



# **Review of Randall County's Indigent Defense Systems**

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**MISSION**

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

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## **Purpose of Review**

The Commission is required to monitor local jurisdictions' compliance with the Fair Defense Act ("FDA").<sup>1</sup> The purpose of this review is to promote local compliance and accountability with the requirements of the FDA through evidence-based practices and to provide technical assistance to improve processes where needed. In addition, this review process is designed to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA.

## **Core Requirements of the Fair Defense Act**

1. Conduct prompt and accurate magistration proceedings:
  - Inform and explain right to counsel to accused;
  - Provide reasonable assistance to accused in completing necessary forms to request counsel;
  - Maintain magistrate processing records.
2. Determine indigence according to standards directed by the indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate a standard attorney fee schedule and payment process.

## **Methodology**

The policy monitoring site review for Randall County was conducted by Joel Lieurance between June 11 and June 15, 2012. Throughout this report all references to Commission staff use the term "monitor." The monitor met with the following persons: the local administrative district judge; the local administrative statutory county judge and his staff; the auditor's office; the two justices-of-the-peace; the felony district courts' coordinator; the county clerk's office staff; and the district clerk's office staff. The monitor observed magistrate's warnings and a juvenile detention hearing. The monitor examined the following records:

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

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<sup>1</sup> Tex. Gov't Code § 79.037(b).

## **Summary of Commendations / Recommendations**

Based upon the Commission's program assessment, Randall County has many effective processes for ensuring that the County meets Texas' indigent defense requirements. These effective processes include a fair appointment system, accurate record keeping systems, and indigent defense plans having all their required elements. The County was challenged in promptly transmitting requests for counsel to the appointing authority and in ensuring timely appointment of counsel in felony cases as well as in juvenile cases.

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

### **Core Requirement 1. Conduct prompt and accurate magistration proceedings.**

**Recommendation 1:** The monitor's sample of magistrate warnings did not fall within the Commission's threshold for presuming that a jurisdiction's processes ensure timely magistrate warnings. Randall County must implement procedures that ensure warnings are timely.

**Recommendation 2:** Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate.

**Recommendation 3:** Misdemeanor requests for counsel made before a case filing must be directed to the person listed in the local indigent defense plan: Judge Anderson's court.

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

**Commendation 1:** All elements required for the indigence determination standards section of the adult indigent defense plan were included in the plan.

**Commendation 2:** All elements required for the indigence determination standards section of the juvenile indigent defense plan were included in the plan.

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

**Commendation 3:** Staff for the felony courts had procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plan.

**Commendation 4:** Staff for the misdemeanor courts had procedures for managing the attorney appointment list and for ensuring that all attorneys on the list met their annual CLE requirements as described in the indigent defense plan.

**Commendation 5:** Staff for the juvenile courts had procedures for managing the attorney appointment list and for ensuring that all attorneys on the list met their annual CLE requirements as described in the indigent defense plan.

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

**Recommendation 4:** Randall County must implement processes that ensure timely appointment of counsel in felony cases.

**Recommendation 5:** Randall County must implement processes that ensure timely appointment of counsel when there is a decision to detain a juvenile.

**Recommendation 6:** Randall County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile.

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

**Commendation 6:** Randall County's distribution of felony appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

**Commendation 7:** Randall County's distribution of misdemeanor appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

**Commendation 8:** Randall County's distribution of juvenile appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

**Commendation 9:** Randall County's appointment procedures appear to ensure that no attorney receives an appointed caseload in the County that exceeds national recommendations.

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

**Commendation 10:** The auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

**Statutory Data Reporting**

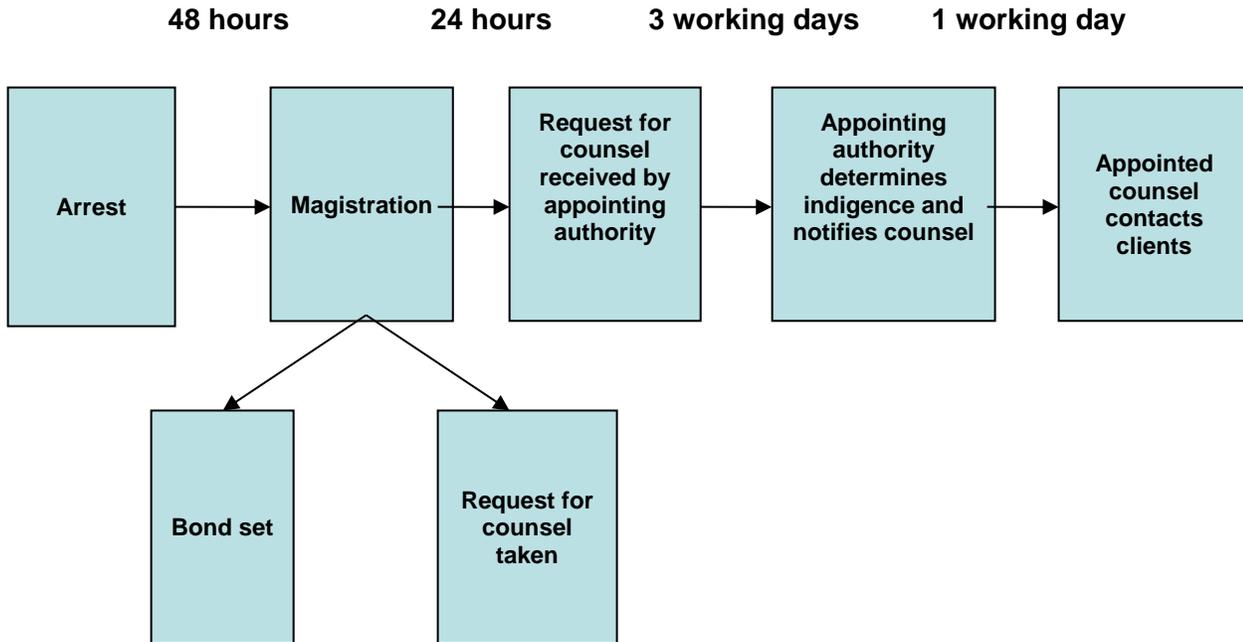
**Commendation 11:** As mandated by Section 79.036 of the Texas Government Code, the Randall County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.

**County Indigent Defense Plans**

**Commendation 12:** As mandated by Section 79.036 of the Texas Government Code, Randall County timely completed its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

## Overview of Randall County’s Indigent Defense System

Figure 1: Fair Defense Act Timeline Model for Counties with Populations Under 250,000



Adults arrested in Randall County are brought to the County Jail and receive magistrate’s warnings every morning. On weekdays, magistrate’s warnings are conducted by one of two justices-of-the-peace who ask each arrestee (for charges with a penalty level of a class B misdemeanor or higher) whether the arrestee wants to request counsel. On weekends, magistrate’s warnings are often conducted by other judges. If the arrestee requests counsel, the arrestee is asked if any assistance is needed in completing forms and is given an affidavit of indigence. Affidavits are collected by jail staff and forwarded in groups to the felony courts coordinator. The felony courts’ coordinator examines the affidavits, and if the arrestee qualifies as indigent, appoints counsel for felony arrestees. If the arrestee does not request counsel at magistration, the arrestee also has the option of making an in-court request for counsel.

