for a summary listing of states that have adopted some form of caseload standards.)

At the time of the review, the Harris County Public Defender's Office was not accepting appointments for juvenile cases. It was reported that Harris County Public Defender's Office began accepting appointments in December 2011 and adopted caseload controls for its juvenile public defenders patterned after the NAC standards.

### **The NAC Standard Applied to Harris County Juvenile Delinquency Attorneys**

In Harris County, eleven attorneys who were on both of the juvenile appointment lists examined by the monitor (the October 2010 list and the October 2011 list) obtained criminal or juvenile appointments that exceeded the NAC recommendations in FY2011.<sup>33</sup> One attorney carried an appointed caseload that exceeded four times the NAC recommendations. Moreover, this examination did not consider appointments taken in other counties, retained cases, federal cases, or civil cases. As a result, these attorneys may have even higher caseloads than is reported unless the attorneys' entire business is obtained from court appointments from the Harris County courts. See Appendix B for the number of criminal and juvenile delinquency appointments in Harris County received by attorneys in juvenile cases.

### **The Effect of Civil Appointments on Attorney Caseloads**

As an example of how civil case appointments may impact attorney workloads, our agency received data regarding the overall top ten attorneys who received payments from Harris County for juvenile CPS as well as guardian ad litem appointments. This data showed the number of cases in which attorneys received payments for any type of appointed case, including civil appointments (CPS and family cases) as well as criminal and juvenile cases. Five attorneys from the list currently receive juvenile delinquency appointments in the County. See Table 6 below for totals of the reported number of appointed cases disposed by these attorneys. Assuming 1850 work hours per year<sup>34</sup>, the attorney with the 882 appointments would be able to devote just over two hours to each disposed case.<sup>35</sup> Whether any court appointed clients of this attorney had a jury trial is unknown to the monitor.

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<sup>33</sup>These totals were reported by Harris County to the Commission and listed the number of appointments for the year as found in the JIMS database.

<sup>34</sup> Assumes 1,850 work hours in a year. See Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* at 16 (American Bar Association 2011) (available at [www.indigentdefense.org](http://www.indigentdefense.org)).

<sup>35</sup> This figure was determined by dividing the 1850 annual work hours by the 882 cases disposed.

**Table 6: Overall FY11 Caseloads of Top Harris County Attorneys Handling Juvenile Delinquency Cases**

Attorney Number	Types of Appointments	Total Number of Cases Disposed	Number of Hours per Disposition
Attorney 1	Misdemeanor, Felony, Juvenile Delinquency, Juvenile CPS	882	2.1
Attorney 52	Felony, Juvenile Delinquency, Juvenile CPS, Family	704	2.6
Attorney 44	Appeals, Misdemeanor, Felony, Juvenile Delinquency, Juvenile CPS, Family	623	3.0
Attorney 43	Juvenile Delinquency, Juvenile CPS, Family	321	5.8
Attorney 21	Felony, Juvenile Delinquency, Juvenile CPS, Family	256	7.2

As noted in the court statistics that Harris County reports to OCA, for fiscal years 2008 through 2011, the County had over 46,000 new juvenile case filings, and of these filings, 16 cases went to jury trial (0.03 percent of juvenile delinquency cases went to a jury trial). The monitor did not have information to indicate whether any of these juveniles that went to trial were defended by a court appointed attorney.

A number of private attorneys who were appointed and paid with county funds to represent juvenile offenders had caseloads far in excess of nationally recommended guidelines. Without proper caseload controls, the rendering of adequate representation may be compromised. Whether adequate representation was provided in these instances is beyond the scope of this review.

### **Use of Investigative and Expert Witness Expenses**

The National Study Commission on Defense Services (NSC) developed a standard for investigative expenses<sup>36</sup> that calls for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. Assuming the annual cost for one investigator is \$50,000<sup>37</sup>, to be in line with national recommendations suggested by the NSC, Harris County could expect to pay \$626,750 on 12.5 full-time equivalent (FTE) investigators in juvenile delinquency cases. For defense of juveniles, the County reported spending \$18,469 on investigative expenses in juvenile delinquency cases during FY2011 (or 3 percent of the predicted amount). On a similar note, the amount of money spent on investigations for the defense could be compared with the amount spent by the prosecution and law enforcement.<sup>38</sup>

<sup>36</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976). These caseloads are based on caseload standards for attorneys set out in the National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973). According to the NSC standard, there should be one full-time investigator for every three attorneys.

<sup>37</sup> The State of Texas determines benefits and taxes at 28.57 percent of a full time equivalent's salary; therefore, a \$50,000 investigator would not only make a salary of \$38,889, but also cost an additional \$11,111 per year in benefits.

<sup>38</sup> See Principle 8, *Ten Principles of a Public Defense Delivery System* (American Bar Association 2002).

