

Jefferson County submitted a new indigent defense plan for the district courts as their response to our report. Our report made three recommendations which are listed below following the relevant part of the indigent defense plan.

**Finding 1:** Contract attorneys in Criminal District Court representing indigent defendants are replaced without a finding of good cause entered on the record.

**Recommendation 1:** As required by Article 26.04(j)(2), appointed attorneys must represent their clients until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered to withdraw as counsel for the defendant after a finding of good cause is entered on the record. Furthermore, findings of good cause must be in line with Texas statutes and case law.

### **Indigent Defense Plan: Prompt Appointment of Counsel**

The "Public Defender" or Rotation Attorney shall continue to represent the defendant until the case is disposed of or unless relieved by the trial judge court or replaced by other counsel after a finding of good cause is entered in the record. If a "Public Defender" is relieved, the trial judge shall immediately appoint another "Public Defender" or Rotation Attorney as a replacement. The replacement attorney shall make every reasonable effort to contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable.

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### **Indigent Defense Plan: Attorney Selection Process**

#### PUBLIC DEFENDERS:

Each Court may designate one or more attorneys as "Public Defenders" on a monthly fee basis. In addition to required qualifications, each "Public Defender" must be selected based on demonstrated past professional skill and performance in the representation of defendants in felony cases.

In selecting "Public Defenders", the Court shall consider at least the following factors when evaluating applicants:

1. The experience and qualifications of the applicant
2. Applicant's past performance in representing defendants in felony criminal cases.
3. Applicant's disciplinary history with the State Bar.
4. Applicant's ability to professionally, ethically and effectively comply with assignments.

The Board may approve contracts with "Public Defenders" who meet all of the Board requirements and enter into an agreement for services. The Board shall enter such agreement only if it complies with these qualifications and standards and all applicable laws governing professional service agreements entered into by counties.

All procedures shall meet the requirements of Chapter 174, Subchapter B, Title 1, Part 8, Sections 174.10-174.25 Chapter 174, Subchapter B of the Texas Administrative Code, INDIGENT DEFENSE POLICIES AND STANDARDS, CONTRACT DEFENDER PROGRAM REQUIREMENTS concerning Contract Defender Program Requirements.

Each "Public Defender" shall perform any duties designated by the appointing judge designed to insure prompt, effective and professional representation of indigent felony defendants.

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**Finding 2:** The process for determining indigence in Jefferson County does not comport with Article 26.04(1) of the Code of Criminal Procedure or with its own indigent defense plan. Article 26.04(1) requires that determinations of indigence apply to each defendant equally, whether the defendant bonds or remains in custody. The local indigent defense plan states that the financial standard for determining indigence is based on whether a defendant's net income is less than 100% of the federal poverty guidelines or whether a defendant receives aid from certain federal welfare programs.

**Recommendation 2:** Determinations of indigence must follow the process described in the Jefferson County indigent defense plan, which provides that only the accused's financial circumstances as measured by the financial standards stated in the plan are to be used as a basis for determining indigence. In order to implement this recommendation, the County will need to put in place a system to screen individuals for indigence earlier in the process.

**Indigent Defense Plan: Prompt Magistration**

- vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Counsel Coordinator. (the appointing authority) The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.
- vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence based upon the defendant's completion of the affidavit of indigence (Model Version 3, adopted 11/15/06-Task Force on Indigent Defense) and appoint counsel if the defendant is indigent within three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.
- viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

ix. If a request for counsel was not made at magistration, the magistrate will forward the magistrate form to the clerk to be put into the case file.

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**Indigent Defense Plan: Indigence Determination Standards**

iii. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent **except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed herein.**
2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

**Indigent Defense Plan: Prompt Appointment of Counsel**

If a defendant is released from custody **prior** to the appointment of counsel, the determination of **indigence will** be heard at the first trial court appearance, **if necessary**. If the defendant is determined to be indigent, a "Public Defender" or Rotation Attorney will be immediately appointed. The appointed attorney shall make contact with and interview the defendant in the same manner as if the defendant was in custody.