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

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

**Table 1: Indigent Defense Statistics for Randall County**

| <b>Randall County</b>                               | <b>2001<br/>Baseline</b> | <b>2008</b> | <b>2009</b> | <b>2010</b> | <b>2011</b> | <b>Texas 2011</b> |
|---|--------------------------|-------------|-------------|-------------|-------------|-------------------|
| <b>Population Estimate</b>                          | 112,115                  | 117,520     | 116,957     | 120,725     | 120,725     | 25,145,561        |
| <b>Felony Cases Added</b>                           |                          | 1,123       | 993         | 1,210       | 1,133       | 269,537           |
| <b>Felony Cases Paid</b>                            |                          | 827         | 732         | 714         | 802         | 185,969           |
| <b>Felony Appointment Rate</b>                      |                          | 73.64%      | 73.72%      | 59.01%      | 70.79%      | 69.00%            |
| <b>Felony Attorney Fees</b>                         |                          | \$430,462   | \$456,970   | \$543,475   | \$606,787   | \$97,000,637      |
| <b>Total Felony Expenditures</b>                    |                          | \$516,689   | \$549,802   | \$624,417   | \$638,234   | \$109,718,251     |
| <b>Misdemeanor Cases Added</b>                      |                          | 2,318       | 2,040       | 2,153       | 1,980       | 549,929           |
| <b>Misdemeanor Cases Paid</b>                       |                          | 195         | 155         | 186         | 175         | 223,586           |
| <b>Misdemeanor Appointment Rate</b>                 |                          | 8.41%       | 7.60%       | 8.64%       | 8.84%       | 40.66%            |
| <b>Misdemeanor Attorney Fees</b>                    |                          | \$71,520    | \$58,906    | \$80,075    | \$73,435    | \$34,607,085      |
| <b>Total Misdemeanor Expenditures</b>               |                          | \$94,403    | \$67,909    | \$92,931    | \$73,494    | \$35,303,063      |
| <b>Juvenile Cases Added</b>                         |                          | 146         | 165         | 180         | 190         | 30,441            |
| <b>Juvenile Cases Paid</b>                          |                          | 130         | 161         | 146         | 150         | 53,739            |
| <b>Juvenile Attorney Fees</b>                       |                          | \$62,900    | \$71,627    | \$69,420    | \$83,763    | \$10,398,182      |
| <b>Total Juvenile Expenditures</b>                  |                          | \$67,069    | \$72,189    | \$71,876    | \$83,952    | \$11,100,633      |
| <b>Total Attorney Fees</b>                          | \$383,237                | \$610,119   | \$620,946   | \$740,215   | \$799,820   | \$148,268,608     |
| <b>Total ID Expenditures</b>                        | \$399,145                | \$731,124   | \$811,804   | \$871,662   | \$878,287   | \$198,364,999     |
| <b>Increase In Total Expenditures over Baseline</b> |                          | 83.17%      | 103.39%     | 118.38%     | 120.04%     | 123.56%           |
| <b>Total ID Expenditures per Population</b>         | \$3.76                   | \$6.22      | \$6.94      | \$7.22      | \$7.28      | \$7.89            |
| <b>Formula + Equalization Grant Disbursement</b>    |                          | \$166,526   | \$96,232    | \$57,311    | \$66,270    | \$24,874,200      |
| <b>Recoupment of Fees from Defendants</b>           |                          | \$220,513   | \$233,446   | \$317,325   | \$253,177   | \$11,793,630      |

## Program Assessment

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

### Core Requirement 1. Conduct prompt and accurate magistration proceedings.

#### Local Practices Compared to Adult Statutory Provisions

- The accused must be brought before a magistrate within 48 hours of arrest.<sup>2</sup>
  - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.<sup>3</sup>
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>4</sup>
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>5</sup>
- A record must be made of the following:
  - the magistrate informing the accused of the accused's right to request appointment of counsel;
  - the magistrate asking whether accused wants to request appointment of counsel;
  - and whether the person requested court appointed counsel.<sup>6</sup>
- If authorized to appoint counsel, the magistrate must do so within one working day after receipt of request for counsel in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>7</sup>
- If not authorized to appoint counsel, the magistrate must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours of the request being made.<sup>8</sup>

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<sup>2</sup> Tex. Code Crim. Proc. art. 14.06(a). This box is not checked because the monitor's sample of times to magistrate warnings fell below the Commission's threshold for presuming timely magistrate warnings.

<sup>3</sup> Tex. Code Crim. Proc. art. 17.033.

<sup>4</sup> Tex. Code Crim. Proc. art. 15.17(a).

<sup>5</sup> *Id.*

<sup>6</sup> Tex. Code Crim. Proc. art. 15.17(e).

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

<sup>8</sup> *Id.* This box is not check because there appears to be issues with promptly transmitting requests to the appointing authority.

## **Jurisdiction's Process**

Randall County uses centralized magistrate warnings where all arrestees in the County are brought to the Randall County Jail so that probable cause can be determined, bond can be set, and requests for counsel can be taken. Magistrate warnings are conducted by two justices-of-the-peace on a rotating basis. Other judges periodically perform magistrate warnings on weekends. The magistrate's warnings are given daily, and according to interviews, they often occur late in the morning.

## **Timeliness of Warnings**

The monitor analyzed the timeliness of magistrate warnings by examining the time from arrest to magistrate's warnings as found in the case files. Based on the data in the case files, the monitor was not able to determine the number of hours from arrest until magistration. However, the monitor was able to determine the date of arrest and the date of magistration. In this way, the monitor assumed that if magistrate's warnings occurred within two days of arrest that the warnings were timely. Similarly, if the warnings occurred more than two days after arrest, the warnings were not timely.<sup>9</sup>

**Table 2: Times to Magistration**

| <b>Randall County Time to Magistration Data</b>                    | <b>Sample Size</b> | <b>Percent</b> |
|--|--------------------|----------------|
| Magistrate warnings where time to magistration could be determined | 75                 |                |
| Magistration Occurs x days after arrest:                           |                    |                |
| 0 days   | 12                 | 16.0%          |
| 1 day  | 58                 | 77.3%          |
| 2 days   | 2                  | 2.7%           |
| <b>Timely Magistration</b>   | <b>72</b>          | <b>96.0%</b>   |
| Greater than 2 days  | 3                  | 4.0%           |

The Commission's administrative rules presume that a jurisdiction's processes ensure timely magistrate warnings if the monitor's sample is at least 98% timely. The monitor's sample was 96% timely in Randall County, and so did not fall within the Commission's threshold.

**Recommendation 1:** The monitor's sample of magistrate warnings did not fall within the Commission's threshold for presuming that a jurisdiction's processes ensure timely magistrate warnings. Randall County must implement procedures that ensure warnings are timely.

## **Handling Requests for Counsel**

The magistrate warnings are video recorded, and the record showing a request for counsel is on the video recording. The record of the request for counsel is not maintained as part of the clerk's case file, but rather as part of the sheriff's records. These records are capable of meeting reporting requirements to the Office of Court Administration (OCA), but government officials who later encounter the defendant in matters related to the arrest may not be able to ascertain whether the defendant requested counsel at magistration. According to data submitted by the justice courts to OCA for the six month period from September 2011 through February 2012, the two justices-of-the-peace gave magistrate warnings to 553 misdemeanor arrestees and 618 felony arrestees. According to this same source, 40 of the 553 misdemeanor arrestees requested counsel at magistration (7% of

<sup>9</sup> This assumption means that the 48 hour time limit is actually extended for purposes of deeming a warning late.

misdemeanor arrestees request counsel at magistration), and 129 of the 618 felony arrestees requested counsel (21% of felony arrestees request counsel at magistration).<sup>10</sup>

If the arrestee requests counsel, the magistrate asks the arrestee if he/she needs any assistance in completing the affidavit. If the arrestee indicates that he/she does not need assistance, the affidavit is given to the arrestee, and at some point, jail staff collect the completed affidavit and forward it to the felony courts' coordinator.

The felony courts' coordinator noted that she receives affidavits of indigence at irregular intervals. She does not receive affidavits on a daily basis. The affidavits are often delivered in large groups of perhaps twenty affidavits. According to her, some of these affidavits are received a week or two later than the date on the affidavit.

