

Task Force on Indigent Defense

Review of Hidalgo County's Indigent Defense Systems

Site Visit: February 9 – February 13, 2009

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Introduction

Task Force Background

In January 2002, the 77th Texas Legislature established the Task Force on Indigent Defense (“Task Force”). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas. The Task Force is given a directive under Tex. Gov’t Code § 71.062(b) to monitor local jurisdictions compliance with the Fair Defense Act (“FDA”).

Goal

Promote local compliance and accountability with the requirements of the FDA through evidence-based practices and provide technical assistance to improve processes where needed. This visit is intended to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA. The review process will also help the Task Force test its monitoring procedures.

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 visit for Hidalgo County was conducted by Joel Lieurance between February 9 and February 13, 2009. The policy monitor interviewed the following persons: the county auditor’s office; the indigent defense services office; a district judge; the public defender’s office; the district clerk’s office; the county clerk’s office; and a defense attorney. Reviewer 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, orders appointing attorneys, and bonding information to determine the time from request to appointment of counsel
- Documentation showing the number of cases assigned to each attorney in order to determine whether appointments were made in a fair, neutral, and non-discriminatory manner

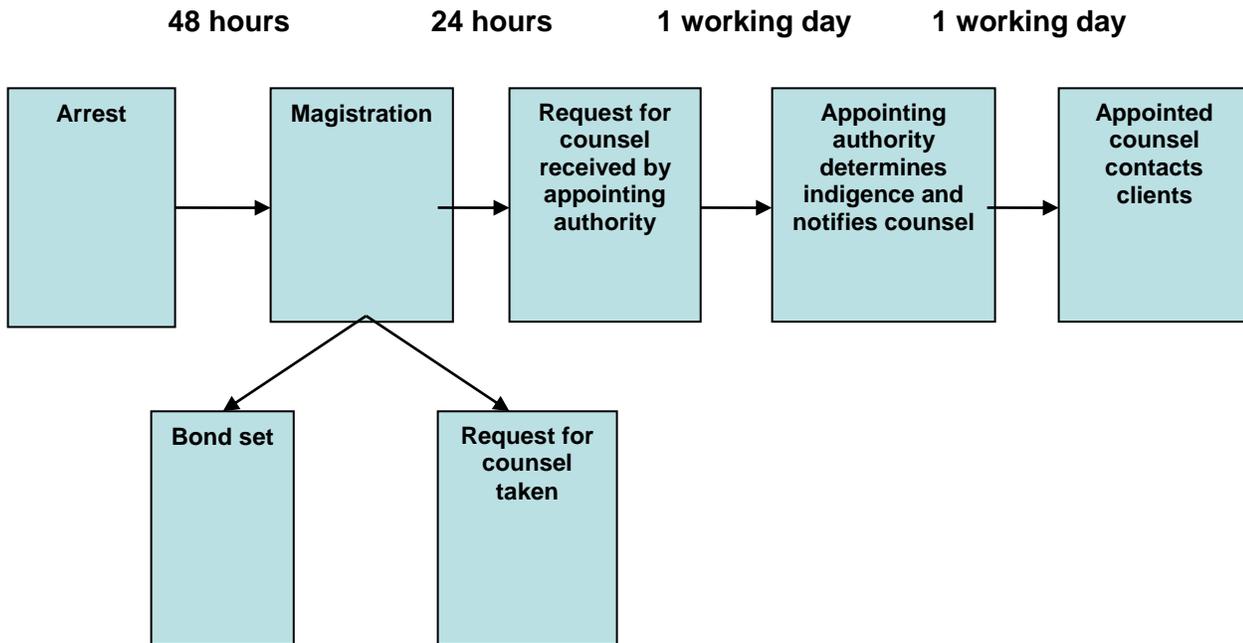
Summary of Findings

Areas to Address

- The jurisdiction may use a single attorney for all non-represented juveniles at detention hearings, however it must procure their services through a bidding process and written contract per the Task Force on Indigent Defense's contract defender rules in (1 TAC §§174.10 - 174.25).
- The juvenile plan must be updated to list the required times for appointment of juvenile counsel.
- The juvenile detention hearing form would more accurately track the detention hearing if a space were available on the form that lists the name of the juvenile attorney present.
- Appointed juvenile attorneys must represent their clients at juvenile detention hearings, as well as all other types of hearings unless they are replaced by a new court appointed attorney or another attorney is retained. These attorneys must be given proper notice of detention hearings.
- Hidalgo County needs to review its attorney selection processes to ensure that a fair, neutral, and non-discriminatory appointment system is present. The distribution of appointments could be made more even if: (1) the rotational wheel were to apply to in-court appointments and (2) the appointing judges appoint counsel based on the order of the attorneys of the list and not from any of the top five attorneys on the list (unless good cause is found for deviating from this order).

Overview of Hidalgo County's Indigent Defense System

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



Persons arrested in Hidalgo County will initially be booked at either a municipal jail or at the Hidalgo County Jail. If booked at a municipal jail, a municipal judge will administer magistrate warnings, including whether the arrestee is requesting counsel. Arrestees are then transferred to the County Jail where they will be interviewed by Indigent Defense Services personnel to again see if counsel is desired and to see if arrestees qualify for appointed counsel. Arrestees initially booked at the Hidalgo County Jail are asked at book-in whether counsel is desired, and are later interviewed by Indigent Defense Services whether or not counsel was requested.

If the individual qualifies as indigent, the attorney appointment is made by a rotating judge either on the day of the request or within one working day of the request. Felony appointments are made from a public appointment list where the judge chooses from amongst the top five attorneys on the list. Misdemeanor appointments are apportioned between private attorneys and the public defender (where the public defender receives 30% of the appointments for detained persons). Private attorney misdemeanor appointments are also made from an appointment list where the judge chooses from amongst the top five names on the list. If the individual bonds prior to requesting counsel, the appointment is made in open court. The appointment procedures for in-court attorney appointments are made in an ad hoc manner where each judge exercises discretion in how these appointments are made.

A summary of indigent defense statistics, which were submitted by the County to the Task Force on Indigent Defense 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.

Hidalgo County	2001 Baseline	2005	2006	2007	2008	Texas 2008
2000 population	569,463	569,463	569,463	569,463	569,463	20,851,464
Population Estimate	591,083	669,489	688,029	723,433	725,978	24,105,062
Felony Cases Added		6,206	6,834	7,305	6,337	280,262
Felony Cases Paid		4,399	3,892	3,781	3,877	174,944
Felony Appointment Rate		70.88%	56.95%	51.76%	61.18%	62.42%
Felony Attorney Fees		\$2,246,136	\$2,436,953	\$2,535,653	\$2,450,286	\$85,610,807
Total Felony Expenditures		\$2,330,469	\$2,499,479	\$2,601,716	\$2,527,761	\$97,832,038
Misdemeanor Cases Added		14,749	16,356	13,888	14,494	593,747
Misdemeanor Cases Paid		7,176	7,420	7,020	7,983	199,174
Misdemeanor Cases via Public Defender			1,626	1,406	978	
Misdemeanor Appointment Rate		48.65%	45.37%	50.55%	55.08%	33.55%
Misdemeanor Attorney Fees		\$1,413,105	\$1,367,138	\$1,337,616	\$1,887,546	\$30,557,802
Total Misdemeanor Expenditures		\$1,414,969	\$1,367,483	\$1,338,291	\$1,888,967	\$31,518,681
Juvenile Cases Added		746	742	1,105	911	49,574
Juvenile Cases Paid		929	588	585	950	58,763
Juvenile Attorney Fees		\$312,537	\$285,137	\$304,341	\$484,455	\$12,240,695
Total Juvenile Expenditures		\$312,537	\$285,327	\$305,543	\$484,592	\$12,857,234
Total Attorney Fees	\$2,025,738	\$3,971,778	\$4,089,229	\$4,177,609	\$4,822,287	\$134,850,831
Total ID Expenditures	\$2,076,345	\$4,468,356	\$5,062,324	\$5,102,605	\$5,876,046	\$174,162,557
Increase In Total Expenditures over Baseline		115.20%	143.81%	145.75%	183.00%	96.28%
Total ID Expenditures per Population	\$3.51	\$6.67	\$7.36	\$7.05	\$8.09	\$7.23
Task Force Grant Disbursements (combined grants)		\$702,617	\$567,268	\$668,369	\$636,397	\$21,394,547
Recoupment of Fees		\$259,108	\$464,361	\$347,376	\$294,844	\$10,235,183

Quality Assessment

In the assessment that follows, the core requirements of the FDA were listed with statutory requirements, how the county's indigent defense plans compared to these requirements, and then how practice compared to statute. FDA statutes are referenced throughout this report and may be found in an attachment to the report. Where the local indigent defense plan is referenced, the local plan is written in italics.