The Commission asked Harris County for documentation as to how many juvenile delinquency cases included an investigation expense. Harris County reported that in FY2011 the County made 31 payments for investigation expenses in juvenile cases. Assuming that each one of these payments was for a different case, the County incurred investigation expenses in 0.4 percent of indigent juvenile cases in FY2011. This number does not take into account investigations performed by the court appointed attorney rather than a licensed investigator.

The Harris County Public Defender Office includes four investigators on staff. These investigators are for both criminal and juvenile cases. As the public defender office begins taking cases and reports data related to juvenile representation, it might be useful for the County to review what, if any, differences exist in the use of investigative services between traditional appointed counsel and the public defender office, and whether the use of investigative services impact case outcomes.

In addition to investigative expenses incurred in juvenile cases, the Commission examined spending on expert witnesses. In FY2011, Harris County spent \$40,674 on expert witnesses in juvenile delinquency cases. Across the State of Texas, expert witness expenses in juvenile delinquency cases totaled \$430,778.

## **Conclusion**

The monitor was impressed with Harris 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 – Harris County Juvenile Indigent Defense Plan

### Harris Juvenile Board Plan Preamble

*Section Pending Approval*

2/2/2012

#### FAIR DEFENSE ACT STANDARDS AND PROCEDURES FOR APPOINTMENT OF COUNSEL FOR JUVENILE RESPONDENTS

The Harris County Juvenile Board adopts the following plan for appointment of counsel for indigent juvenile respondents. This plan supersedes any prior plan. The Juvenile Courts adopt an appointment of counsel plan that follows The Texas Family Code Sec. 51.102. It is effective on December 14, 2011.

The plan establishes:

- 1) Standards for determining indigency.
  - 2) Qualifications for attorneys to be on the appointment list.
  - 3) Procedures for inclusion and removal of attorneys from the list.
  - 4) Methods for assignment of attorneys.
  - 5) Fee schedule and attorney compensation.
1. **TERMINOLOGY:** As used in these procedures, the following terms and phrases will have the following meanings.
- 1.1 “Board” shall mean the Harris County Juvenile Board.
  - 1.2 “Judges” shall mean the Juvenile Judges trying cases in Harris County.
  - 1.3 “Referee” shall mean a duly appointed referee authorized to make attorney appointments to indigent individuals charged with juvenile offenses.
  - 1.4 The pronouns “he,” “him,” and “his” shall refer to individuals of both genders.
  - 1.5 “Respondent,” “Child,” and “Juvenile” shall refer to an individual charged with a juvenile offense.
  - 1.6 “Juvenile offense” shall mean conduct committed by a person ten (10) years of age or older and under seventeen (17) years of age that constitutes: (a) a misdemeanor punishable by confinement or (b) a felony; or seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or indicating a need for supervision as a result of acts committed before becoming seventeen (17) years of age; or as defined in Section 54.02 (j) (1) – (5) of the Texas Family Code.
  - 1.7 “TJJD” shall mean the Texas Juvenile Justice Department.

1.8 “CLE” shall mean Continuing Legal Education.

1.9 “Public Defender” shall mean the Public Defender’s Office in Harris County.

2.0 “HCPD slot” shall mean a Public Defender place-holder instead of an attorney name on a graduated list, which will be used to facilitate individual appointments of attorneys that are employed and designated by the Public Defender.

### **Prompt Detention Hearings**

*Section Pending Approval*

2/2/2012

### **3. WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES, WHETHER INDIGENT OR NOT**

- 3.1. If the juvenile is in custody and is not represented by retained counsel, at the first detention hearing: The judge or referee’s determination of indigency shall be based on information collected by the Juvenile Probation Department and/or based on evidence introduced at a hearing before the judge or referee. In accordance with Section 54.01(a) of the Texas Family Code, if the juvenile is in custody, a detention hearing without a jury shall be held promptly, but not later than the second working day after the juvenile is taken into custody provided, however, that when a juvenile is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the juvenile is taken into custody. Prior to the detention hearing, the court shall inform the parents/guardians of the juvenile’s right to counsel and to appointed counsel if indigent.
- 3.2. The judge or referee shall appoint an attorney to represent the respondent if he makes a finding of indigency; or the juvenile or his parents, guardian, or managing conservator request that an attorney be appointed to represent the juvenile; or the juvenile or his family has not hired an attorney to represent the juvenile. If the juvenile was not represented by an attorney at a detention hearing and a determination was made to detain the juvenile, the juvenile shall immediately be entitled to representation by an attorney.
- 3.3. The judge or referee shall appoint an attorney who meets the qualifications established under these standards to represent the juvenile based on the charges to be filed.
- 3.4. **Appointment of counsel when the juvenile *is not in custody*.** The juvenile court shall determine whether the respondent and his family are indigent on or before the filing of a petition for adjudication; or a petition for discretionary transfer; or a motion to modify disposition that seeks to have the respondent committed to the TJJD or confined in a secure facility.