**Recommendation 2:** Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate.

When there is a misdemeanor request for counsel, the request is delivered to the felony courts' coordinator and she forwards it to the coordinator in County Court-at-Law #1. At the time of the monitor's visit, the adult indigent defense plan stated that Judge Anderson of County Court-at-Law #1 was the person designated to receive misdemeanor requests for counsel. However, staff in the County did not seem to be aware of this designation, and so the destination for misdemeanor requests for counsel made at magistration was unclear.

**Recommendation 3:** Misdemeanor requests for counsel made before a case filing must be directed to the person listed in the local indigent defense plan: Judge Anderson's court.

### **Observation of Magistrate's Warnings**

The monitor observed magistrate's warnings for four arrestees (one felony arrest and three misdemeanor arrests). The arrestees all received the warnings required by Article 15.17. The felony arrestee requested counsel and was given an affidavit of indigence. He stated that he did not need assistance with the affidavit. The three misdemeanor arrestees did not request counsel at the time of the warnings.

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<sup>10</sup> See <http://card.txcourts.gov/ReportSelection.aspx> for data reported to OCA. Data showing requests for counsel at the justice court level can be found under the justice court activity detail.

## **Core Requirement 2. Determine indigence according to standards directed by the indigent defense plan.** <sup>11</sup>

### **Local Indigent Defense Plan Compared to Adult Statutory Provisions**

- ☑ Provide detailed procedures used to determine whether a defendant is indigent.<sup>12</sup>
- ☑ State the financial standard(s) to determine whether a defendant is indigent.<sup>13</sup>
- ☑ List factors courts the court will consider when determining whether a defendant is indigent.<sup>14</sup>

### **Jurisdiction's Plan**

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

*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 125% 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.*

According to the plan, the accused may not meet any of the three conditions but may be considered indigent if the accused is unable to retain private counsel without substantial hardship to the accused or the accused's dependents.

**Commendation 1:** All elements required for the indigence determination standards section of the adult indigent defense plan were included in the plan.

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<sup>11</sup> The policy monitor does not evaluate this core requirement by determining whether persons applying for counsel are appropriately deemed indigent or non-indigent, but rather by examining whether the jurisdiction's indigent defense plan meets relevant statutes.

<sup>12</sup> Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>13</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>14</sup> Tex. Code Crim. Proc. art. 26.04(m).

### **Local Indigent Defense Plan Compared to Juvenile Statutory Provisions**

- ☑ Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>15</sup>
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>16</sup>
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>17</sup>

### **Jurisdiction's Plan**

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

**Commendation 2:** All elements required for the indigence determination standards section of the juvenile indigent defense plan were included in the plan.

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

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

- ☑ Establish objective qualification standards for attorneys to be on an appointment list.<sup>18</sup>
  - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.<sup>19</sup>
- ☑ Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.<sup>20</sup>

### **Jurisdiction's Process (Felony Courts):**

The monitor found that the felony courts had procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plans.

**Commendation 3:** Staff for the felony courts had procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plan.

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<sup>15</sup> Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>16</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>17</sup> Tex. Code Crim. Proc. art. 26.04(m).

<sup>18</sup> Tex. Code Crim. Proc. art. 26.04(d).

<sup>19</sup> 1 TAC §§174.1-174.4.

<sup>20</sup> Tex. Code Crim. Proc. art. 26.04(d). The monitor did not examine actual attorney applications to be on the appointment list. The box is checked because the courts clearly had appointment lists that they followed.

### **Misdemeanor Courts**

The monitor found that the misdemeanor courts had procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plans.

**Commendation 4:** Staff for the misdemeanor courts had procedures for managing the attorney appointment list and for ensuring that all attorneys on the list met their annual CLE requirements as described in the indigent defense plan.

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

- Establish objective qualification standards for attorneys for three levels of conduct.<sup>21</sup>
  - Conduct indicating a need for supervision or delinquent conduct (no TYC possible);
  - Delinquent conduct (TYC possible); and
  - Determinate sentence or discretionary transfer to criminal court proceedings have been initiated.
- Standards must require attorneys to complete at least six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period or be currently certified in juvenile law by the Texas Board of Legal Specialization.<sup>22</sup>
- Attorneys must be approved by a majority of the Juvenile Board or judges on the Juvenile Board to be placed on or removed from the appointment list.<sup>23</sup>

### **Jurisdiction's Process (Juvenile Courts):**

The monitor found that the juvenile courts had procedures for managing the attorney appointment lists and for ensuring that all attorneys on the lists met their annual CLE requirements as described in the indigent defense plans.

**Commendation 5:** Staff for the juvenile courts had procedures for managing the attorney appointment list and for ensuring that all attorneys on the list met their annual CLE requirements as described in the indigent defense plan.

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<sup>21</sup> Tex. Fam. Code § 51.102(a),(b)(2).

<sup>22</sup> 1 TAC §§174.1-174.4.

<sup>23</sup> Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d). The monitor did not examine actual attorney applications to be on the appointment list. The box is checked because the courts clearly had appointment lists that they followed.

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

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

- Incarcerated persons: After receipt of a request for counsel, counsel must be appointed within one working day in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>24</sup>
- Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.<sup>25</sup>
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>26, 27</sup>

### **Jurisdiction's Process**

#### **Felony Appointments:**

The monitor examined 78 felony cases from the district clerk's office. Sixty-one (61) of the cases were filed during FY2011 (October 2010 – September 2011). An additional 17 cases had not been filed but had activity indicating that adversarial judicial proceedings had occurred during FY2011. Of the 78 felony cases reviewed, 56 contained a determination of indigence (all resulting in appointment of counsel). Forty-three (43) of these appointments were timely (77% timely).<sup>28,29</sup> The cases that were not timely had appointments occurring between four and nine working days after the request for counsel. The monitor's sample of felony case files was below the Commission's threshold for presuming that a jurisdiction has processes in place for making timely appointments of counsel (90% timeliness threshold). The root cause of these late appointments appeared to be that there is not a process in place for promptly transmitting all requests for counsel to the appointing authority (as required by Article 15.17 of the Code of Criminal Procedure). See the following table showing the number of working days from request for counsel until appointment.

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<sup>24</sup> Tex. Code Crim. Proc. art. 1.051(c).

<sup>25</sup> Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

<sup>26</sup> Tex. Code Crim. Proc. art. 1.051(f-2).

<sup>27</sup> None of the boxes in this section are checked. The monitor found late appointments of counsel and noted that the root cause appeared to be because some requests for counsel were not promptly transmitted to the appointing authority. However, the monitor could not definitively determine that this was the sole source of late appointments.

<sup>28</sup> Files were selected in a pseudo-sequential manner where files were picked in groups of varying numbers.

<sup>29</sup> Where the time from request to appointment was unclear from the case files, the monitor presumed that the request was made on the date of appointment.

**Table 3: Times to Appointment in Felony Cases**

| <b>Randall Felony Appointment Sample Data</b>  | <b>Sample Size</b> | <b>Number from sample</b> | <b>Percent</b> |
|--|--------------------|---------------------------|----------------|
| Number of Indigence Determinations Examined    | 56                 |                           |                |
| Appointment / Denial of Indigence Occurred in: |                    |                           |                |
| 0 work days                                    |                    | 23                        | 41.1%          |
| 1 work day + 24 hour transfer                  |                    | 7                         | 12.5%          |
| 2 work days + 24 hour transfer                 |                    | 7                         | 12.5%          |
| 3 work days + 24 hour transfer                 |                    | 6                         | 10.7%          |
| <b>Timely appointments</b>                     |                    | <b>43</b>                 | <b>76.8%</b>   |
| Late Appointments                              |                    | 13                        | 23.2%          |

**Recommendation 4:** Randall County must implement processes that ensure timely appointment of counsel in felony cases.

**Misdemeanor Appointments:**<sup>30</sup>

The monitor examined 75 misdemeanor cases that were filed between January and August 2011 to determine the timeliness of indigence determinations in misdemeanor cases.<sup>31</sup> Of these 75 misdemeanor case files, nine contained a determination of indigence (all resulting in an appointment of counsel). Eight of these appointments were timely (89% timely).<sup>32</sup> The one appointment that was not timely occurred seven working days after the request for counsel. The number of determinations of indigence from the monitor’s sample was not large enough to provide strong guidance as to the portion of cases in which counsel is appointed timely.<sup>33</sup> See the following table showing the number of working days from request for counsel until appointment. Even though the monitor’s sample is less than 90% timely, the monitor is not making any recommendation to the jurisdiction regarding the timeliness of misdemeanor appointments because the sample of indigence determinations is not statistically meaningful. The monitor does have some concerns that since processes for transmitting requests for counsel to the appointing authority do not appear to be seamless that the processes for making timely appointments of counsel may not be seamless.