Core Requirement 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.

Statutory Provisions

The FDA requires that magistration is conducted without unnecessary delay, but not later than 48 hours after the person is arrested. At magistration, the arrestee is to be informed in clear language of the following:

- the accusation against him/her and of any affidavit filed;
- the right to retain counsel;
- the right to remain silent;
- the right to have an attorney present during any interview with peace officers or attorneys representing the state;
- the right to terminate the interview at any time;
- the right to have an examining trial; and
- the person's right to request the appointment of counsel if the person cannot afford counsel.

The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. 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. Tex. Code Crim. Proc. art. 15.17(a). If the arrestee requests appointed counsel, the arrestee is required to complete under oath a questionnaire concerning his financial resources. Tex. Code Crim. Proc. art. 26.04(n).

If the person arrested is not a US Citizen, he/she has the right to request that the consulate for his/her native country is informed that he/she is in jail. The consulate is to keep the family informed of the arrestee's situation and to make sure that the arrestee's rights are protected. The magistrate is to ask, "Do you request that the court notify the consulate for your native country that you are in jail at this time?" This is a continuing legal right that the arrestee may exercise at any time. (If the accused requests notification of his/her consulate, the magistrate must determine the country of origin and send notice to consulate by fax, if possible.) For more information regarding this subject please go to:

http://www.oag.state.tx.us/AG_Publications/pdfs/vienna_guidebook.pdf (*Magistrate's Guide to the Vienna Convention on Consular Notifications*).

The record of the magistrate's warning must comply with Article 15.17(e), and must contain information indicating that:

- (1) the magistrate informed the person of the person's right to request appointment of counsel;
- (2) the magistrate asked the person whether the person wanted to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

This record may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). Tex. Code Crim. Proc. art. 15.17(e)-(f).

Jurisdiction's Indigent Defense Plan

Adult Plan:

2.01 Prompt Appearance Before a Magistrate.

(a) The magistrates of this county will inform supervisory personnel of all law enforcement agencies operating within the county that each time a person is arrested, Texas law requires the officer making the arrest and any officer who later has custody to ensure that the person is taken before a magistrate without unnecessary delay, and never more than 48 hours after arrest.

(b) The judges of this county will work with the magistrates, prosecutors, and law enforcement agencies in the county to devise appropriate procedures for meeting the time standards set forth in Rule 2.0 1 (a).

(c) Whenever an arrested person is first brought before a magistrate, the magistrate shall record the date and time that the person was first arrested and when the person was taken into custody.

(d) Each time a magistrate or a judge has reasonable cause to believe that a law enforcement officer has engaged in unnecessary delay in taking a defendant before a magistrate after arrest, the magistrate or judge will inform the law enforcement officer's supervisors. In the event of repeated incidents of unnecessary delay by a law enforcement agency or officer, the judges will initiate communications with the law enforcement agency regarding corrective measures to ensure compliance with Rule 2.0 1 (a) and with any procedures adopted pursuant to Rule 2.0 1 (b).

2.02 Responsibilities of the Magistrate.

(a) Whenever an arrested person is first brought before a magistrate, the magistrate shall immediately perform the duties described in Article 15.17 of the Code of Criminal Procedure, including:

- (1) The magistrate shall specifically inform the person arrested of the person's right to request appointment of counsel if the person cannot afford counsel.*
- (2) The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.*
- (3) The magistrate shall specifically inform the person of the procedures for requesting appointment of counsel.*

- (4) *The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.*
- (5) *The magistrate shall ensure that the above information and assistance are provided in a manner and using terminology and language that the arrested person can understand.*
- (6) *If the arrested person does not speak and understand the English language or is deaf, the magistrate shall ensure that the information and assistance are provided with the assistance of an interpreter consistent with Articles 38.30 and 38.3 1 of the Code of Criminal Procedure.*
- (7) *If a magistrate has cause to believe that a person is not mentally competent to decide whether to request counsel, the magistrate will enter a request for counsel on the person's behalf. The magistrate shall record this request for counsel in a way that alerts the person making the appointment that counsel competent to represent mentally ill defendants should be appointed.*
- (b) *In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make an electronic or written record documenting:*
- (1) *that the magistrate informed the person of the person's right to request appointment of counsel;*
 - (2) *that the magistrate asked the person whether the person wanted to request appointment of counsel; and*
 - (3) *whether the person requested appointment of counsel.*
- (c) *The record required under Rule 2.02 may be combined on the same form used to record the arrested person's request for appointment of counsel and to transmit that request to the person making the appointment.*
- (d) *The records required under this Rule shall be maintained for the same period required for all official records of criminal court proceedings.*

2.03 Transmittal of Request for Appointed Counsel. If the person arrested requests appointment of counsel and has completed the necessary forms, the magistrate shall transmit or cause to be transmitted to the appointing judge or person(s) designated by the judges to appoint counsel the forms requesting appointment of counsel. The forms requesting appointment of counsel shall be transmitted without unnecessary delay and so that the person making the appointment receives the forms no later than 24 hours after the request is made.

Jurisdiction's Process

Magistrations Records Reviewed

Magistrate's warnings are administered at the Hidalgo County Jail and at municipal jails. If someone requests counsel at the municipal jail, the person will be interviewed by Indigent Defense Services shortly after transfer to the County Jail. If a person is initially booked at the County Jail, the person will be interviewed shortly after book-in by Indigent Defense Services to see if counsel is desired. Reviewer examined 19 magistrations records from municipal jails to see if Article 15.17 warnings were timely administered. The warnings occurred between March, 2008 and November, 2008. All warnings were given within 48 hours of arrest and so were timely. The County is congratulated on its timely magistrations warnings. See the following table for a summary of times to magistrations.

Hidalgo County Time to Magstration Data	Sample Size	Percent
Magistrate's warnings examined	19	100%
Magstration Occurs x hours after arrest:		
0 – 12 hours	12	63.2%
12 – 24 hours	6	31.6%
24 – 36 hours	1	5.3%
36 – 48 hours	0	0.0%
Timely Magstration	19	100.0%

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

Statutory Provisions

Each jurisdiction must establish procedures and financial standards for determining indigence. The procedures must apply to each defendant equally, regardless of whether or not bail has been posted. In determining whether a defendant is indigent, the court or the court's designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations previously listed. Tex. Code Crim. Proc. art. 26.04(l)-(m).

A defendant who requests a determination of indigence and appointment of counsel must:

- (1) complete under oath a questionnaire concerning his financial resources;
- (2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
- (3) complete the questionnaire and respond to examination by the judge or magistrate.

Tex. Code Crim. Proc. art. 26.04(n).

In addition the defendant is required to sign an oath that substantially conforms to the following:

On this _____ day of _____, 20 ____, I have been advised by the (name of the court) Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. (signature of the defendant)

Tex. Code Crim. Proc. art. 26.04(o).