- 3.5. If an indigent juvenile respondent is served with a petition or such a motion to modify is filed, the court shall appoint an attorney to represent the juvenile after the motion to modify is filed or the petition is served on the respondent.
- 3.6. The juvenile courts may assign indigency determinations and hearings required under this section to the detention center referee.
- 3.7. A juvenile court or referee may appoint counsel for a non-indigent juvenile if either the parent(s), guardian, or managing conservator refuse to retain counsel for the juvenile or request the juvenile court or referee to appoint counsel for the juvenile. In both cases, the court or referee shall require either reimbursement to the county for any attorneys' fees expended, or order payment directly to the attorney providing representation.

### **Indigency Determination Standards**

*2/4/2011*

#### **2. STANDARDS FOR DETERMINING INDIGENCY:**

- 2.1 A respondent is considered indigent for purposes of the Act if he is financially unable to hire counsel. There shall be a presumption of indigency if the income of the respondent and parent, guardian, or managing conservator is below 125% of the Federal Poverty Guidelines.
- 2.2 The judge or referee shall find respondent indigent and appoint counsel to represent him if the judge finds the respondent's financial liabilities are more than his assets, or the respondent is financially unable to pay for an attorney qualified to represent the respondent for the offense which is charged.
- 2.3 A respondent who has been found indigent is presumed indigent for the duration of the proceedings unless there is a material change in the respondent's financial circumstances.
- 2.4 For determining indigency, "Respondent" shall refer to the income and assets of the respondent and his parent, guardian, or managing conservator.

### **Minimum Attorney Qualifications**

*Section Pending Approval*

*2/2/2012*

#### **4. APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT JUVENILE**

##### **RESPONDENTS – General Provisions:**

- 4.1. An attorney assigned to represent a juvenile respondent shall represent a respondent until the respondent is acquitted, appeals are exhausted, or the court relieves the attorney and/or replaces the attorney with other counsel. The juvenile board's plan for appointment of counsel recognizes the differences in qualifications and experience necessary for appointments to cases in which the allegation is conduct indicating a need for supervision; or delinquent conduct where commitment to TJJD is not an authorized disposition; or delinquent conduct where commitment to TJJD without a determinate sentence is an authorized disposition; or those cases in which determinate

sentence proceedings have been initiated, or where proceedings for discretionary transfer to criminal court have been initiated.

## **5. LISTS OF QUALIFIED ATTORNEYS**

5.1. **MASTER LIST:** To be considered for placement on the Master List, each attorney must submit a completed application form and meet all of the following baseline criteria. An attorney must:

- 5.1.1 Be licensed and in good standing with the State Bar of Texas.
- 5.1.2 Have practiced law for at least one (1) year.
- 5.1.3 Have passed the juvenile certification test if one is offered; or attended an orientation course offered by the juvenile courts if one is offered.
- 5.1.4 Have observed adjudication, disposition, certification, and detention hearings in the courts in the juvenile trial division and the detention center.
- 5.1.5 Have exhibited a commitment to providing quality representation to juvenile respondents.
- 5.1.6 Have demonstrated professionalism and reliability when interacting with juvenile court judges and staff.
- 5.1.7 Have averaged twelve (12) hours a year of continuing legal education courses or other training relating to juvenile law.
- 5.1.8 Have been approved by a secret ballot by a majority of the Harris County Juvenile Court judges.

5.2 All qualifications must be documented.

## **6. GRADUATED LISTS:**

6.1. **Class C List:** Attorneys may represent juvenile respondents in cases involving 1) conduct indicating a need for supervision and 2) delinquent conduct when commitment to TJJD is not an authorized disposition. To be eligible for **Class C** appointments, an attorney must meet the baseline criteria for inclusion on the **Master List**.

6.2. **Class B List:** Attorneys may represent juvenile respondents in cases of delinquent conduct in which commitment to TJJD without a determinate sentence is an authorized disposition. To be eligible for **Class B** appointments, in addition to meeting the baseline criteria for inclusion on the **Master List**, an attorney must have at least three (3) years experience in juvenile litigation; and handled fifty (50) misdemeanor juvenile stipulations or tried to conclusion four (4) juvenile trials.

6.3. **Class A List:** Attorneys may represent juvenile respondents in cases in which determinate sentence proceedings or proceedings for discretionary transfer to criminal court have been initiated. To be eligible for **Class A** appointments, in addition to meeting the baseline criteria for

inclusion on the **Master List**, an attorney must have at least four (4) years experience in juvenile litigation; and handled one hundred (100) juvenile stipulations, including six (6) juvenile trials.

- 6.4. **Appellate List:** Attorneys may be appointed to represent juvenile respondents on appellate matters. In addition to the baseline criteria, appellate lawyers must be on the **Class A List**, and meet one of the following criteria:

Be board certified in juvenile law by the Texas Board of Legal Specialization or

Have personally authored and filed at least three (3) appellate briefs.