<sup>30</sup> In examining the timeliness of misdemeanor and felony appointments, the magistrate forms did not indicate whether the arrestee had requested counsel. The magistration form includes a space where the magistrate can check whether the arrestee is requesting counsel, but this space is not checked because the record of the request is part of the video recording. As a result, the monitor used the date on the affidavit of indigence as the date of request rather than the date on the magistration form. This has the effect of being more lenient on the county with regard to the timeliness of appointments. For instance, requests made at magistration where no affidavit was completed are not counted. Also, requests made at magistration but where the affidavit was completed at a later date are counted from the later date listed on the affidavit.

<sup>31</sup> Files were from the county clerk’s office. Files were selected in a pseudo-random fashion by picking ad hoc points and then selecting every tenth file beyond that point. This sample contained 40 cases from county court-at-law #1 and 35 cases from county court-at-law #2.

<sup>32</sup> Where the time from request to appointment was unclear from the case files, the monitor presumed that the request was made on the date of appointment.

<sup>33</sup> The monitor attempts to obtain a sample that at a minimum will provide a 95% confidence level and a 15% confidence interval of the timeliness of counsel appointments. This threshold was not achieved since only nine indigence determinations were obtained from the case file review.

**Table 4: Times to Appointment in Misdemeanor Cases**

| <b>Randall Misdemeanor Appointment Sample Data</b> | <b>Sample Size</b> | <b>Number from sample</b> | <b>Percent</b> |
|--|--------------------|---------------------------|----------------|
| Number of Indigence Determinations Examined        | 9                  |                           |                |
| Appointment / Denial of Indigence Occurred in:     |                    |                           |                |
| 0 work days  |                    | 7                         | 77.8%          |
| 1 work day + 24 hour transfer                      |                    | 1                         | 11.1%          |
| 2 work days + 24 hour transfer                     |                    | 0                         | 0%             |
| 3 work days + 24 hour transfer                     |                    | 0                         | 0%             |
| <b>Timely appointments</b>                         |                    | <b>8</b>                  | <b>88.9%</b>   |
| Late Appointments                                  |                    | 1                         | 11.1%          |

**Waivers of Counsel:**

Since the monitor was unable to determine in his sample whether defendants requested counsel at magistration, the monitor was unable to determine whether the jurisdiction had processes in place to prevent invalid waivers of counsel. If a defendant requested counsel at magistration, but the affidavit was never transmitted to the misdemeanor courts, and the defendant pled pro se, the waiver of counsel is presumed invalid under Article 1.051(f), Code of Criminal Procedure.

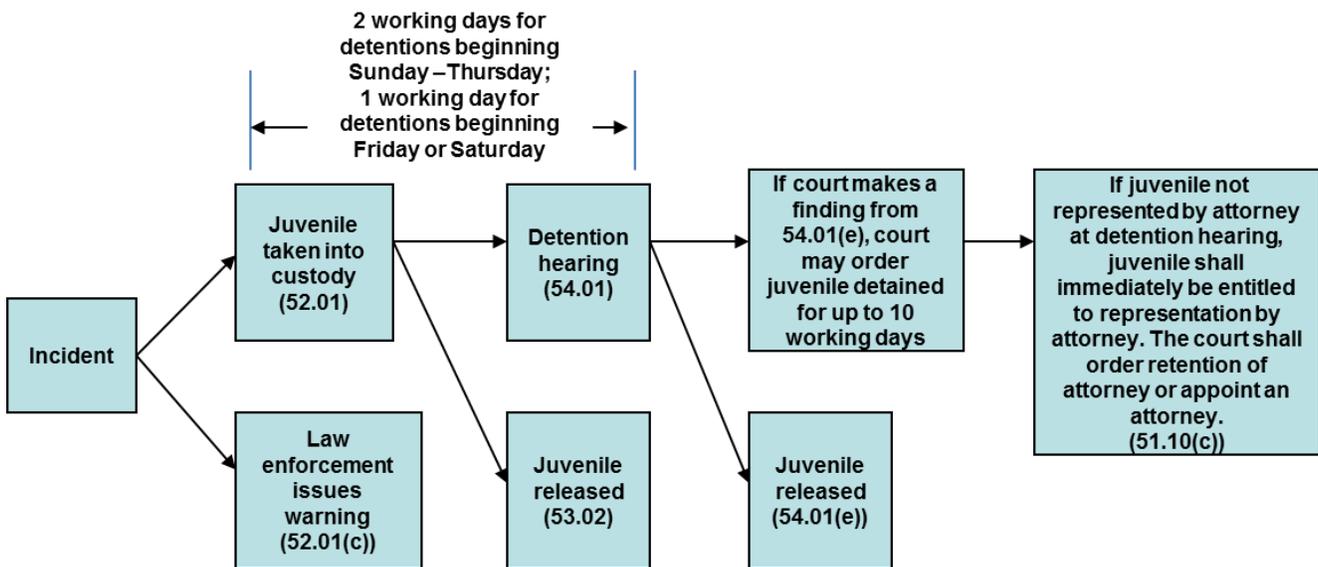
**Local Practices Compared to Juvenile Statutory Provisions**

- ❑ If the child was not represented by an attorney at the detention hearing and a determination was made to detain the child, the child shall be immediately entitled to representation by an attorney.<sup>34</sup>
- ❑ If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.<sup>35</sup>

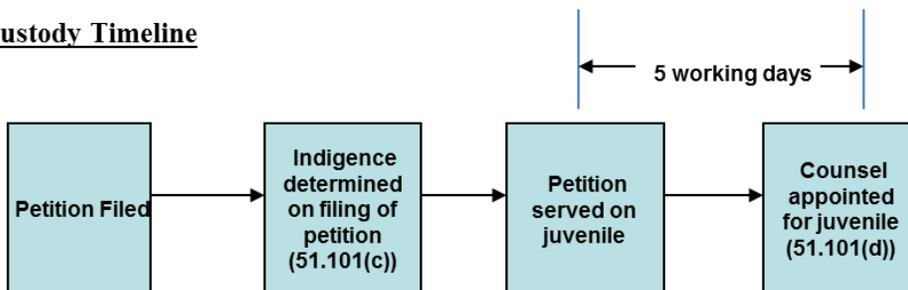
**Juvenile Appointments:**

**Figure 2: Statutory Attorney Appointment Timeline for Juveniles**  
(relevant Texas Family Code references are listed in parentheses)

**In-custody Timeline**



**Out-of-custody Timeline**



<sup>34</sup> Tex. Fam. Code § 51.10(c).

<sup>35</sup> Tex. Fam. Code § 51.101(c)-(d). The boxes in this section were not checked because the monitor’s sample of cases was less than 90% timely.

The monitor examined the timeliness of indigence determinations in instances where the juvenile was detained and in instances when a petition was served on the juvenile. To ascertain the timeliness of local processes, the monitor examined 40 juvenile case files from FY2011 (October 2010 – September 2011), observed a juvenile detention hearing, and observed the pre-hearing process for a juvenile docket.