A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigence or non-indigence is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. Tex. Code Crim. Proc. art. 26.04(p).

For juveniles, Tex. Fam. Code § 51.10(f)-(g) states:

(f) The court shall appoint an attorney to represent the interest of a child entitled to representation by an attorney, if:

- (1) the child is not represented by an attorney;
- (2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and
- (3) the child's right to representation by an attorney:
 - (A) has not been waived under Section 51.09 of this code; or
 - (B) may not be waived under Subsection (b) of this section.

(g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

The rules of Article 26.04 still apply to juveniles, except that the income and assets of the person responsible for the child's support are used in determining whether the child is indigent. Tex. Fam. Code § 51.102(b)(1).

Jurisdiction's Indigent Defense Plan

Adult Plan:

3.02 Financial Standards for Determining Indigence. The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county.

(a) A defendant is considered indigent if:

- (1) the defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and*
- (2) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.*

(b) A defendant is considered indigent if, at the time of requesting appointed counsel, the defendant or the defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

(c) A defendant is considered indigent if the defendant:

- (1) is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; and*
- (2) has no non-exempt assets or property in excess of the amounts specified in Rule 3.02(a)(2).*

(d) A defendant who does not meet any of the financial standards above shall nevertheless be determined indigent if the defendant is otherwise unable to retain private counsel without substantial hardship to the defendant or the defendant's dependents, taking into account the nature of the criminal charge(s), the anticipated complexity of the defense, the estimated cost of obtaining competent private legal representation for the matter charged, and the amount needed for the support of the defendant and the defendant's dependents.

3.03 Appointing Counsel for Partially Indigent Defendants.

(a) A defendant determined to be partially indigent shall be eligible for appointment of counsel only upon payment to the county of an appointment fee of \$100 if charged with one or more misdemeanors, or \$200 if charged with one or more felonies. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case.

(b) A defendant shall be considered partially indigent if the defendant does not meet any of the standards for indigence set forth in Rule 3.02 and:

(1) the defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and

(2) the value of the non-exempt assets and property owned by the defendant:

(i) does not exceed \$2,500.00;

(ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or

(iii) does not exceed double the estimated cost of obtaining private legal representation on the offense(s) with which the defendant is charged.

3.04 Factors Not to be Considered.

(a) A defendant's posting of bail or ability to post bail may not be considered in determining whether the defendant is indigent or partially indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

(b) The resources available to friends or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

Jurisdiction's Adult Process: Arrestees initially booked at the Hidalgo County Jail are asked at book-in whether counsel is desired, and are later interviewed by Indigent Defense Services. The financial information of the arrestee is collected by Indigent Defense Services and is forwarded to the appointing judge. If the individual qualifies as indigent (meeting any of the four qualifiers under the indigent defense plan), the attorney appointment is made by a rotating judge either on the day of the request or within one working day of the request. If the individual bonds prior to requesting counsel, the appointment is made in open court. According to persons interviewed, the appointment procedures for in-court attorney appointments are made at each judge's discretion.

Core Requirement 3. Establish minimum attorney qualifications.

Statutory Provisions

Judges of the statutory county courts are to establish an appointment list of qualified attorneys to provide representation in misdemeanor cases. Likewise, judges of the district courts are to establish an appointment list of qualified attorneys to provide representation in felony cases. The judges are to specify objective qualifications necessary to be included on the list and may establish graduated lists, according to the seriousness of the offense. Each attorney applying to

be on an appointment list must be approved by a majority of the judges who try criminal cases at that court level. In a county where a public defender is used, the courts may appoint the public defender to represent defendants. Tex. Code Crim. Proc. art. 26.04(d)-(f). Attorneys accepting appointments are required to annually obtain 6 hours of criminal law continuing legal education (CLE) credit per Title 1, §174.1 of the Texas Administrative Code.

For juveniles, the juvenile board is to establish qualifications necessary for an attorney to be included on the appointment list. The plan must recognize the differences in qualifications and experience necessary for appointments involving supervision, delinquent conduct, or commitment to the Texas Youth Commission. Tex. Fam. Code § 51.102. Attorneys accepting appointments are required to annually obtain 6 hours of juvenile law continuing legal education (CLE) credit per Title 1, §174.2 of the Texas Administrative Code.

Appointed attorneys are to make every reasonable effort to contact the defendant by the end of the first working day after receiving the appointment and to interview the client as soon as practicable. Tex. Code. Crim. Proc. art. 26.04(j). The public defender may have additional objective qualifications in providing quality representation as the duties of the public defender are to be specified by the commissioner's court in a written agreement. Art. 26.044(b). Attorneys must also meet the standard of care set by the Texas Bar in the Texas Disciplinary Rules of Professional Conduct.

Jurisdiction's Indigent Defense Plan

Adult Plan: *4.03 Attorney Qualifications. Twice a year, on or before March 15th and September 15, attorneys may apply to be included on one or more of the public appointment lists. To be eligible for placement on each list, attorneys must have met the following minimum qualifications.*

1) Misdemeanor List:

- (1) Currently Licensed and in good standing with the State Bar of Texas;*
- (2) Exhibited proficiency and commitment to providing quality representation to criminal defendants;*
- (3) Exhibited professionalism and reliability when providing representation to criminal defendants;*
- (4) Averaged 10 hours a year of continuing legal education courses relating to criminal law as recognized by the State Bar of Texas;*

3) State Jail Felony, Third Degree/Second Degree Felony

- (1) Have met the qualifications for placement on the Misdemeanor List;*
- (2) Have practiced in the area of criminal law for at least six months; and*
- (3) Have tried to verdict at least two criminal jury trials as lead counsel or second chair, before said counsel can be lead counsel in a trial.*
- (4) Counsel can plea-bargain, and handle all pre-trial matters without meeting qualifications (3) and can act as trial counsel with the assistance of other counsel that meet qualification (3) serving as First or Second chair co-counsel.*

4) First Degree Felony:

- (1) Have met the qualifications for placement on the Misdemeanor List;*

- (2) Have practiced in the area of criminal law for at least one year; and*
- (3) Have tried to verdict at least five criminal jury trials as lead counsel or second chair (at least two must be felonies).*

5) Capital Felony List:

- (1) Have met the qualifications for placement on the First Degree*
- (2) Have practiced in the area of criminal law for at least three years;*
- (3) Have tried to verdict at least ten criminal jury trials as lead counsel, including at least eight felony trials, of which at least six were trials in first or second degree felonies or capital felonies and at least two of which were homicide cases; and*
- (4) For appointment in capital felony cases where the death penalty is sought the attorney must, in addition, meet the qualifications set forth below in Rule 5.*

6) Appellate List:

- (1) Have met the qualifications set forth in paragraphs (1) through (5) of the requirements for placement on the Misdemeanor List; and*
- (2) Have met at least one of the following criteria:*
 - (i) be currently board certified in criminal law by the Texas Board of Legal Specialization;*
 - (ii) have personally authored and filed at least 5 criminal appellate briefs or post-conviction writs of habeas corpus; or*
 - (iii) have submitted an appellate writing sample approved by a majority of the judges.*

4.04 Approval of Attorneys by the Judges.

- (a) In addition to meeting the objective qualifications described in Rule 4.03, an attorney may be placed on one or more of the felony appointment lists only if a majority of the felony judges approves the attorney's placement on each such list. In addition to meeting the objective qualifications described in Rule 4.03, an attorney may be placed on the misdemeanor appointment list only if a majority of the misdemeanor judges approves the attorney's placement on the misdemeanor list.*
- (b) At least twice a year, following the submission of attorney applications for the public appointment lists, the felony judges in the county shall evaluate the new applicants for each felony appointment list and the attorneys already on the lists. The judges will approve, by majority vote, those attorneys:*
 - (1) who meet the objective qualifications set forth in Rule 4.03 for placement on the list; and*
 - (2) whom the judges consider to be actually competent to adequately handle cases associated with the list.*
- (c) At least twice a year, following the submission of attorney applications for the public appointment lists, the misdemeanor judges in the county shall evaluate the new applicants for the Misdemeanor List and the attorneys already on the misdemeanor List. The judges will approve, by majority vote, those attorneys:*
 - (1) who have met the objective qualifications set forth in Rule 4.03 for placement on the Misdemeanor List; and*
 - (2) whom the judges consider to be actually competent to adequately handle misdemeanor cases.*
- (d) An attorney may be removed from one or more public appointment lists by a majority of the judges for the corresponding court level whenever the judges determine that the attorney no longer meets the objective qualifications for that list or is not fully competent to adequately*

handle the category of cases associated with that list. The judges may in their discretion remove an attorney from one or more lists, while continuing to approve the attorney for other lists.