### **Prompt Appointment of Counsel**

*Section Pending Approval*

2/2/2012

### **3. WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES, WHETHER INDIGENT OR NOT**

- 3.1. If the juvenile is in custody and is not represented by retained counsel, at the first detention hearing: The judge or referee's determination of indigency shall be based on information collected by the Juvenile Probation Department and/or based on evidence introduced at a hearing before the judge or referee.
- 3.2. The judge or referee shall appoint an attorney to represent the respondent if he makes a finding of indigency; or the juvenile or his parents, guardian, or managing conservator request that an attorney be appointed to represent the juvenile; or the juvenile or his family has not hired an attorney to represent the juvenile.
- 3.3. The judge or referee shall appoint an attorney who meets the qualifications established under these standards to represent the juvenile based on the charges to be filed.
- 3.4. **Appointment of counsel when the juvenile *is not in custody*.** The juvenile court shall determine whether the respondent and his family are indigent on or before the filing of a petition for adjudication; or a petition for discretionary transfer; or a motion to modify disposition that seeks to have the respondent committed to the TJJD or confined in a secure facility.
- 3.5. If an indigent juvenile respondent is served with a petition or such a motion to modify is filed, the court shall appoint an attorney to represent the juvenile after the motion to modify is filed or the petition is served on the respondent.
- 3.6. The juvenile courts may assign indigency determinations and hearings required under this section to the detention center referee.
- 3.7. A juvenile court or referee may appoint counsel for a non-indigent juvenile if either the parent(s), guardian, or managing conservator refuse to retain counsel for the juvenile or request the juvenile court or referee to appoint counsel for the juvenile. In both cases, the court or referee shall

require either reimbursement to the county for any attorneys' fees expended, or order payment directly to the attorney providing representation.

## **Attorney Selection Process**

*Section Pending Approval*

2/2/2012

### **7. COMPILATION OF MASTER LIST**

- 7.1. **Attorney Application and Approval:** Attorneys must complete and submit an application for inclusion on the Master List. Attorneys meeting the baseline criteria and who have been approved by a majority of the district court judges trying juvenile cases in Harris County will be placed on the Master List, until a subsequent Master List is prepared by the Juvenile Judges.
- 7.2. **Voting Will Be by Secret Ballot.** Judges will vote "approved," "not approved," or "abstain" as to each applicant.
- 7.3. **Majority Vote for Inclusion:** A majority vote of "approved" is necessary for an attorney to be included on the **Master List**.
- 7.4. **Placement on Graduated Lists:** Applicants approved by a majority of the judges for the **Master List** will be placed on the graduated lists according to adopted criteria with the approval of the vote of a majority of the judges. The judges will make appointments for indigent respondents only from the graduated lists of approved attorneys.
- 7.5. **New Applications:** The judges will consider new applications at least annually.
- 7.6. **Annual Update:** Attorneys shall report any material changes in their information before January 1<sup>st</sup> of each year. The Master List and graduated lists will be updated at least annually.
- 7.7. **Reporting of Continuing Legal Education activity:** An attorney's annual reporting period shall run from January 1<sup>st</sup> to December 31<sup>st</sup>. On or before December 31<sup>st</sup> of each year, attorneys must tender a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report to the Administrative Offices of the District Courts accompanied by an affidavit verifying that the report is true and correct. If there are errors in the Verification Report, the attorney may amend the report by submitting any necessary supporting documentation, or affidavits.
- 7.8. **Public Defender:** The Public Defender shall be placed on the Master List and all graduated lists.

### **8. REMOVAL OF ATTORNEYS FROM THE MASTER LIST:**

A majority of the judges may remove an attorney from the Master List if the attorney does not fulfill his duties in representing indigent juvenile respondents; or if it is shown that the attorney submitted a claim for legal services not performed by the attorney; or if the attorney does not provide proof of completion of the minimum continuing legal education (CLE) required by the

State Bar; or the attorney does not exhibit professionalism in his interactions with the juvenile court judges or staff.

**9. SUBSEQUENT MASTER LIST:**

A subsequent Master List may be prepared at any time by approval of a majority of the District Court Judges trying Juvenile cases in Harris County. An attorney's placement on the Master List does not create a permanent entitlement to inclusion on any future list. Each Master List will be a new compilation of attorneys, which is separate and apart from any prior list.

9.1. **Attorney or Judge Request for Classification Review:** Attorneys asking the Juvenile Judges to reconsider their classification on the graduated lists shall submit a new application. The decision to perform a review of classification status must be made by a majority vote of Juvenile Judges. Upon review of the completed application, the Juvenile Judges may 1) upgrade applicant's classification; 2) downgrade applicant's classification; 3) leave applicant's classification unchanged, or 4) remove applicant from the Master List. A majority of the Juvenile Judges may, on their own initiative, perform this reclassification at any time with notice to the attorney.

9.2. **Appeals:** An applicant may appeal his omission or removal from the **Master List**. At any time within **seven (7)** calendar days after an applicant receives notice of his omission or removal from the Master List, the applicant may give written notice of appeal to the Central Appointment Coordinator. Upon receipt of a notice of appeal, the Central Appointment Coordinator shall verify the accuracy of the votes for the applicant and the accuracy of an attorney's omission or removal from the **Master List**. If a review of the votes and **Master List** indicates an error, the Central Appointment Coordinator shall make the necessary corrections or modifications. Within **fourteen (14)** calendar days receipt of applicant's notice of appeal, the Central Appointment Coordinator shall notify the applicant of his status as to the **Master List**. An applicant omitted or removed from the Master List is presumptively ineligible for appointments during the appeal process.