### **Juvenile Detention Hearings**

Under Section 51.10 of the Family Code, a detention hearing may be conducted without the presence of an attorney. However, if there is a decision to detain the juvenile, Section 51.10(c) requires either an order to retain counsel or an immediate appointment of counsel. If no attorney was present for the hearing, the attorney who is subsequently appointed or retained may request a de novo hearing under Section 54.01(n) of the Family Code.

The monitor observed a detention hearing for a single juvenile. Prior to the detention hearing, a court coordinator collected the family's request for counsel. The judge reviewed the application and appointed counsel. This attorney was not present for the hearing. At the hearing, the judge made a decision to detain the juvenile, but for a period less than ten working days. This process met the requirements of Section 51.10(c).

The monitor examined 40 juvenile case files from FY2011, 25 of which contained a juvenile detention hearing with a decision to detain the juvenile. In reviewing these case files, the monitor found several instances where there was a decision to detain the juvenile but neither an order to retain counsel nor an order appointing counsel. The Commission's administrative rules presume a jurisdiction has procedures for timely appointment of counsel if the monitor's sample is at least 90% timely. The monitor's sample of detention hearing cases was 52% timely.

The root cause of the untimely appointments appeared to be the fact that appointments of counsel typically require a request for counsel to be completed prior to the appointment. In some instances those requests were either not immediately made by the parents or not immediately ruled upon by the courts. Jurisdictions that successfully ensure that appointments are timely for detention hearings either ensure that all hearings have juveniles represented by counsel or ensure that there is an appointment of counsel if the parents do not promptly make a request for counsel from the courts. In those instances where the family is later found not to be indigent, the court is free to assess the attorney's fees to the family.

**Recommendation 5:** Randall County must implement processes that ensure timely appointment of counsel when there is a decision to detain the juvenile.

### **Petitions Served on the Juvenile**

Under Section 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to appoint counsel for the juvenile. This requirement can be problematic if the court makes appointments of counsel only after receiving a request for counsel from the parents. If a court makes appointments based upon requests from the parents, the courts must quickly bring the juveniles into court and then hope that the parents attend the docket and request counsel. The monitor observed the court processes prior to the juvenile docket. Affidavits of indigence were passed to parents and collected prior to the docket. Parents were notified of whether they qualified as indigent, and if indigent, they were informed of the attorney appointed for the juvenile. The process appeared very efficient, but its timeliness was dependent upon dockets being scheduled

within five working days of service on the juvenile and upon whether the parents attended the docket and requested counsel.

The monitor examined case files to see if counsel was appointed timely for instances when a petition was served on the juvenile. The records indicated that there were several instances where appointment of counsel occurred more than five working days after the juvenile was served with a copy of the petition.

**Recommendation 6:** Randall County must implement processes that ensure timely appointment when there is a petition served on the juvenile.

See the following table for a summary of the timeliness of counsel appointment in juvenile matters.

**Table 5: Times to Appointment in Juvenile Cases**

| <b>Randall Juvenile Appointment Sample Data</b>   | <b>Sample Size</b> | <b>Number from sample</b> | <b>Percent</b> |
|---|--------------------|---------------------------|----------------|
| Number of Juvenile Case Files Examined  | 40                 |                           |                |
| <b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>  |                    |                           |                |
| Number of instances from sample where a detention hearing was conducted with a decision to detain the juvenile and the monitor could determine whether (on the day of the hearing): <ul style="list-style-type: none"> <li>• An attorney was present;</li> <li>• An attorney had been appointed; or</li> <li>• There was an order to retain counsel.</li> </ul> |                    | 25                        |                |
| <b>Number of instances where the case file indicated that there was (on the day of the hearing):</b> <ul style="list-style-type: none"> <li>• <b>An attorney was present;</b></li> <li>• <b>An attorney had been appointed; or</b></li> <li>• <b>There was an order to retain counsel.</b></li> </ul>   |                    | 13                        | 52%            |
| <b>TIMELINESS OF COUNSEL APPOINTMENTS WHEN THE JUVENILE IS SERVED WITH A PETITION</b>   |                    |                           |                |
| Petitions involving appointed counsel   |                    | 34                        |                |
| <b>Petitions filed where juvenile received counsel within 5 working days of being served:</b>   |                    | 20                        | 59%            |
| Petitions filed where juvenile received counsel more than 5 working days after being served:  |                    | 14                        | 41%            |

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

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- Rotational method: The court must appoint an attorney from among next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.<sup>36</sup>
- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.<sup>37</sup>
- Alternative appointment method:<sup>38</sup>
  - The local processes must be established by vote of two-thirds of the judges.
  - The plan must be approved by presiding judge of administrative judicial region.
  - The courts must allocate appointments reasonably and impartially among qualified attorneys.
- For a contract defender program, the county must meet contract defender standards.<sup>39</sup>

### **Jurisdiction's Process**

#### **Felonies:**

Appointments of counsel in felony cases are made through the felony courts' coordinator. The felony courts use two lists for non-capital trial-level cases: one list for state jail and third degree felony offenses and a second list for first and second degree felony offenses. Attorneys are appointed on a rotating manner according to the offense charged and the attorney's position on the appointment list. The monitor examined the distribution of FY2011 felony cases paid as received from the auditor's office and found that 68 attorneys had received payments for 786 cases in FY2011. The top seven attorneys (or top 10.3% of recipient attorneys) received 24.8% of available cases, **or 2.4 times their representative share of appointments**. This distribution of cases falls well within the Commission's administrative rules of presuming that a jurisdiction's attorney selection process is fair, neutral, and non-discriminatory. See Appendix C for a pie chart describing this distribution.

**Commendation 6:** Randall County's distribution of felony appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

#### **Misdemeanors:**

Appointments of counsel are made through each of the misdemeanor courts' respective coordinators. Attorneys are appointed on a rotating manner according to their position on the appointment list. The monitor examined the distribution of FY2011 misdemeanor cases paid as received from the auditor's office and found that 54 attorneys had received payments for 179 cases in FY2011. The top five attorneys receiving appointments (or top 9.3% of recipient attorneys) received 21.8% of available cases, **or 2.3 times their representative share of appointments**. This distribution of cases falls well within the Commission's administrative rules of presuming that a jurisdiction's

<sup>36</sup> Tex. Code Crim. Proc. art. 26.04(a). Only one of the boxes in this section needs to be met to meet statutory requirements.

<sup>37</sup> Tex. Code Crim. Proc. art. 26.044.

<sup>38</sup> Tex. Code Crim. Proc. art. 26.04(g)-(h).

<sup>39</sup> 1 TAC §§174.10-174.25.

attorney selection process is fair, neutral, and non-discriminatory. See Appendix C for a pie chart describing this distribution.

**Commendation 7:** Randall County’s distribution of misdemeanor appointments falls well within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

**Juveniles:**

Appointments of counsel are made through the juvenile court’s coordinator. Attorneys are appointed on a rotating manner according to their position on the appointment list. The monitor examined the distribution of FY2011 juvenile cases paid as received from the auditor’s office and found that 35 attorneys had received payments for 148 cases in FY2011. The top four attorneys receiving appointments (or top 11.4% of recipient attorneys) received 25.0% of available cases, **or 2.2 times their representative share of appointments**. This distribution of cases falls well within the Commission’s administrative rules of presuming that a jurisdiction’s attorney selection process is fair, neutral, and non-discriminatory. See Appendix C for a pie chart describing this distribution.

**Commendation 8:** Randall County’s distribution of juvenile appointments falls well within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

**Appointed Caseloads**

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for public defenders, which are detailed in the following table.<sup>40</sup>

**Table 6: NAC Caseload Standards**

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

The NAC caseload standards represent the maximum number of cases for each category that are recommended to be handled by a single attorney in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80 percent of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a good starting point in assessing caseloads but should not be accepted as universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by

<sup>40</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

the differences in work required by cases within a category. For example a case involving felony homicide may require significantly more work than a burglary case.