Juvenile Plan:

2) *Juvenile List:*

- (1) *Currently Licensed and in good standing with the State Bar of Texas;*
- (2) *Exhibited proficiency and commitment to providing quality representation to juvenile offenders;*
- (3) *Averaged 10 hours a year of continuing legal education courses relating to juvenile law and or criminal law recognized by the State Bar of Texas;*

Jurisdiction’s Process: The fiscal monitor examined the tracking of the attorney appointment list and CLE hours. This item is covered in her report.

The juvenile detention cases are handled by a single attorney. This appears to be a contract system, but no formal contract exists. Contract defender rules have been established by the Task Force and are listed in the Texas Administrative Code (1 TAC §§174.10 - 174.25). The contract defender rules are attached with this report. The rules require that an open bidding process be present for awarding contracts and also require certain provisions to be in the contract.

Recommendation: The jurisdiction may use a single attorney for all non-represented juveniles at detention hearings, however it must procure their services through a bidding process and written contract per the Task Force on Indigent Defense’s contract defender rules in (1 TAC §§174.10 - 174.25).

Action Plan:

Contact person(s): _____

Completion date: _____

Core Requirement 4. Appoint counsel promptly.

Statutory Provisions

An indigent defendant is entitled to have an attorney appointed to represent him/her in any adversarial judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Tex. Code Crim. Proc. art. 1.051(a). If the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not more than 24 hours after the request, transmit or cause to be transmitted to the appointing authority, the forms requesting counsel. Art.

15.17(a). For counties with a census population over 250,000, **if an indigent defendant is not released from custody prior to the appointment of counsel**, the court or court’s designee shall appoint counsel as soon as possible, but **not later than the end of the first working day** after the date on which the court or the court’s designee receives the defendant’s request for appointment of counsel. Art. 1.051(c). **If an indigent defendant is released from custody prior to the appointment of counsel** under this section, appointment of counsel is not required until **the defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first**. Art. 1.051(j).

For juveniles, if the child does not have counsel at the detention hearing and a determination was made to detain the child, the child is entitled to immediate representation of an attorney. The court must order the retention of an attorney or appoint an attorney. Tex. Fam. Code § 51.10(c).

If a determination was not made to detain the child, determinations of indigence are made on the filing of a petition if: (1) the child is released by intake; (2) the child is released at the initial detention hearing; or (3) the case was referred to the court without the child in custody. Tex. Fam. Code § 51.101(c). A juvenile court that makes a finding of indigence under Subsection 51.101(c) must appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. § 51.101(d).

Jurisdiction’s Indigent Defense Plan

Adult Plan: *2.04 Prompt Appointment of Counsel. Counsel shall be appointed in the manner specified in Rule 4 below, as soon as possible, but not later than the end of the first working day after the date on which the appointing judge or person(s) designated by the judges to appoint counsel receives the defendant’s request for counsel. “Working day” means Monday through Friday, except for official state holidays.*

Juvenile Plan: No time deadlines for appointment of juvenile counsel are listed in the indigent defense plan.

Recommendation: The juvenile plan must be updated to list the required times for appointment of juvenile counsel. These time deadlines must list when counsel is to be appointed for detention hearings (where the child was not represented by counsel) and for when a petition for adjudication or discretionary transfer is filed against the child.

Action Plan:

Contact person(s): _____

Completion date: _____

Jurisdiction's Process

Felony Appointments: Reviewer examined 79 indigence determinations for the district courts to see if determinations were timely. The indigence determinations occurred between June, 2008 and January, 2009. Overall, timely determinations of indigence were made in 97.4% of cases where the defendant did not make bond and counsel was assigned. One of the cases where counsel was appointed beyond the Article 1.051(c) timeline occurred because counsel was requested at magistration, but the Indigent Services Department was not able to interview the person immediately (most likely because the person was not transferred to the County Jail immediately). See the following chart for a summary table of timely appointments.

Hidalgo Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	79		
Persons bonding before requesting and receiving counsel		2	2.5%
Persons not bonding and receiving counsel		77	97.5%
Persons not bonding who received counsel (or denial) in:	77		
0 work days		66	85.7%
1 work day + 24 hour transfer		9	11.7%
Timely appointments for persons not bonding		75	97.4%
2 work days + 24 hour transfer		1	1.3%
3 work days + 24 hour transfer		1	1.3%

Misdemeanor Appointments: Reviewer examined 80 indigence determinations for the statutory county courts to see if determinations were timely. The indigence determinations occurred between March, 2008 and January, 2009. Overall, timely determinations of indigence were made in 100% of cases where the defendant did not make bond and counsel was assigned. The County is congratulated on its timely misdemeanor appointments. See the following chart for a summary table of timely appointments.

Hidalgo Misdemeanor Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	80		
Persons bonding before requesting and receiving counsel		18	22.5%
Persons not bonding and receiving counsel		62	77.5%
Persons not bonding who received counsel (or denial) in:	62		
0 work days		57	91.9%
1 work day + 24 hour transfer		5	8.1%
Timely appointments for persons not bonding		62	100.0%

Juvenile Appointments: Reviewer was told that a single attorney handles juvenile detention hearings as a contract defender. On Reviewer's visit, this attorney was in trial at the time of the detention hearings and a separate juvenile attorney was at the hearings. The juvenile detention

form has a space that lists whether a juvenile attorney was present, but the name of the attorney is left off from this sheet. See appendix with the current juvenile detention form.

Reviewer was told that when an attorney is appointed to a juvenile case that the appointed attorney may not appear at later detention hearings for the juvenile. Instead attorneys rely on the juvenile detention attorney to handle the case. Under Tex. Fam. Code § 51.101(a), juvenile detention attorneys remain responsible for cases until the case terminates, the family retains an attorney, or a new attorney is appointed by the court.

(a) If an attorney is appointed at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

Under Tex. Fam. Code § 51.101(d), attorneys appointed after a juvenile is served with a petition must continue to represent the juvenile until the case terminates, the family retains an attorney, or a new attorney is appointed by the court.

(d) A juvenile court that makes a finding of indigence under Subsection (c) shall appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. An attorney appointed under this subsection 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.

Recommendation: The juvenile detention hearing form would more accurately track the detention hearing if a space were available on the form that lists the name of the juvenile attorney present.

Action Plan:

Contact person(s): _____

Completion date: _____

Recommendation: Appointed juvenile attorneys must represent their clients at juvenile detention hearings, as well as all other types of hearings unless they are replaced by a new court appointed attorney or another attorney is retained. These attorneys must be given proper notice of detention hearings.

Action Plan:

Contact person(s): _____

Completion date: _____

Reviewer examined juvenile attorney appointment data from fiscal year 2008 to determine if appointments were timely. Reviewer examined nine instances where a detention hearing was held before a petition was served on the juvenile. All detention hearings had an attorney present. Reviewer examined 32 instances where a petition was served on an individual. In all 32 instances, an attorney was appointed by the time the petition was served. Under the County’s processes, juveniles are typically appointed an attorney before the juvenile is served with the petition. The County is congratulated on its timely appointment of counsel in juvenile cases.