**10. METHOD FOR ASSIGNMENT OF ATTORNEYS AND PROCEDURES:**

10.1. **INDIVIDUAL CASE APPOINTMENT METHOD:** A public attorney, employed and designated by the Public Defender, or a private attorney, acting as an independent contractor and compensated with public funds, is appointed to provide legal representation and services to an indigent juvenile respondent.

10.2. **TERM APPOINTMENT METHOD:** A public attorney, employed and designated by the Public Defender, or a private attorney, acting as an independent contractor and compensated with

public funds, is assigned to provide legal representation and services to indigent juvenile respondents who appear before a court for a specified period of time.

10.3. **COMBINATION METHOD:** The court may use any combination of the approved methods to appoint attorneys.

**11. PROCEDURES FOR ATTORNEY ASSIGNMENT**

11.1. Consistent with these adopted procedures, each judge may choose any attorney from the graduated lists of qualified attorneys for assignment. The procedures shall take into account the availability of the attorney and the individual qualifications of the attorney with respect to the nature of the case.

11.2. The Judges shall select a Central Appointment Coordinator to assist in the implementation of the Harris County Juvenile Courts' alternative appointment procedures.

11.3. Each judge will indicate to the Central Appointment Coordinator how many Public Defender slots should be placed on each graduated list, which may or may not correspond to the number of available and qualified attorneys employed by the Public Defender for appointment to Juvenile cases.

**12. ATTORNEY REQUESTS FOR APPOINTMENTS:**

12.1. Attorneys whose names appear on the Master List of Qualified Attorneys shall submit requests to be considered for appointments to the Central Appointment Coordinator by way of computer in the District Court Administrative Office or through the Internet. An attorney may access the sign-up program by entering his bar card number. Before the system will accept the request, the attorney must enter a current telephone and/or pager number and, when applicable, an updated address and contact information. All requests must include the following information:

Name and bar card number; Telephone, pager, and fax numbers and e-mail address (if available), specific dates available, and types of assignment sought.

**13. COURT ASSIGNMENT OF ATTORNEYS.**

13.1. **Individual Case Assignments:** When submitting a request for an attorney, the court's request shall designate: (1) the ranking of the attorney needed; (2) the date of the assignment; (3) any special requests (bilingual, etc.).

The computer shall provide to the court **five (5)** randomly selected names (or HCPD slots) per request. A court requesting an attorney for individual case assignment may submit only one request at a time. A court may not submit another request until at least one attorney has been assigned from the original five names/slots and the remaining names have been returned to the attorney pool. If the court chooses a HCPD slot, the attorney designated by the Public Defender

shall not be appointed by the court unless the court is satisfied the attorney is qualified for the appointment.

- 13.2. **Term Assignments:** Courts may submit requests for attorneys available for term assignments. Courts may make assignments from among the available attorneys who meet the court's criteria for term appointments. These limited assignments are based on the needs of the court and the qualifications of attorneys already on the Master List. The period of appointment may be one day or multi-day, not to exceed one year. All types and categories of cases are subject to term appointment, including but not limited to: violations of probation, deferred prosecution, detention, T.Y.C transfer hearings, certifications, determinate sentences and appeals.

### **Fee and Expense Payment Process** *Section Pending Approval*

2/2/2012

14. **FEE SCHEDULES:** The Juvenile Board adopts the following fee schedules:
- 14.1. **For Conduct Indicating a Need for Supervision and Misdemeanor Delinquent Conduct:**  
The fee schedule adopted by the County Criminal Courts at Law in Harris County, Texas; and
- 14.2. **or Felonies:** The fee schedule adopted by the District Courts Trying Criminal Cases in Harris County, Texas.
15. **APPOINTED PRIVATE ATTORNEY COMPENSATION**
- 15.1. Appointed private counsel shall be compensated for all work on behalf of a respondent, including habeas corpus proceedings, appellate work, and motions for rehearing.
- 15.2. Compensation shall be based on the time and labor required, the complexity of the case, and the experience of counsel.
- 15.3. Appointed private counsel shall be paid a reasonable attorney's fee for performing the following services:
- Time spent in court making an appearance on behalf of the respondent as evidenced by docket entry;
  - Time spent in trial;
  - Time spent in a proceeding in which sworn oral testimony is elicited;
  - Reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;
  - Preparation of an appellate brief, preparation and presentation of oral argument before a Court of Appeals, the Court of Criminal Appeals, or the Texas Supreme Court; and preparation of motions for rehearing.

15.4. An attorney shall not be paid until the attorney submits to the judge presiding over the proceedings a completed, itemized form detailing services rendered. The judge must approve payment.