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**Finding 3:** Jefferson County's practice of removing counsel if bond is made does not comport with Article 26.04(m) or with Article 26.04(p) of the Code of Criminal Procedure. Article 26.04(m) disallows the courts from considering whether the defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances. Article 26.04(p) presumes that persons determined to be indigent remain indigent unless there is a material change in the defendant's financial circumstances.

**Recommendation 3:** As required by Article 26.04(p) of the Code of Criminal Procedure, the County must implement procedures so that a defendant who is determined to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless there is a material change in the defendant's financial circumstances.

**Indigent Defense Plan: Prompt Appointment of Counsel**

The Counsel Coordinator will appoint a "Public Defender" or Rotation Attorney to represent each qualified indigent defendant at arraignment. In compliance with Art. 26.04 CCP, the appointed attorney shall make contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable **after the attorney is appointed.**

The "Public Defender" or Rotation Attorney shall continue to represent the defendant until **the case is disposed of** or unless relieved by the **trial judge court or replaced by other counsel after a finding of good cause is entered in the record.** If a "Public Defender" is relieved, the trial judge shall immediately appoint another "Public Defender" or Rotation Attorney as a replacement. The replacement attorney shall make **every reasonable effort to** contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon

as practicable.

If a defendant is released from custody prior to the appointment of counsel, the determination of indigence will be heard at the first trial court appearance, if necessary. If the defendant is determined to be indigent, a Public Defender or Rotation Attorney will be immediately appointed. The appointed attorney shall make contact with and interview the defendant in the same manner as if the defendant was in custody.

A Public Defender may not receive appointments to represent indigents in any other court without the specific approval of the appointing judge. A Public Defender may have a limited private practice but priority must always be given to cases pending in the Court of the appointing judge.

Each appointed attorney is to become familiar with this plan.

Jefferson County District Courts Indigent Defense Plan after revisions to address TIDC report.

### Preamble

This section may contain any introductory statements regarding the plan that do not fit in any of the other sections.

Section last updated by Larry Gist on 8/24/2012 3:01:06 PM

**INTRODUCTION: This Plan is for the Jefferson County Criminal District Courts.**

**Criminal Courts Board:** The Jefferson County Criminal Courts Board is composed of the judges of the Criminal and 252nd District Courts. The Board by majority vote will elect a Chairman. The Chairman shall preside at all Board meetings and hearings and announce any Board decisions. The Board may periodically impose policies, procedures and guidelines to implement this plan and guarantee effective representation to all indigent felony offenders, in accordance with Art. 26.04 CCP. In the event of a tie vote, the Local Administrative Judge will temporarily appoint a District Judge to serve on the Board for the sole purpose of resolving that particular issue.

**Counsel Coordinator:** A Counsel Coordinator will be designated by the Criminal Courts Board. All questions, issues and problems must be directed to the Counsel Coordinator for resolution. The Counsel Coordinator shall also:

1. Maintain and update the list of attorneys qualified to receive appointments;
2. Investigate and track attorney qualifications;
3. Manage arraignment procedures;
4. Track cases and assignments to prevent duplication;
5. Organize and administer waiver of indictment procedures;
6. Supervise and monitor attorney fee payments;
7. Receive and investigate complaints against appointed attorneys;
8. Maintain the rotation schedule of appointed attorneys;

9. Coordinate with the Office of Court Administration and the ~~Task Force on~~ **Texas** Indigent Defense ~~Commission;~~

10. ~~Insure~~ **Ensure** compliance with the policies and standards of the ~~Task Force on~~ **Texas** Indigent Defense ~~Commission;~~

11. Assist in the County Reporting Plan and obtaining Technical Report Grants; and

12. Perform all other duties designated by the Criminal Courts Board.

### Prompt Magistration

Conduct prompt and accurate magistration proceedings.