Hidalgo Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	41		
Persons receiving detention hearing prior to petition being served (all had an attorney at the detention hearing)		9	
Persons served with petition		32	
Persons served with petition who received counsel in:	32		
0 working days		32	100.0%
1 working day		0	0.0%
2 working days		0	0.0%
3 working days		0	0.0%
4 working days		0	0.0%
5 working days		0	0.0%
Timely appointments for persons served with petition		32	100.0%

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

Statutory Provisions

Tex. Code Crim. Proc. Art. 26.04(b) requires that appointments are allocated among qualified attorneys in a fair, neutral, and non-discriminatory manner. Article 26.04(a) states: “A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i).” Subsection (f) allows for the court to appoint the public defender. Subsection (h) allows the court to appoint counsel via an alternative program. Subsection (i) allows for appointment of attorneys from the court’s administrative judicial region when a person is accused of a felony and the court is unable to adequately appoint appropriate counsel. When a rotational system is used for appointments, “the court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys’ names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order”. Art. 26.04(a). When an alternative system is used for appointments, procedures must ensure that “appointments are reasonably and impartially allocated among qualified attorneys”. Art. 26.04(g)(2)(D).

Jurisdiction’s Indigent Defense Plan

Adult Plan: *4.01 Method of Appointment. Attorneys shall be appointed to represent indigent defendants from public appointment lists using a system of rotation as described in Article 26.04(a) of the Code of Criminal Procedure and as further specified in this rule.*

4.05 Assignment of Attorneys. The following method shall be used to assign attorneys from the appropriate public appointment list to represent individual defendants:

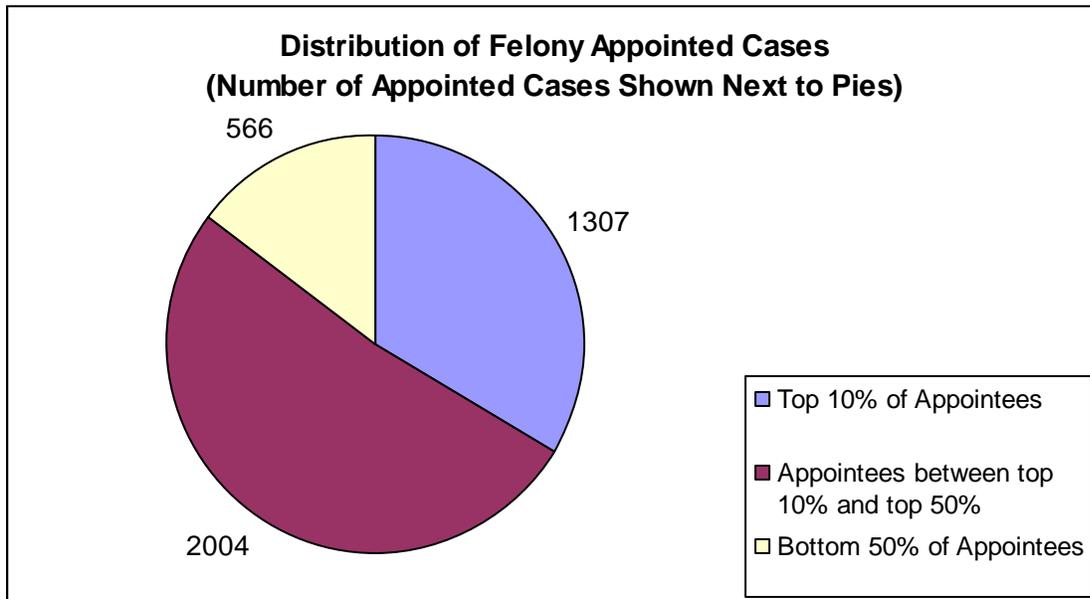
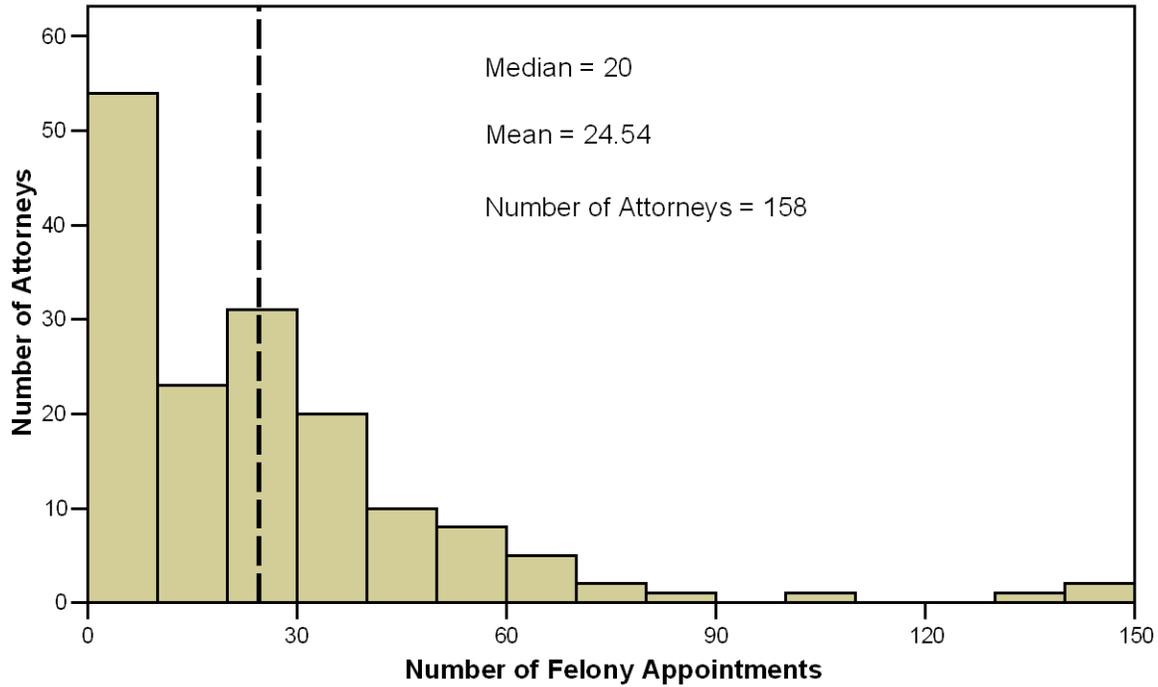
- (a) At any given time, one district judge will serve as appointing judge for all defendants charged with felonies, and one county court at law judge will serve as appointing judge for all defendants charged with misdemeanors.*
- (b) Each judge will serve as appointing judge every two weeks on a rotating basis in alphabetical order of the judges’ last names using separate lists of current district and county court at law judges beginning January 2002.*
- (c) The current appointing judge will:*
 - (1) receive all requests for appointment of counsel transmitted by the magistrate as provided in Rule 2;*
 - (2) determine whether each defendant requesting appointed counsel is indigent, as provided in Rule 3;*
 - (3) select and appoint the appropriate counsel to represent each indigent defendant as provided in this Rule; and*
 - (4) cause all interested parties to be notified of the appointment as provided in Rule 6.*
- (d) Any appointing judge may delegate any of the responsibilities described in this Rule to a magistrate or to an indigent defense administrator who has been designated by the judges and is a county employee hired to address administrative matters associated with indigent defense.*
- (e) The appointing judge or person delegated to make the appointment will appoint the lawyer whose name appears next in order on the public appointment list that corresponds to the most serious offense as currently charged, unless:*