In Randall County, based on the number of cases paid by the auditor in FY2011, no attorney's appointed caseload approached the threshold established by NAC. Eighty different attorneys received a criminal or juvenile appointment, and the highest appointed caseload was about a quarter of the maximum total recommended caseload. This does not mean that no attorney exceeded the threshold as neither cases from other jurisdictions, retained cases, nor civil cases were included in this analysis. However, the fact that no attorney's appointed caseload exceeded the NAC standard could be interpreted as a sign that attorneys are mindful of their caseloads when accepting appointed cases. See Appendix D for a listing of appointed caseloads in Randall County.

**Commendation 9:** Randall County's appointment procedures appear to ensure that no attorney receives an appointed caseload in the County that exceeds national recommendations.

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

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- ☑ Payments shall be in accordance with a schedule of fees adopted by the judges.<sup>41</sup>
- ☑ No payment shall be made until the judge approves payment after submission of the attorney fee voucher.<sup>42</sup>
- ☑ If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.<sup>43</sup>
- ☑ Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.<sup>44</sup>

### **Jurisdiction's Process**

The monitor interviewed the auditor's office and the auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases. For example, based on the auditor's records for FY2011, there were 510 felony payments for 818 different felony cases.<sup>45</sup> According to the Indigent Defense Expense Report (IDER) submitted by the auditor to the Commission, Randall County made indigent defense payments in 801 non-capital felony cases and in 17 felony appeals cases (total of 818 felony cases). Since these totals are in agreement, the auditor's recording methods demonstrate a level of consistency.

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<sup>41</sup> Tex. Code Crim. Proc. art. 26.05(b). These boxes are checked because the County appears to have a standard process for attorneys to request payment and to receive only payments that were approved by the appointing judge. The monitor did not go through individual vouchers to ensure that statutory requirements were followed.

<sup>42</sup> Tex. Code Crim. Proc. art. 26.05(c).

<sup>43</sup> *Id.*

<sup>44</sup> Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).

<sup>45</sup> For purposes of the IDER, if two attorneys are paid for the same case, it is counted as two different indigent defense cases.

**Commendation 10:** The auditor’s office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

The monitor made an examination into the number of cases in which investigative or expert witness expenses were incurred for indigent defendants. The National Study Commission on Defense Services (NSC) drafted a standard for investigative expenses<sup>46</sup> using caseloads based on the NAC public defender standard (see Table 6), which calls for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. Based on the number of appointments in non-capital felony, misdemeanor, and juvenile cases in 2011, one would expect that 2.2 full-time investigators would be required to handle the investigations of indigent defense cases under the NSC standard. The number of cases with investigative expenses incurred appears to less than would be required under the NSC standard. See Table 7 and Table 8 which show the number of indigent cases with investigative and expert witness expenses incurred in 2011.

**Table 7: Percent of Cases with Investigative Expenses**

| Case Type          | Total Indigent Cases | Total Cases with Investigative Expenses | Percent of Cases having Investigative Expenses |
|--------------------|----------------------|---|--|
| Capital Felony     | 1                    | 1                                       | 100.0%   |
| Non-Capital Felony | 801                  | 12                                      | 1.5%   |
| Misdemeanor        | 175                  | 0                                       | 0.0%   |
| Juvenile           | 150                  | 1                                       | 0.7%   |

**Table 8: Percent of Cases with Expert Witness Expenses**

| Case Type          | Total Indigent Cases | Total Cases with Expert Witness Expenses | Percent of Cases having Expert Witness Expenses |
|--------------------|----------------------|--|---|
| Capital Felony     | 1                    | 0  | 0.0%  |
| Non-Capital Felony | 801                  | 9  | 1.1%  |
| Misdemeanor        | 175                  | 0  | 0.0%  |
| Juvenile           | 150                  | 0  | 0.0%  |

<sup>46</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976).

## Statutory Data Reporting

### Local Practices Compared to Statutory Provisions

- ☑ The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:
  - ☑
    - In each district, county, statutory county, and appellate court
  - ☑
    - In cases for which a private attorney is appointed for an indigent defendant
  - ☑
    - In cases for which a public defender is appointed for an indigent defendant
  - ☑
    - In cases for which counsel is appointed for an indigent juvenile
  - ☑
    - For investigation expenses, expert witnesses expenses, or other litigation expenses.

According to Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. The data is to be submitted in the form and manner prescribed by the Commission and is to include an analysis of the amount expended by the county. The auditor's office timely completed the annual indigent defense expense report and maintained supporting data.

**Commendation 11:** As mandated by Section 79.036 of the Texas Government Code, the Randall County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.

## County Indigent Defense Plans

The Fair Defense Act (FDA) requires the adoption and publication of written plans for appointment of counsel in criminal and juvenile cases. It also requires the local administrative judges and juvenile board chairman to submit these plans to the Commission no later than November 1 of each odd-numbered year pursuant to Section 79.036, Government Code. This is also a requirement to be eligible to receive grant funds from the new Commission.

**Commendation 12:** As mandated by Section 79.036 of the Texas Government Code, Randall County timely completed its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

## Conclusion

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

## **Appendix A – Adult Indigent Defense Plan**

### **Armstrong, Potter and Randall District and County Courts Plan**

#### **Preamble**

*10/6/2011*

The following plan was adopted by the District and County Court at Law Judges having jurisdiction in criminal cases in Armstrong, Potter and Randall Counties, for submission in accordance with the requirements of the Texas Fair Defense Act.

#### **Prompt Magistration**

*11/16/2009*

#### **I. Conduct Prompt and Accurate Magistration Proceedings**

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##### **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 the proper 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 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**

6/27/2011

### II. Determination of Indigence for Adults-Primary

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#### 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.

v. “CRPD” shall mean the Caprock Regional Public Defender, his office, or his Designee.

#### 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 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.

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

1. the nature of the criminal charge(s),
2. anticipated complexity of the defense,

3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the accused and the accused's dependents;
5. accused's income,
6. source of income,
7. assets and property owned,
8. outstanding obligations,
9. necessary expenses,
10. the number and ages of dependents, and
11. spousal income that is available to the accused.

iii. Factors NOT to be considered in determining indigence:

1. The accused's posting of bail or ability to post bail may not be considered in determining whether the accused is indigent.
2. The resources available to friends or relatives of the accused may not be considered in determining whether the accused is indigent.

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

C. Indigence Proceedings:

i. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:

1. Determining if accused is (or is not) indigent; or
2. Impeaching direct testimony of accused regarding the accused's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in 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 of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

### **Minimum Attorney Qualifications**

*10/6/2011*

#### **III. Minimum Attorney Qualifications for Adults (Medium Sized Counties)**

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A. The Judges hearing criminal cases shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

i. Misdemeanor Qualification Requirements:

1. All attorneys on the appointment list must ensure all information on their application is correct;
2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
3. An attorney shall complete a minimum of 6 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the court administration office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;
4. An attorney must have a minimum 1 year(s) experience in criminal law;
5. An attorney must have experience as lead counsel in at least 1 criminal case(s) tried to verdict before a jury trial(s). The styles and cause numbers of these cases should be listed in the Statutory County Court's appointment application form;
6. An attorney may not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last 1 year(s);
7. An attorney must maintain an office capable of receiving email, fax, and telephone calls;
8. An attorney must have the ability to produce typed motions and orders;
9. An attorney shall notify the court administration office promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

ii. State Jail and Third Degree Felony Case Qualification Requirements

1. An attorney must meet general requirements for misdemeanor appointments;
2. An attorney must have prior experience as 1<sup>st</sup> or 2<sup>nd</sup> chair in at least 1 criminal case(s) tried to verdict before a jury. At least 1 of the trial(s) must have been felonies. The styles and cause numbers of these cases must be listed in the District Courts appointment application form;

iii. First and Second Degree Felony Case Qualification Requirements

1. An attorney must meet the general requirements for State Jail and Third Degree Felony appointments.
2. An attorney must have 4 years experience in criminal law;
3. An attorney must have experience as 1<sup>st</sup> or 2<sup>nd</sup> chair in at least 2 felony case(s) tried to verdict before a jury. At least 2 of the trial(s) must have been felonies. The styles and cause numbers of these cases must be listed in the District Courts appointment application form.

iv. Capital Case Qualification Requirements:

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of this Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of this administrative judicial region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

v. Appeal Qualification Requirements - An attorney must meet at least one of the following criteria:

1. Be currently board certified in criminal law by the Texas Board of Legal Specialization; or
2. Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
3. Have submitted an appellate writing sample approved by a majority of the judges; or
4. Have worked as a briefing clerk of an appellate court for a period of at least one year.