- Accused must be brought before magistrate within 48 hours of arrest. [Art. 14.06(a), CCP]
  - Person arrested for misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time [Art. 17.033, CCP]
- Magistrate must inform and explain right to counsel and right to appointed counsel to accused [Art. 15.17(a), CCP]
- Magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused. [Art. 15.17(a), CCP]
- Record must be made of:
  - Magistrate informing the accused of the accused's right to request appointment of counsel [Art. 15.17(e)(1), CCP]
  - Magistrate asking whether accused wants to request appointment of counsel [Art. 15.17(e)(2), CCP]
  - Whether the person requested court appointed counsel [Art. 15.17(e)(3), CCP]
- If authorized to appoint counsel, magistrate must do so within 1 working day after receipt of request for counsel in counties with a population of 250,000 or more and within 3 working days in counties under 250,000 [Art. 15.17(a), CCP]
- If not authorized to appoint counsel, magistrate within 24 hours must transmit or cause to be transmitted to the appointing authority an accused's request for counsel [Art. 15.17(a), CCP]

Section last updated by Larry Gist on 8/16/2012 3:36:27 PM. Section last reviewed by Jessa R. Haugebak on 8/5/2010 2:35:10 PM.

#### A. Arresting Officer Responsibilities

- i. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested.

ii. Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

iii. Release of defendants arrested without warrant

1. A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24th hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.

2. A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48th hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense.

3. If requested by the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

#### B. Magistrate Duties

i. At the Magistrate's hearing, the magistrate should determine if accused can speak and understand English, or if the defendant is deaf.

ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:

1. Advise the accused of the accusation against him/her and any affidavit filed therewith;

2. Admonish the accused of:

a. The right to retain counsel;

b. The right to remain silent;

c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;

d. The right to terminate an interview at any time;

e. The right not to make a statement and that any statement made by the accused may be used against him/her; and

f. The right to an examining trial.

3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.;

4. Inquire as to whether accused is requesting that counsel be appointed.;

5. Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing.;

6. If the magistrate has reason to believe the accused is not mentally

competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

iii. In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.

1. If probable cause has not been determined by a magistrate:

a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.

b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.

c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.

iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.

v. The magistrate shall record the following:

1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.

2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.

3. Whether the accused requested appointment of counsel

vi. If the magistrate is not authorized to appoint counsel and if the accused requests appointment of counsel, the magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to Counsel Coordinator. (the appointing authority) The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.

vii. If the magistrate is authorized to appoint counsel, the magistrate shall make a determination of indigence based upon the defendant's completion of the affidavit of indigence (Model Version 3, adopted 11/15/06-Task Force on Indigent Defense) and appoint counsel if the defendant is indigent within three working days unless the County has a U.S. Census population over 250,000, in which case counsel shall be appointed within one working day.

viii. If a request for counsel was made at magistration, the appointing authority shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

ix. If a request for counsel was not made at magistration, the magistrate will

forward the magistrate form to the clerk to be put into the case file.

### Indigence Determination Standards

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

- Detail procedures used to determine whether a defendant is indigent [Art. 26.04(l)-(r), CCP]
- State financial standard(s) to determine whether a defendant is indigent [Art. 26.04(l), CCP]
- List factors courts will consider when determining whether a defendant is indigent [Art. 26.04(m), CCP]

- Indigent if defendant qualifies for public benefits

- Indigent if net household income does not exceed ( 

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 ) of Federal Poverty Guidelines

- Indigent if defendant resides in an institution

- Indigent if the difference between the accused's monthly net household income and reasonable necessary expenses is less than \$  **Invalid value**

- Indigent if the value of assets does not exceed \$2,500, or \$5,000 in a household with an individual 60 years or older, disabled, or institutionalized, or double the cost of obtaining competent private representation

- Indigent if net income does not exceed \$  **Invalid value**

- Indigent if assets do not exceed \$  **Invalid value**

- Other:

A. Definitions, as used in this rule:

- i. "Indigent" means a person who is not financially able to employ counsel.
- ii. "Net household income" means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.
- iii. "Household" means all individuals who are actually dependent on the accused for financial support.
- iv. "The cost of obtaining competent private legal representation" includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

B. Eligibility for Appointment

- i. An accused is presumed indigent if any of the following conditions or factors are present:
  1. At the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary

Assistance for Needy Families, Supplemental Security Income, or public housing;

2. The accused's net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or

3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.

ii. An accused who does not meet any of the standards above shall nevertheless be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the criminal charge(s),
2. anticipated complexity of the defense,
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income,
6. source of income,

7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

iii. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent **except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed herein.**
2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

iv. Only the accused's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. Indigence Proceedings:

- i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
  1. Determining if accused is (or is not) indigent; or

2. Impeaching direct testimony of accused regarding the accused's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the ~~timelines~~ **time lines** specified in Parts I and IV of these rules and contained in Code of Criminal Procedure article 1.051.

iv. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.

1. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

a. Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or

b. Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.

2. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the

county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay during the ~~pendency~~ **pendency** of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### Minimum Attorney Qualifications

Establish minimum attorney qualifications.

- Establish objective qualification standards for attorneys. [Art. 26.04, CCP]
- Standards must require attorneys to complete at least 6 hours of continuing legal education pertaining to criminal law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization. (see 1 TAC §§174.1-174.4)
- Attorneys must be approved by majority of judges (or by managed assigned counsel program) to be placed on the appointment list [Art. 26.04 and 26.047, CCP]

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**An alternative program method using "public defenders" and a system of rotation may be used in appointing legal counsel for indigent defendants.** Only attorneys who volunteer will be considered for appointment on felony cases as either Public Defenders or Rotation Attorneys. All applicants must meet the following minimum qualifications to be considered:

FOR TRIAL APPOINTMENTS:

1. A minimum of 5 years experience or 10 felony jury trials; AND
2. A minimum of 25% of practice in criminal law matters; AND
3. A minimum of 15 hours of ~~certified~~ **certified** CLE credit annually in criminal law matters. No self study hours will be counted; AND
4. In the last 5 years, never have been found to provided ineffective representation by an appellate court or a Bar disciplinary committee OR if so, after providing details receive a waiver from the Criminal Courts Board; AND

5. Receive approval from the Criminal Courts Board by majority vote.

FOR APPELLATE APPOINTMENTS:

1. A minimum of 5 years experience OR 10 appellate cases; AND
2. List the name, offense, cause number and court for all felony appellate cases in the last 5 years up to a maximum of 10; AND
3. A minimum of 25% of practice in criminal law matters; AND
4. Meet the same CLE requirements as Trial Attorneys; AND
5. Meet the same ineffective assistance test as Trial Attorneys; AND
6. Receive approval from the Criminal Courts Board.

### Prompt Appointment of Counsel

Appoint counsel promptly.

- Incarcerated persons: After receipt of request for counsel, counsel must be appointed within 1 working day in counties with a population of 250,000 or more and 3 working days in counties under 250,000 [Art. 1.051(c), CCP]
- Persons out of custody: Counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first [Article 1.051(j), CCP; *Rothebery v. Gillespie County*; and presentation from indigent defense workshop.
- Advise unrepresented defendants of the right to counsel and procedures for obtaining counsel [Art. 1.051(f-2), CCP]

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The Counsel Coordinator will appoint a "Public Defender" or Rotation Attorney to represent each qualified indigent defendant at arraignment. In compliance with Art. 26.04 CCP, the appointed attorney shall make contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable **after the attorney is appointed.**

The "Public Defender" or Rotation Attorney shall continue to represent the defendant until **the case is disposed of or unless relieved by the trial judge court or replaced by other counsel after a finding of good cause is entered in the record.** If a "Public Defender" is relieved, the trial judge shall immediately appoint another "Public Defender" or Rotation Attorney as a replacement. The replacement attorney shall make **every reasonable effort to** contact with the defendant not later than the end of the first working day after appointment and interview the defendant as soon as practicable.