15.5. The attorney whose request for payment has been disapproved may, by written motion, file an appeal with the presiding judge of the administrative region. The presiding judge may conduct a hearing on the matter.

15.6. Non –capital counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigations, mental health, and other experts. Expenses incurred with and without prior court approval shall be reimbursed according to the procedures set forth below. When possible, counsel should obtain prior court approval before incurring expenses for investigation and experts.

15.7. Expenses incurred **with prior court approval** shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases:

15.8. Appointed private counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state, as applicable:

The type of investigation to be conducted or the type of experts to be retained.

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

An itemized list of anticipated expenses for each investigation or expert.

15.9. 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:

State the reasons for the denial in writing;

Attach the denial to the confidential request; and

Submit the request and denial as a sealed exhibit to the record.

15.10. Expenses incurred **without prior court approval** shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases:

Appointed private counsel may incur reasonable or necessary 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 reasonable or necessary expenses.



County Auditor's Form 40-3 Harris County, Texas (REV. 06/03)  <b>ATTORNEY FEES EXPENSE CLAIM</b> <b>JUVENILE DISTRICT COURTS-COURT APPEARANCE</b> UNDER TEXAS FAMILY CODE SECTION 51.101	<b>INSTRUCTIONS</b> Show only one respondent per claim. Before payment can be authorized, each item must be completed legibly in ink. For investigations, paid bills must be submitted by the attorney for expenses claimed. Forward completed claim to the Presiding Judge for approval.
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Court No.	Respondent's Name	Case Number(s)	Charge(s)
		Number of Court Days/Hours	RATE
		TOTAL (presumptive max)	AMOUNT /Judge Completes)

ATTORNEY FOR THE DAY AT DETENTION HEARINGS	\$300/day	\$300/day	
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INDIVIDUAL CASE APPOINTMENT			
NON-TRIAL	First Degree		\$250/day
	Second Degree		\$200/day
	Third Degree, SJF		\$150/day
	Misdemeanor & VOP		\$125/day
	Resets & Detention Hearings		\$75/day

TRIAL	First Degree		\$500/day
	Second Degree		\$400/day
	Third Degree, SJF, MISD		\$300/day

NON-DEATH CAPITAL	Non-Trial Appearance		\$400/day
	Trial/Hearing with Testimony		\$800/day
	Out-of-Court Hours*		\$100/hour

PRE-TRIAL HEARING w/ TESTIMONY		\$350/day	
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NON-CAPITAL APPEALS		\$75/hour	\$2,250
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OUT OF COURT HOURS*	First Degree		\$100/hour
	Second Degree		\$75/hour
	Third Degree, SJF, MISD		\$50/hour

INVESTIGATION	Prior written court approval required. Itemized bill required. Expert expenses paid per County policy.		\$750/case
EXPERT TESTIMONY			\$750/case

OTHER-Prior Approval of Fee Schedule Committee Required.			
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<b>*Must detail on Out-of-Court voucher form.</b>	<b>TOTAL</b>
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List date(s) of all Court Appearances. Attach any Out-of-Court voucher form.

**ORDER DETERMINING RIGHT TO APPOINTMENT OF COUNSEL**

On this date, the Respondent's request for the appointment of counsel was heard in open Court and evidence presented concerning the Respondent's financial resources

**APPOINTMENT WITH REIMBURSEMENT:** The Court finds the Respondent is entitled to the appointment of counsel because

It is in the interest of justice. The Court further finds the Respondent presently has financial resources to pay all or part of the cost of legal services and related expenses.

IT IS ORDERED that Respondent is appointed counsel and shall contribute to the cost of legal services and related expenses as may be ordered by the Court

**INDIGENCY WITHOUT REIMBURSEMENT:** The Court finds the Respondent is entitled to the appointment of counsel because

Respondent is indigent  It is in the interest of justice. The Court further finds the Respondent presently has insufficient financial resources to offset the cost of legal services and related expenses

IT IS ORDERED that Respondent is appointed counsel in this matter

The Court appoints the attorney named below to represent the Respondent until charges are dismissed, the Respondent is found not to have engaged in delinquent conduct or not to be a child in need of supervision, appeals are exhausted, or the attorney is relieved of his/her duties by the Court or replaced by other counsel

**PERSONAL INFORMATION**

Social Security Number	Telephone Number ( )	Bar Card Number
------------------------	-------------------------	-----------------

Mailing Address (Number, Street, Suite, City, State, Zip Code)

**Appendix B – Harris County Criminal and Juvenile Delinquency Caseloads of Attorneys Handling Juvenile Delinquency Cases<sup>39</sup>**