- (1) the defendant requesting appointed counsel does not understand English, in which case the person making the appointment will appoint the lawyer who both appears next in order on the list and can communicate with the defendant in the defendant's language;*
- (2) the person making the appointment exercises discretionary authority to appoint one of the attorneys whose name is among the next five names in order on the appropriate list;*
- or*
- (3) in unusual circumstances, the person making the appointment enters a written finding of good cause on the record for appointing any qualified, willing attorney regardless of whether the attorney's name is among the first five names on the appropriate list.*
- (f) Whenever a lawyer is appointed out of order under Rule 4.04(e), the lawyer who is appointed out of order will move to the last place in order on that list, and any lawyer who was not appointed will remain at the top of the list until appointed or removed from the list.*

Jurisdiction's Process

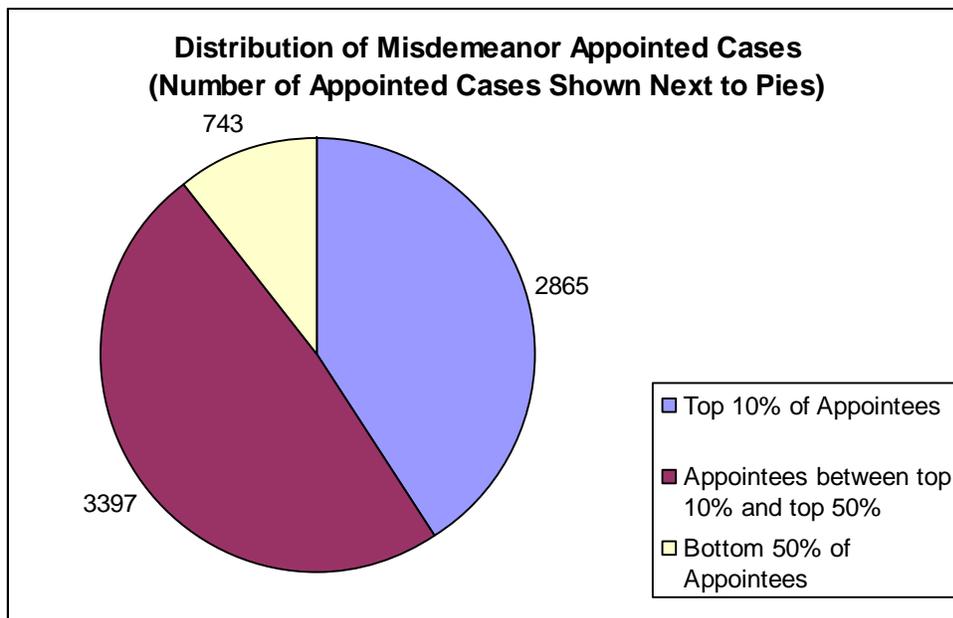
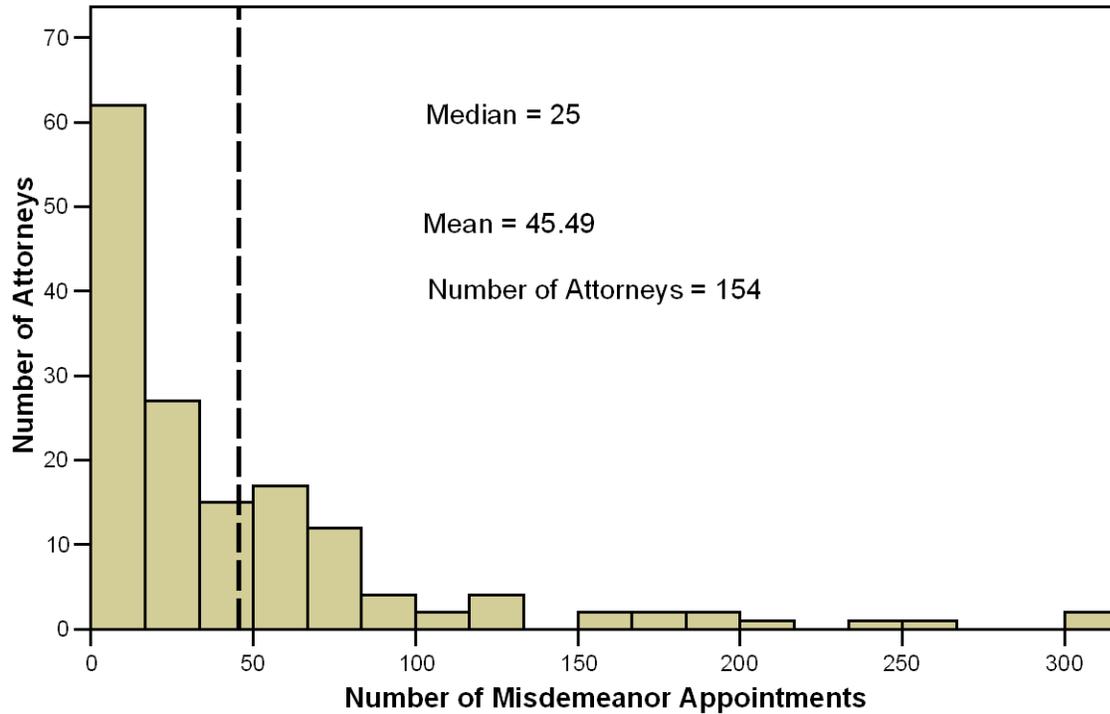
Reviewer obtained case appointment information from payments made by the auditor's office. Reviewer was told that the appointment wheel is used for appointing counsel to detained persons but not to bonded persons. Reviewer was also told that in making an appointment from the wheel, that the software allows an appointment from any of the top five names, but if there is a deviation from these five names that the appointing judge must enter a reason for the deviation.

Felonies: Reviewer examined felony appointments to private attorneys for fiscal year 2008. One hundred fifty eight (158) attorneys received felony appointments. The number of appointments per attorney ranged from 150 cases to 1 case. The top sixteen attorneys (or top 10.1% of appointees) received 33.7% of these cases or 3.3 times their representative share. The distribution of the appointments is shown in the graphs below. If all attorneys received an equal amount of cases, no attorney would fall in the divisions to the right or to the left of the vertical dashed line.