If a defendant is released from custody **preir prior** to the appointment of counsel, the determination of **indigence will indigence will** be heard at the first trial court appearance, **if necessary.** If the defendant is determined to be indigent a "Public Defender" or Rotation Attorney will be immediately appointed. The appointed attorney

shall make contact with and interview the defendant in the same manner as if the defendant was in custody.

A "Public Defender" may not receive appointments to represent indigents in any other court without the specific approval of the appointing judge. A "Public Defender" may have a limited private practice but priority must always be given to cases pending in the Court of the appointing judge.

Each appointed attorney is to become familiar with this plan.

### Attorney Selection Process

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

- Rotational method: Must appoint attorneys from among next five names on appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order [Art. 26.04(a), CCP]
- Public Defender: Must meet the requirements in Article 26.044, CCP and process for appointment of the public defender needs to be in indigent defense plan [Art. 26.04(f), CCP]
- Managed Assigned Counsel: Must meet the requirements in Article 26.047, CCP and process for assignment of cases to the managed assigned counsel program needs to be in indigent defense plan [Art. 26.047, CCP]
- Alternative method [Art. 26.04(g)-(h), CCP]:
  - Must be established by vote of two-thirds of the judges.
  - Must be approved by presiding judge of administrative judicial region.
  - Must allocate appointments reasonably and impartially among qualified attorneys.
- For contract defender program, must meet contract defender standards (see 1 TAC §§174.10-174.25.)

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#### FELONY CASES;

Attorneys will be selected and appointed on a rotation basis from the Master list unless a "Public Defender" is used in the case.

#### DEATH PENALTY CASES:

Once a capital indictment is returned where the State seeks the death penalty, only attorneys approved by a local selection committee created for the Second Administrative Judicial Region will be appointed as provided in Art. 26.052 CCP.

#### PUBLIC DEFENDERS:

Each Court may designate one or more attorneys as "Public Defenders" on a monthly fee basis. In addition to required qualifications, each "Public Defender" must be selected based on demonstrated past professional skill and performance in the representation of defendants in felony cases.

In selecting "Public Defenders", the Court shall consider at least the following factors when evaluating applicants:

1. The experience and qualifications of the applicant
2. Applicant's past performance in representing defendants in felony criminal cases.
3. Applicant's disciplinary history with the State Bar.
4. Applicant's ability to professionally, ethically and effectively comply with assignments.

The Board may approve contracts with "Public Defenders" who meet all of the Board requirements and enter into an agreement for services. The Board shall enter such agreement only if it complies with these qualifications and standards and all applicable laws governing professional service agreements entered into by counties.

All procedures shall meet the requirements of Chapter 174, Subchapter B, Title 1, Part 8, Sections 174.10-174.25 Chapter 174, Subchapter B of the Texas Administrative Code ; INDIGENT DEFENSE POLICIES AND STANDARDS; CONTRACT DEFENDER PROGRAM REQUIREMENTS concerning Contract Defender Program Requirements.

Each "Public Defender" shall perform any duties designated by the appointing judge designed to insure prompt, effective and professional representation of indigent felony defendants.

#### Fee and Expense Payment Process

Fee and expense payment process.

- Payments shall be in accordance with a schedule of fees adopted by the judges (or managed assigned counsel program) [Art. 26.05(b), CCP]
- No payment shall be made until judge (or managed assigned counsel program) approves payment after submission of attorney fee voucher [Art. 26.05(c), CCP]
- If judge (or managed assigned counsel program) disapproves the requested amount of payment, the judge (or managed assigned counsel program) shall make written findings stating the amount that the judge (or managed assigned counsel program) approves and each reason for approving an amount different from the requested amount. [Art. 26.05(c), CCP]
- Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred. [Arts. 26.05(d) & 26.052(h), CCP]

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A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for

time and effort expended and will be in accordance with a fee schedule adopted and approved by a majority of the judges hearing criminal cases in the county.