Attorney	Juvenile Cases	Misdemeanor Cases	Felony Cases	NAC Attorneys Required for this Caseload
Attorney 1	255	387	278	4.1
Attorney 2	385			1.9
Attorney 8	321	117		1.9
Attorney 52	317		5	1.6
Attorney 44	190	28	78	1.5
Attorney 6	291			1.5
Attorney 34	107		107	1.2
Attorney 45	234			1.2
Attorney 14	219			1.1
Attorney 18	210			1.1
Attorney 55	204			1.0
Attorney 33	159			0.8
Attorney 43	154			0.8
Attorney 25	152			0.8
Attorney 23	69	141		0.7
Attorney 35	138		1	0.7
Attorney 57	129			0.6
Attorney 58	127			0.6
Attorney 36	121			0.6
Attorney 27	118			0.6
Attorney 28	118			0.6
Attorney 41	116			0.6
Attorney 10	115			0.6
Attorney 19	114			0.6
Attorney 56	110			0.6
Attorney 53	48		41	0.5
Attorney 30	101			0.5
Attorney 40	98			0.5
Attorney 46	97			0.5
Attorney 48	96			0.5
Attorney 49	96			0.5
Attorney 38	90			0.5
Attorney 3	88			0.4
Attorney 7	86			0.4
Attorney 11	86			0.4
Attorney 54	83			0.4

<sup>39</sup> This list only includes attorneys that received juvenile cases in FY2011 and were on both the October 28, 2010 appointment list and the October 20, 2011 appointment list.

Attorney	Juvenile Cases	Misdemeanor Cases	Felony Cases	NAC Attorneys Required for this Caseload
Attorney 20	81			0.4
Attorney 59	80			0.4
Attorney 12	68		1	0.3
Attorney 29	57	19	2	0.3
Attorney 31	69			0.3
Attorney 21	27		27	0.3
Attorney 15	60			0.3
Attorney 22	54			0.3
Attorney 13	39		11	0.3
Attorney 42	53			0.3
Attorney 37	14	41	11	0.2
Attorney 32	49			0.2
Attorney 50	41			0.2
Attorney 24	40			0.2
Attorney 17	33			0.2
Attorney 47	29			0.1
Attorney 4	6	37		0.1
Attorney 39	21			0.1
Attorney 5	18			0.1
Attorney 51	14			0.1
Attorney 26	12			0.1
Attorney 9	5			0.0
Attorney 16	3			0.0

## Appendix C – Appointments of Attorneys in Juvenile Delinquency Cases by Court<sup>40</sup>

Attorney	313 <sup>th</sup> District Court	314 <sup>th</sup> District Court	315 <sup>th</sup> District Court	Total Juvenile Delinquency Appointments
Attorney 2	84	229	72	385
Attorney 8	161	71	89	321
Attorney 52	148	77	92	317
Attorney 6	92	170	29	291
Attorney 1	16	231	8	255
Attorney 45	122	56	56	234
Attorney 14	31	172	16	219
Attorney 18	81	31	98	210
Attorney 55	53	94	57	204
Attorney 44	71	52	67	190
Attorney 33	38	97	24	159
Attorney 43	46	28	80	154
Attorney 25	25	52	75	152
Attorney 35	26	70	42	138
Attorney 57	25	21	83	129
Attorney 58	4	40	83	127
Attorney 36	17	99	5	121
Attorney 27	17	23	78	118
Attorney 28	73	3	42	118
Attorney 41	55	17	44	116
Attorney 10	54	25	36	115
Attorney 19	0	114	0	114
Attorney 56	15	36	59	110
Attorney 34	22	17	68	107
Attorney 30	20	33	48	101
Attorney 40	82	5	11	98
Attorney 46	36	11	50	97
Attorney 48	36	20	40	96
Attorney 49	36	34	26	96
Attorney 38	8	3	79	90
Attorney 3	20	30	38	88
Attorney 7	41	13	32	86
Attorney 11	53	9	24	86
Attorney 54	18	9	56	83
Attorney 20	22	1	58	81
Attorney 59	0	80	0	80
Attorney 23	31	16	22	69
Attorney 31	22	11	36	69

<sup>40</sup> This list only includes attorneys that received juvenile cases in FY2011 and were on both the October 28, 2010 appointment list and the October 20, 2011 appointment list.

Attorney	313 <sup>th</sup> District Court	314 <sup>th</sup> District Court	315 <sup>th</sup> District Court	Total Juvenile Delinquency Appointments
Attorney 12	9	12	47	68
Attorney 15	39	1	20	60
Attorney 29	22	12	23	57
Attorney 22	24	4	26	54
Attorney 42	30	0	23	53
Attorney 32	19	15	15	49
Attorney 53	35	7	6	48
Attorney 50	6	4	31	41
Attorney 24	11	2	27	40
Attorney 13	17	8	14	39
Attorney 17	0	26	7	33
Attorney 47	4	6	19	29
Attorney 21	14	9	4	27
Attorney 39	2	11	8	21
Attorney 5	0	17	1	18
Attorney 37	6	3	5	14
Attorney 51	0	14	0	14
Attorney 26	4	7	1	12
Attorney 4	0	6	0	6
Attorney 9	1	4	0	5
Attorney 16	1	1	1	3