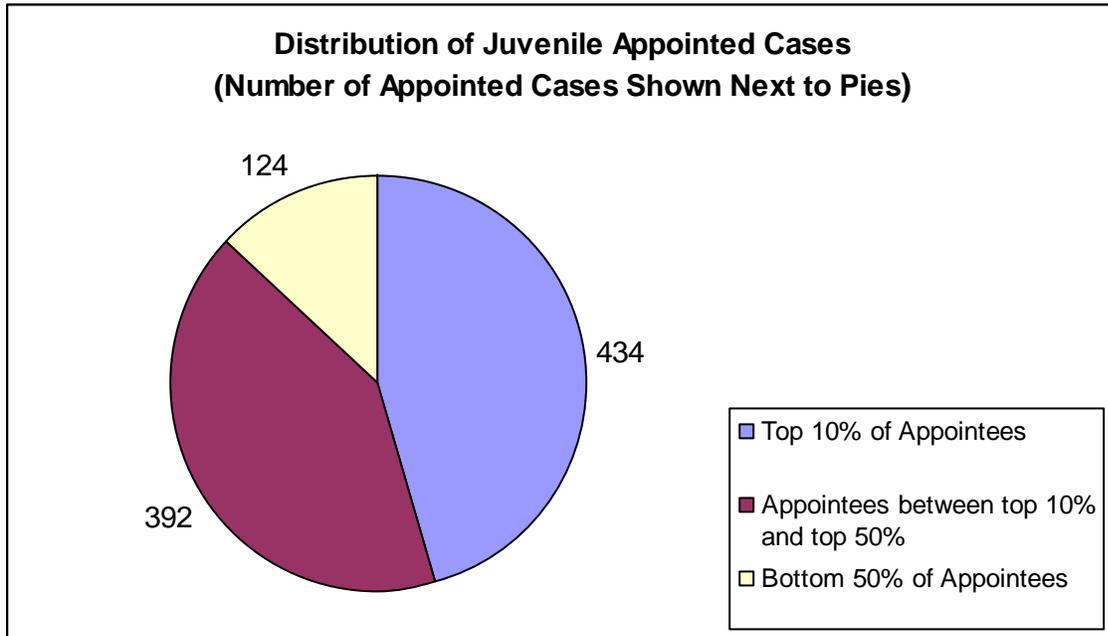
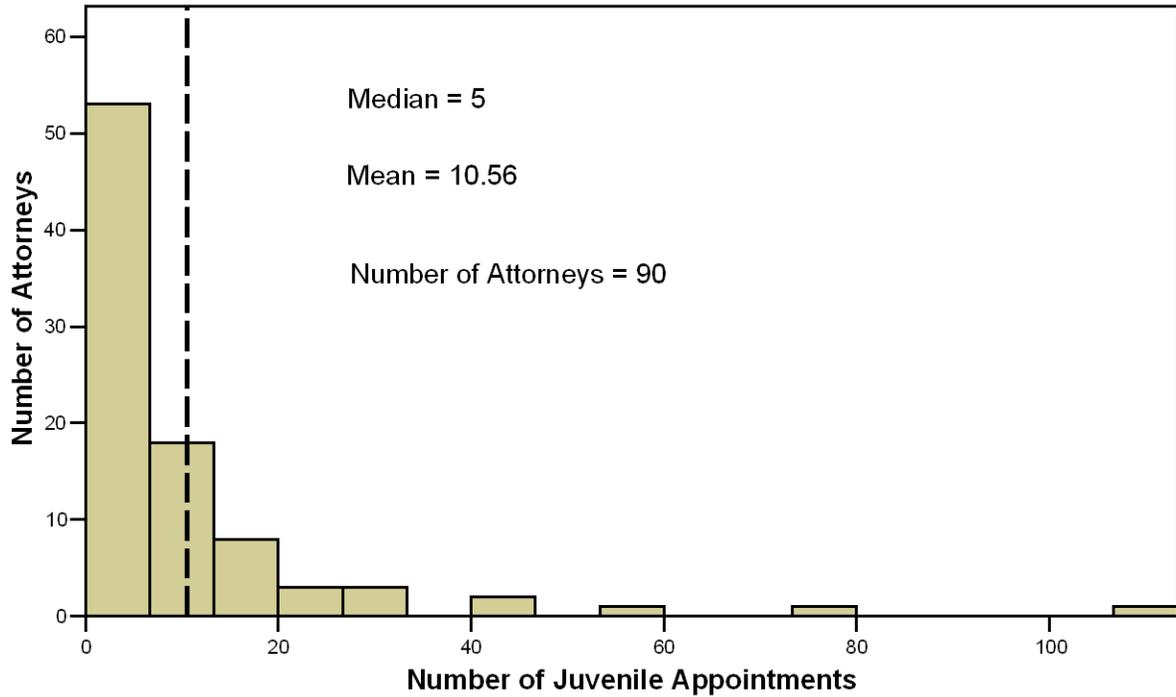
Misdemeanors: Reviewer examined misdemeanor appointments to private attorneys for fiscal year 2008. One hundred fifty four (154) attorneys received misdemeanor appointments. The number of appointments per attorney ranged from 315 cases to 1 case. The top fifteen attorneys

(or top 9.7% of appointees) received 40.9% of these cases or 4.2 times their representative share. The distribution of the appointments is shown in the graphs below. If all attorneys received an equal amount of cases, no attorney would fall to the divisions to the right or to the left of the vertical dashed line.



Juveniles: Reviewer examined juvenile appointments to private attorneys for fiscal year 2008. Ninety (90) attorneys received juvenile appointments. The number of appointments per attorney ranged from 107 cases to 1 case. The top nine attorneys (or top 10.0% of appointees) received 45.7% of these cases or 4.6 times their representative share. The distribution of the appointments

is shown in the graphs below. If all attorneys received an equal amount of cases, no attorney would fall to in the divisions to the right or to the left of the vertical dashed line.



Recommendation: Hidalgo County needs to review its attorney selection processes to ensure that a fair, neutral, and non-discriminatory appointment system is present. The distribution of appointments could be made more even if: (1) the rotational wheel were to apply to in-court appointments and (2) the appointing judges appoint counsel based on the order of the attorneys of the list and not from any of the top five attorneys on the list (unless good cause is found for deviating from this order).

Action Plan:

Contact person(s): _____

Completion date: _____

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

Statutory Provisions

Attorneys are to be paid a reasonable fee for the following: time spent in court making an appearance; reasonable and necessary time spent out of court on the case, supported by documentation that the court requires; preparation of an appellate brief and preparation and presentation of oral argument to an appellate court; and preparation of a motion for rehearing. A fee schedule is to govern these payments, taking into account reasonable and necessary overhead rates. No payment is to be made to the attorney unless the judge approves the payment. If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment and the reasons for any disapproval. An attorney whose request for payment is disapproved may appeal the disapproval. Tex. Code Crim. Proc. art. 26.05(a)-(e).

Counsel is to be reimbursed for reasonable and necessary investigation and expert witness fees. Expenses incurred without prior court approval shall be reimbursed if the expenses were reasonably necessary and reasonably incurred. Tex. Code Crim. Proc. arts. 26.05(d), 26.052(h).

Jurisdiction's Indigent Defense Plan

Adult Plan:

8.01 Fee Schedule. The County will pay appointed counsel for all time reasonably necessary for adequate representation of the defendant, as approved by a judge, according to the following fee schedule adopted as provided under Article 26.05(b) of the Code of Criminal Procedure:

- (a) Appointed attorneys shall be paid \$40 per hour for all documented out-of-court and in-court time, \$70 per hour for all documented time that is actually spent on the case that reasonable professionals would agree was objectively necessary for a qualified criminal defense attorney in the community to represent the client; and*
- (b) For good cause or exceptional circumstances, an appointed attorney may request payment at an hourly rate above the rates specified in subsections (a) and (b) of this Rule, subject to review and approval by the judge presiding over the case as specified in Rule 8.02.*

8.02 *Judicial Determination of Attorney Compensation.* The judge presiding over the case for which the appointed attorney seeks compensation will use the following procedures to review and approve the appropriate compensation:

(a) *The appointed counsel must submit to the presiding judge a form approved by the judges for itemizing the services performed.*

(b) *The presiding judge hearing a motion under this Rule will either approve the amount requested or enter written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.*

(c) *An attorney whose request for payment is disapproved may appeal the disapproval by filing a motion with the presiding judge of the administrative judicial region, as provided under Article 26.05(c) of the Code of Criminal Procedure.*

(d) *The county will reimburse appointed attorneys for investigation and expert witness expenses incurred on behalf of an indigent client as provided under Articles 26.05(d) and 26.052(f) - (h) of the Code of Criminal Procedure.*

Jurisdiction's Process

The fiscal monitor covered payment of attorney fees and expenses. This item is in her report.

Recommendations Not Included in the Quality Assessment

Self-Assessment

Hidalgo County's indigent defense services would benefit from periodic internal self-assessments. Self-assessment is necessary for the county to maintain up-to-date knowledge of the effectiveness of its indigent defense processes. The assessment becomes very complicated and time consuming if all pertinent records which measure times between events are not in a central location, such as in defendant court files. The self-assessment would measure:

- 1) times from arrest to magistration;
- 2) that magistration records are maintained
- 3) times from request for counsel to appointment;
- 4) that counsel is appointed according to the indigent defense plan in a fair, neutral, and non-discriminatory manner; and
- 5) that only properly qualified attorneys are on the appointment list.

See Appendix B for more details.