B. Payment Process: No payment of attorney's fees will be made other than in accordance with the rules set forth below.

i. An appointed attorney shall fill out and submit a fee voucher to the court for services rendered.

ii. The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

1. If a judge disapproves a request for compensation, the judge shall make written findings, stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount.

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60<sup>th</sup> day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of this administrative judicial region.

C. Payment of Expenses:

i. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred.

ii. Procedure With Prior Court Approval:

1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:

- a. The type of investigation to be conducted or the type of expert to be retained;
- b. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- c. An itemized list of anticipated expenses for each investigation and/or each expert.

2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- a. State the reasons for the denial in writing;
- b. Attach the denial to the confidential request; and
- c. Submit the request and denial as a sealed exhibit to the record.

iii. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses

will not be approved.

FEE PAYMENT SCHEDULE;

For "Public Defenders Defenders"; An amount not to exceed \$8333 per month per attorney

For Rotation Attorneys:

Disposition:

Plea of Guilty or Dismissal: Single Case \$650; Multiple Cases \$750; State Jail Single Case \$500; State Jail Multiple Cases: \$600.

Out of Court Hours: \$50/hour with authorized time sheet

Trial: \$500 per half day

Appeal:

\$750 for appeal of a single case Jury Trial; \$850 Multiple Cases Jury Trial; \$1500 for appeal of multiple cases on the same defendant. \$10,000 for appeal of a capital case where the death penalty is assessed. \$375 Non trial and motion to revoke probation.

Death Penalty Cases:

Lead Counsel, \$1500 per half day in trial. Second Chair, \$1000 per half day in trial. An additional amount for trial preparation when documented and approved in advance by the trial judge.

Investigator/Expert Witness:

Expenses incurred with prior Court approval shall be reimbursed if the request is reasonable. Expenses incurred without prior Court approval shall be reimbursed if the expense is reasonably necessary and reasonably incurred.

Interpreters:

If the defendant does not speak English or is deaf or blind, the Court shall obtain the services of an appropriate interpreter to be present during all court proceedings and at all meetings between the Public Defender or Rotation Attorney and the defendant. The Court will pay all reasonable costs involved.

Fee Payment Voucher;

All fee claims must be submitted on a voucher approved by the Board and that can be obtained from the Counsel Coordinator or Court Clerk.

### Miscellaneous

Use this section to add any part of the plan that the county wished to add that does not fit in any of the other sections.

CONPLAINTS:

All ~~complaints~~ **complaints** against a "Public Defender" or Rotation Attorney will be referred to the Counsel Coordinator for investigation. All complaints will be reviewed periodically. An appointed attorney may be removed by a majority vote of the Criminal Courts Board. The attorney must receive notice of the complaint and have the opportunity to be heard by the Board before any decision is made. The Board may appoint one experienced defense attorney to be present during the hearing and advise the Board. All such hearings will be closed. All proceedings and the Board's vote will be confidential. The attorney is entitled to be represented by Counsel at the hearing and the results of the Board vote will be given to the the attorney and the person filing the complaint.

SUSPENSION OR REMOVAL:

A "Public Defender" or Rotation Attorney who fails to properly and professionally follow all of the rules and procedures adopted by the Courts or fails to provide timely and effective representation may be suspended or removed from the qualified list by majority vote of the Board. Removed attorneys may reapply one year after removal or earlier if permitted by the Board.

APPEALS:

A "Public Defender" or Rotation Attorney may appeal any matters regarding this plan to the Criminal Courts Board.

WAIVERS:

Each Trial Court retains authority to waive or alter any portion of this plan in exceptionally justified cases or when determined necessary for the fair and impartial administration of justice. To insure prompt and effective representation, any judge may depart from this plan in exceptional circumstances when the interest of justice require.

ADOPTED ~~November 1~~ **August 16, 2009** **2012** by the Criminal Courts Board:

Judge John Stevens, Criminal District Judge

Judge Layne Walker, 252nd District Court Judge