## Appendix D – Letter from Harris County Juvenile Probation Department



**HARRIS COUNTY  
JUVENILE PROBATION DEPARTMENT**

1200 CONGRESS \* HOUSTON, TEXAS 77002 \* (713) 222-4801

**Thomas D. Brooks**  
Executive Director  
Chief Juvenile Probation Officer

**Henry Gonzales**  
Assistant Executive Director

November 11, 2011

Joel Lieurance  
Policy Monitor  
Texas Indigent Defense Commission  
205 West 14th St., Suite 700  
PO Box 12066  
Austin, Texas 78711-2066

Mr. Lieurance,

I am writing this letter in response to the recent audit of the Harris County indigent defense practices relating to juveniles. It has been brought to my attention that there is a need for revision in the present process to ensure timely appointment of attorneys.

The process in Harris County is for the Juvenile Probation Department to receive the petitioned case, contact the family, obtain financial information, and then forward that information to the Court Coordinators to appoint an attorney if the family qualifies and is requesting a court appointed attorney. The courts are dependent on the probation department to forward the financial information in a timely manner.

The practice as it relates to the Harris County Juvenile Probation Department is to assign pre-adjudicated cases to our probation officers once the petition is filed. The probation officer receives the case with a petition, court assignment, and future court date. The majority of these cases are non-custodial and the probation officer is the first point of contact for the child/family. The probation officer prioritizes the processing of the case and contacts the family based on the case with the closest court date.

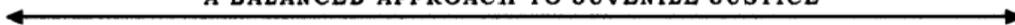
The Juvenile Probation Department will modify present procedures to make sure the child/family is contacted and a financial statement is obtained within seven days of assignment. The information will then be forwarded to the individual court coordinator so that an attorney can be assigned if applicable.

If you have any questions or concerns please feel free to contact me.

A handwritten signature in cursive script that reads "Tom Brooks".

Tom Brooks  
Executive Director  
Harris County Juvenile Probation Department  
1200 Congress St.  
Houston, Tx. 77002  
713-222-4801 E-fax: 713-437-8423

**A BALANCED APPROACH TO JUVENILE JUSTICE**



## Appendix E – Maximum Caseloads Established by Varying State Offices<sup>41</sup>

State	Felony	Misdemeanor	Juvenile	Authority
Arizona	150	300	200	<i>State of Arizona v. Joe U. Smith</i> , 681 P. 2d 1374 (1984).
Colorado	33-386	196-430	249	The Spangenberg Group. <i>Weighted-Caseload Study for the Colorado State Public Defender</i> . November 1996.
Florida	200	400	250	Florida Public Defender Association. <i>Comparison of Caseload Standards</i> . July 1986.
Georgia	150	400	200	Georgia Indigent Defense Council. <i>Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Programs</i> . October 1989.
Indiana	120-200	400	250	Indiana Public Defender Commission. <i>Standards for Indigent Defense Services in Non-Capital Cases: With Commentary</i> . January 1995.
Louisiana	150-200	400-450	200-250	Louisiana Indigent Defense Board. <i>Louisiana Standards on Indigent Defense</i> . 1995.
Massachusetts	200	400	300	Committee for Public Counsel Services. <i>Manual for Counsel Assigned Through the Committee for Public Counsel Services: Policies and Procedures</i> . June 1995.
Minnesota	120	400	175	Minnesota State Public Defender. <i>Caseload Standards for District Public Defenders in Minnesota</i> . October 1991.
Missouri	40-180	450	280	Missouri State Public Defender System. <i>Caseload Committee Report</i> . September 1992.
Nebraska	50	-	-	Nebraska Commission on Public Advocacy. <i>Standards for Indigent Defense Services in Capital and Non-Capital Cases</i> . May 1996.
Oregon	240	400	480	Oregon State Bar. <i>Indigent Defense Task Force Report</i> . September 1996.
Tennessee	55-302	500	273	The Spangenberg Group. <i>Tennessee Public Defender Case-Weighting Study</i> . May 1999.
Vermont	150	400	200	Office of the Defender General. <i>Policy of the Defender General Concerning Excessive Workloads for Public Defenders</i> . October 1987.
Washington	150	300	250	Washington Defender Association. <i>Standards for Public Defender Services</i> . October 1989.
Wisconsin	145	323	207	The Spangenberg Group. <i>“Caseload/workload Study for the State Public Defender of Wisconsin”</i> September 1990

<sup>41</sup> The Spangenberg Group. *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance p 8 (2001); Spangenberg, Robert , et al. *Status of Indigent Defense in New York: A Study for Chief Judge Kaye’s Commission on the Future of Indigent Defense Services: Final Report*. The Spangenberg Group; Prepared for: The Administrative Office of the Courts for Chief Judge Kaye’s Commission on the future of Indigent Defense Services, p 45 (Jun. 2006); and The Spangenberg Group. *Review of the Caddo Parish Indigent Defender Office*, p 25-26. Prepared for Caddo Parish Indigent Defender Board, Feb. 2007.