Direct Electronic Filing in Criminal Cases

The Public Policy Research Institute at Texas A&M University has published a study titled *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (<http://www.courts.state.tx.us/tfid/pdf/FinalReport7-12-06wackn.pdf>) which highlights the benefits of early screening and direct filing of case information from law enforcement to prosecutors to the courts. The study noted that quicker filing between entities results in improved case screening and prompt disposition of cases, better case quality, greater protection of defendants' rights and a better quality of legal defense for persons charged with crimes, and a reduction in hidden costs.

Conclusion

The Task Force staff was impressed with Hidalgo County's dedication to indigent defense. Task Force staff enjoyed meeting with court personnel and was impressed with the commitment to serving the community.

Appendix A – Juvenile Detention Form

(Lists that an attorney was present but does not list attorney's name)

IN THE MATTER OF _____ CAUSE NO: _____ 449TH DISTRICT COURT
 _____ OF
 A CHILD _____ HIDALGO COUNTY, TEXAS

DETENTION HEARING ORDERS

Proper notice and all warnings as prescribed for a section 54.01 of the Texas Family Code were given and fully explained.

The following appeared in court : (X)Child ()Father ()Mother (X)Juvenile's Attorney (X)Assistant District Attorney ()Intake Officer (X)Probation Officer () _____

The Court, having considered the pleading, the evidence and arguments of Counsel for all parties orders the following:

ORDER OF RELEASE

- () The Child shall be RELEASED.
- () The Child shall be DETAINED and later RELEASED under the conditions listed in the order of release.

CONDITIONS OF RELEASE

Released to the custody of _____

1. To appear at the Adjudication Hearing which has been previously set or will be set by the 449TH Court, unless otherwise ordered by the Court.
 2. Shall attend school and be in daily attendance.
 3. Shall abide by a _____ P.M. daily curfew, unless accompanied by a parent.
 4. Shall report in person/by phone, 381-8600 or 973-7800; to _____, on _____.
 5. Not associate with _____.
 6. Shall abide by all conditions of the Home Detention Program.
 7. Abide by all rules and regulations as set by _____.
 8. Continue to abide by all conditions of Judicial Probation/Deferred Prosecution, if applicable.
- Random Urinalysis

ORDER OF DETENTION

- () The child hereby be DETAINED at the _____ (Non-Secure Detention/Emergency Placement) Facility and shall abide by all the rules and regulations set forth by said program.
- () The child hereby be DETAINED.
- () A. Urinalysis () B. Psychological Evaluation

The Juvenile shall be DETAINED at the Hidalgo County Juvenile Detention Center for a period of ten (10) days or until further orders of the Court by reason(s) stated in Exhibit A incorporated herein.

The Court further finds that it is in the best interest of the child and the community for the child to be placed outside his/her home. The Court finds that the child has been removed from his/her home and the Court approves the removal as referenced in Exhibit A incorporated herein.

The Court finds that reasonable efforts were made to prevent or eliminate the need for the child to be removed from his/her home as referenced in Exhibit B incorporated herein.

IT IS FURTHER ORDERED THAT THE HIDALGO COUNTY JUVENILE PROBATION DEPARTMENT BE RESPONSIBLE FOR THE CHILD'S PLACEMENT, CARE AND CONTROL.

SIGNED AND ENTERED ON THIS _____ DAY OF _____, 2009
 NEXT SCHEDULED DETENTION HEARING: _____

 JUDGE, JESSE CONTRERAS
 449TH DISTRICT COURT JUDGE

Appendix B -- How to Conduct an Initial Indigent Defense Self-Assessment

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine whether all Fair Defense Act (FDA) requirements are being met. The Task Force recommends that self-assessments be conducted to verify procedures and operational practices (e.g. local plan, rules and procedures, attorneys' applications, attorneys' CLE hours). Self-assessments ensure familiarity with county policies, procedures, and operational practices. Moreover, best practices indicate that internal periodic reviews of documents/forms and processes assist in identifying possible problems or errors. Self-assessment can be performed by any jurisdiction and adds accountability to the indigent defense process. Court personnel may have an internal belief of performance based on experience with a part of the indigent defense process, but without actual records, one cannot know the effectiveness of the system.

Self-assessment items

1. Time to magistration

Check magistration records to see that magistration occurred within 48 hours of arrest (use an acceptable sample size as defined in the methodology). Compare the time of arrest to the time of magistration. The magistration record may be on a paper magistration form or on an electronic record.

The sample should be as random as reasonably possible, from a representative cross-section of persons/places where magistration was conducted. For instance, if magistration duties are rotated between justices-of-the-peace, the sample should include magistration data from all the different justices. The sample size should be large enough to allow one to gauge performance of the system. A sample size calculator is available at <http://www.surveysystem.com/sscalc.htm> and allows for the calculation of an appropriate sample size. Reasonable confidence requirements may be a 95% confidence level with a 15% confidence interval. In this way if the sample showed that 75% of magistrations were timely, one could say with 95% confidence that all magistrations are timely 75% +/- 15% of the time (or between 60% and 90% of the time). More accurate confidence intervals may be used but require larger sample sizes or a basis for knowing the performance level of the system. If a second review were conducted, the performance from the initial review could be used as a base level for system performance. Plugging this initial review percentage into the sample size calculator may yield much tighter confidence intervals with the same sample size.

2. Timely appointment of counsel

Review counsel request forms for each court system and make separate performance estimates for each court system (i.e. district courts and statutory county courts) to see that counsel was appointed for each court system within the time required by the FDA. Under the FDA, for persons not making bond, a jurisdiction has 24 hours to transfer a request for counsel to an appointing authority. The appointing authority has one or three working days (depending on whether the 2000 county population was over 250,000 persons) in which to appoint counsel. This means that from the time of request, the arrestee must receive appointed counsel within one or three working days plus 24 hours of the request. For persons bonding before the deadline to appoint counsel is reached, counsel is to be appointed by the earlier of the initiation of

adversarial judicial proceedings (the indictment or information) or the defendant's initial appearance (arraignment).

Take random samples of defendants receiving counsel from both the district and statutory county courts using the appropriate sample sizes listed above. Check the percentage of persons who receive timely appointment of counsel. Appropriate forms for this verification are the attorney appointment form and the affidavit of indigence.

3. Review attorney qualifications

Check all attorneys who have received appointments from the previous 12 months to see that they are on the approved list (voted by a majority of judges) and that they have met the applicable CLE requirements.

4. Review attorney selection process

To check that a rotation system is fair, neutral and non-discriminatory, observe the distribution of all criminal appointments in each court system (district courts and statutory county courts) from the previous year. Look for instances when an individual or small group of individuals are given a far greater share of appointments than one would expect if given out according to the wheel. Mere disparity in felony appointments is not an indication of discriminatory appointments, as some attorneys may be qualified to receive more types of appointments than other attorneys.

5. Review indigence standards

Check that a determination of indigence has been made for persons requesting counsel (use an acceptable sample size as done when measuring time to appointment of counsel).

6. Review payment for indigent services

- a. Check that attorney fee vouchers are complete. (Did the judge and attorney sign the voucher? Is the voucher for a felony or a misdemeanor?)
- b. Do the amounts on the attorney fee voucher add up correctly?
- c. Is the voucher payment in accordance with the attorney fee schedule?
- d. Are written findings made for disapproved/reduced reimbursements?

The attorney fee voucher and attorney fee schedule should be used in reviewing payment for indigent services. A representative cross-section of vouchers is necessary in reviewing this item. Errors in processing payment may be caused either by judge or attorney error. Using a sample from the entire criminal court system may not yield a large enough sample to observe errors in the system. On the other hand, making separate sample estimates of performance for each court processing criminal matters could be very time consuming. To adequately review this item in a timely manner, one may want to review the district courts together as a sample and the statutory county courts together as a sample.