B. Approval for Appointment Lists

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

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

C. Public Defender – The CRPD will be placed on the Armstrong County Misdemeanor List. The CRPD will be placed on the Armstrong County State Jail and Third Degree Felony, First and Second Degree Felony Lists upon approval of the District Court Judge.

D. Removal from Appointment List - The judges will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

E. Reinstatement to Appointment Lists

i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

F. Duties of Appointed Counsel - Appointed Counsel shall:

- i. Notify the court within 72 hours of the receipt of appointment;
- ii. Make every reasonable effort to:
  1. Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
  2. Interview the defendant as soon as practicable after the attorney is appointed;
- iii. Represent the defendant until:
  1. Charges are dismissed;
  2. The defendant is acquitted;
  3. Appeals are exhausted; or
  4. The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.
- iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
- v. Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- vi. Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- vii. Be prepared to try the case to conclusion either with or without a jury;
- viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
- ix. Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and
- x. Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case; and
- xi. Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics.
- xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

### **Prompt Appointment of Counsel**

11/1/2011

IV. Appoint Counsel Promptly for Adults (Population Less than 250,000)

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A. Prompt Appointment of Counsel

- i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court. Per *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008) and article 1.051(j) of the Code of Criminal Procedure, counsel will be appointed within three working days of request, whether the defendant is incarcerated or has been released on bond.

ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

iii. Appointment Authority

1. If no case has been filed in the trial court, the appointing authority for misdemeanors is: Judge W.F. "Corky" Roberts - Potter County; Judge James Anderson- Randall County; Judge Hugh Reed - Armstrong County.
2. If no case has been filed in the trial court, the appointing authority for felonies is: Judge Dan Schaap - Armstrong County; Judge Ana Estevez - Potter County; Judge John Board - Randall County.
3. If the case has been filed in the trial court, the appointing authority is: the judge presiding in the trial court in which the case is filed.

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

i. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

ii. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:

1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
2. Waived or has waived the opportunity to retain private counsel.

iii. The attorney representing the state may not:

1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
  - a. Has been given a reasonable opportunity to retain counsel; or
  - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

i. A defendant may voluntarily and intelligently waive the right to counsel.

ii. A waiver obtained in violation of section IV.B above is presumed invalid.

iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

"I have been advised this \_\_\_ day of \_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding

my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

## **Attorney Selection Process**

*6/27/2011*

### V. Attorney Selection Process for Adults (Rotation)

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A. The appointing authority will identify which of the appointment lists, discussed in the Section III (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:

- i. The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients’ language, if one is available;
- ii. The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
- iii. Other good cause exists for varying from the list.

B. Once appointed, an attorney’s name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney’s name appears on the list shall remain next in order on the list.

C. In Armstrong County, the CRPD will be appointed as many times as necessary to achieve adequate workload for the CRPD without exceeding its available resources.

D. Judicial Removal from Case:

- i. The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
  - 1. Counsel’s failure to appear at a court hearing;
  - 2. Counsel’s failure to comply with the requirements imposed upon counsel by this plan;
  - 3. Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
  - 4. Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
  - 5. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
  - 6. The defendant requests an attorney, other than trial counsel, for appeal; or

7. The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

E. If the CRPD's workload reaches its limit or if the CRPD faces a conflict in representing the juvenile, counsel will be appointed in a rotational manner from the attorney appointment list.

## **Fee and Expense Payment Process**

*6/27/2011*

### **VI. Fee and Expense Payment Process for Adults**

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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.

D. Section A through C above apply to assigned counsel, the CRPD shall be compensated in accordance with its budget as set by Dickens County Commissioners Court.

## **Appendix B – Juvenile Indigent Defense Plan**

### **Armstrong, Potter and Randall Juvenile Board Plan Prompt Detention Hearings**

*10/30/2009*

#### Juvenile Conduct Prompt Detention Hearing

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

### **Indigence Determination Standards**

*6/27/2011*

#### Determination of Indigence for Juveniles-Primary

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- A. Definitions, as used in this rule:
- i. “Indigent” means a person who is not financially able to employ counsel.
  - ii. “Net household income” in the case of a child is the income of the child’s parents or other person determined responsible for the support of the child. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the person determined responsible for the support of the child has no income or lesser income.
  - iii. “Household” means all individuals who are actually dependent on the child’s parent(s) or person(s) deemed responsible for the support of the child, for financial support.

iv. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

v. “CRPD” shall mean the Caprock Regional Public Defender, his office, or his Designee.

## B. Eligibility for Appointment

i. A child is presumed indigent if any of the following conditions or factors are present:

1. At the time of requesting appointed counsel, a child is presumed indigent if the child’s parent(s) or other person(s) determined responsible for the support of the child is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
2. The net household income of the child’s parent(s) or other person(s) determined responsible for the support of the child does not exceed 125 % of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
3. The child’s parent(s) or other person(s) determined responsible for the support of the child is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought; or

ii. The child who does not meet any of the standards above shall nevertheless be considered indigent if the child’s parent(s) or other person(s) responsible for the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the appointing authority shall take into account:

1. the nature of the charge(s);
2. anticipated complexity of the defense;
3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
4. the amount needed for the support of the child, the child’s parent(s)/person(s) responsible, and other dependents of the child’s parent(s)/person(s) responsible;
5. child’s parent(s’) income or the income of other person(s) determined responsible for the support of the child;
6. source of income;
7. assets and property owned by the child, child’s parent(s), or other person(s) determined responsible for support of the child;
8. outstanding obligations;
9. necessary expenses; and
10. the number and ages of any siblings of the child.

iii. Factors NOT to be considered in determining indigence:

1. The resources available to friends or relatives of the child, other than the child’s parent(s) or other person(s) deemed responsible for the child, may not be considered in determining whether the child is indigent.
2. Only the child’s parent(s) or other person(s) responsible for the child and the child’s financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

## C. Indigence Proceedings:

i. The appointing authority can require the child and the child’s parent(s) or other person(s) responsible for the child to respond to questions about the child’s household financial status,

produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.

ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:

1. Determining if child is (or is not) indigent; or
2. Impeaching direct testimony of the child or the child's parent(s)/person(s) responsible regarding the child's indigence.

iii. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules.

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

1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court. The child's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:

- a. Evidence of a material change in the child's parent(s)/person(s) responsible and the child's financial circumstances; or
- b. Additional information regarding the child's parent(s)/person(s) responsible and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.

2. If a child previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

v. If the court determines that a child's parent(s) or other person(s) responsible for the child has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the child's parent(s) or other person(s) responsible for the child to pay during the pendency of the charges or, if found to have engaged in delinquent conduct or CINS, as court costs the amount that it finds the child's parent(s) or other person(s) responsible for the child is able to pay.

## **Minimum Attorney Qualifications**

*6/27/2011*

### Minimum Attorney Qualifications for Juveniles

---

A. The Juvenile Board shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

i. General Requirements:

1. All attorneys on the appointment list must ensure all information on their application is correct;
2. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
3. An attorney shall complete a minimum of 6 hours of CLE in the area of juvenile law and procedure each year. All attorneys on the appointment list must file a certificate with the juvenile board each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in juvenile law.

Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 6 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only;

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

5. May not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last 10 years;

6. An attorney must maintain an office capable of receiving email, fax, and telephone calls;

7. An attorney must have the ability to produce typed motions and orders;

8. An attorney shall notify the Juvenile Board promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule, or under these guidelines from receiving appointments to represent indigent defendants.

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

1. Meet the General Requirements;

2. Must have a minimum 1 year of work experience in juvenile law;

3. Must have observed or participated in at least:

a. Two stipulated juvenile adjudications;

b. Two contested juvenile adjudications;

c. Two juvenile dispositions; and

d. Two detention hearings; and

4. Participated in at least one criminal or juvenile trial.

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

1. Meet General Requirements;

2. Have a minimum three years of work experience in juvenile law;

3. Participated in five criminal or juvenile cases, of which at least one was tried to a jury verdict; and

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

1. Meet General Requirements;

2. Have a minimum five years of work experience in juvenile law;

3. Participated in five criminal or juvenile cases, of which at least three were tried to a jury verdict;

4. Tried at least three criminal or juvenile case as lead counsel.

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

C. Public Defender – The CRPD will be placed on the Juvenile appointment list for Armstrong County.

D. Removal from Appointment List - The Juvenile Board will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges.

E. Reinstatement to Appointment Lists

i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan.

ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

F. Duties of Appointed Counsel - Appointed Counsel shall:

i. Notify the court within 72 hours of the receipt of appointment;

ii. Make every reasonable effort to:

1. Contact the child by the end of the first day after the date on which the attorney is appointed; and
2. Interview the child as soon as practicable after the attorney is appointed;

iii. Represent the child until:

1. The case is terminated;
2. The family retains an attorney;
3. The attorney is relieved of his duties by the court or replaced by other counsel.

iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense that may be reasonably and arguably available to the child;

v. Brief the law of the case and be prepared to present any legal defense that may be reasonably and arguably available to the child;

vi. Be prepared to negotiate with the prosecutor for the most favorable solution of the case as can be achieved through a plea agreement;

vii. Be prepared to try the case to conclusion either with or without a jury;

viii. Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;

ix. Maintain reasonable communication and keep the child informed of the status of the case; and

x. Advise the child on all matters involving the case and such collateral matters as may reasonably be required to aid the client in making appropriate decisions about the case.

xi. Perform the attorney's duty owed to the child in accordance with these procedures, the requirements of the Code of Criminal Procedure and the Family Code, and applicable rules of ethics.

xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

## **Prompt Appointment of Counsel**

Appoint Counsel Promptly for Juveniles

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A. Appointment of Counsel for Children in Detention

- i. Prior to the detention hearing the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.
- ii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.
- iii. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.
- iv. If the juvenile is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the juvenile's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain counsel by appointing an attorney to represent the child and requiring that the child's parent or other responsible adult reimburse the court for attorneys' fees.
- v. Upon appointment, the court administrator shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date.
- vi. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the first working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.
- vii. An attorney appointed for a detention hearing shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.
- viii. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

B. Appointment of Counsel for Children not Detained at Intake

- i. If the child is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that financial information may be gathered for a determination of indigence.
- ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:
  - a. The date a petition for adjudication or discretionary transfer hearing has been served on the child; or
  - b. A motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed.

- iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.
- iv. The prosecuting attorney/court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

## **Attorney Selection Process**

*6/27/2011*

### Attorney Selection Process for Juveniles (Rotation)

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- A. The appointing authority will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child and will appoint the attorney whose name is first on the list, including, for Armstrong County, the CRPD unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:
  - i. The child requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;
  - ii. The child has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case;
  - iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable; or
  - iv. Other good cause exists for varying from the list.
- B. Once appointed, an attorney's name will be moved to the bottom of the appointment list. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.
- C. The CRPD will be appointed in Armstrong County as many times as necessary to achieve adequate workload for the CRPD without exceeding its available resources.
- D. Judicial Removal from Case:
  - i. The judge presiding over a case involving a child may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
    1. Counsel's failure to appear at a court hearing;
    2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
    3. Current information about the child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;
    4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
    5. The child requests an attorney, other than trial counsel, for appeal; or
    6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child.

ii. Appointment of Replacement Counsel - Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

## **Fee and Expense Payment Process**

6/27/2011

### Fee and Expense Payment Process for Juveniles

---

A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the Juvenile Board.

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

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

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

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

2. An attorney whose request for payment is disapproved or is not otherwise acted on by the 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:

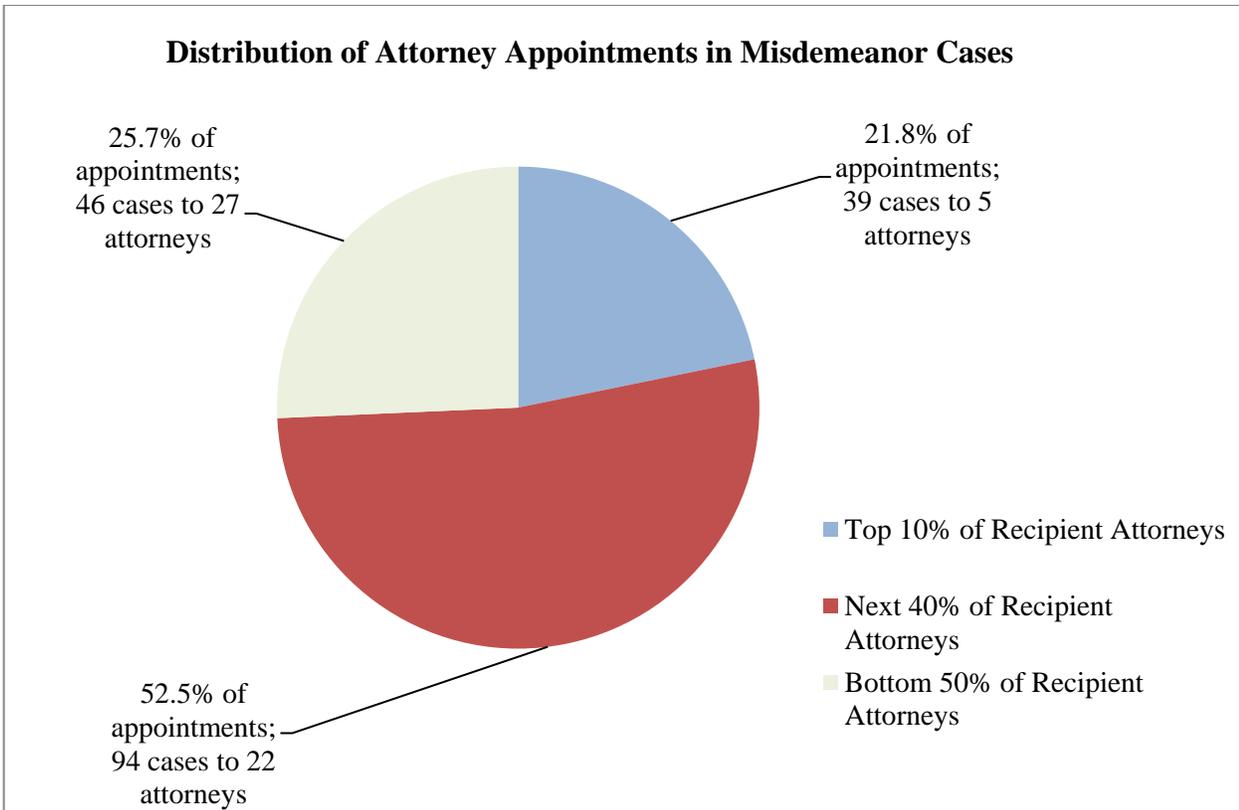
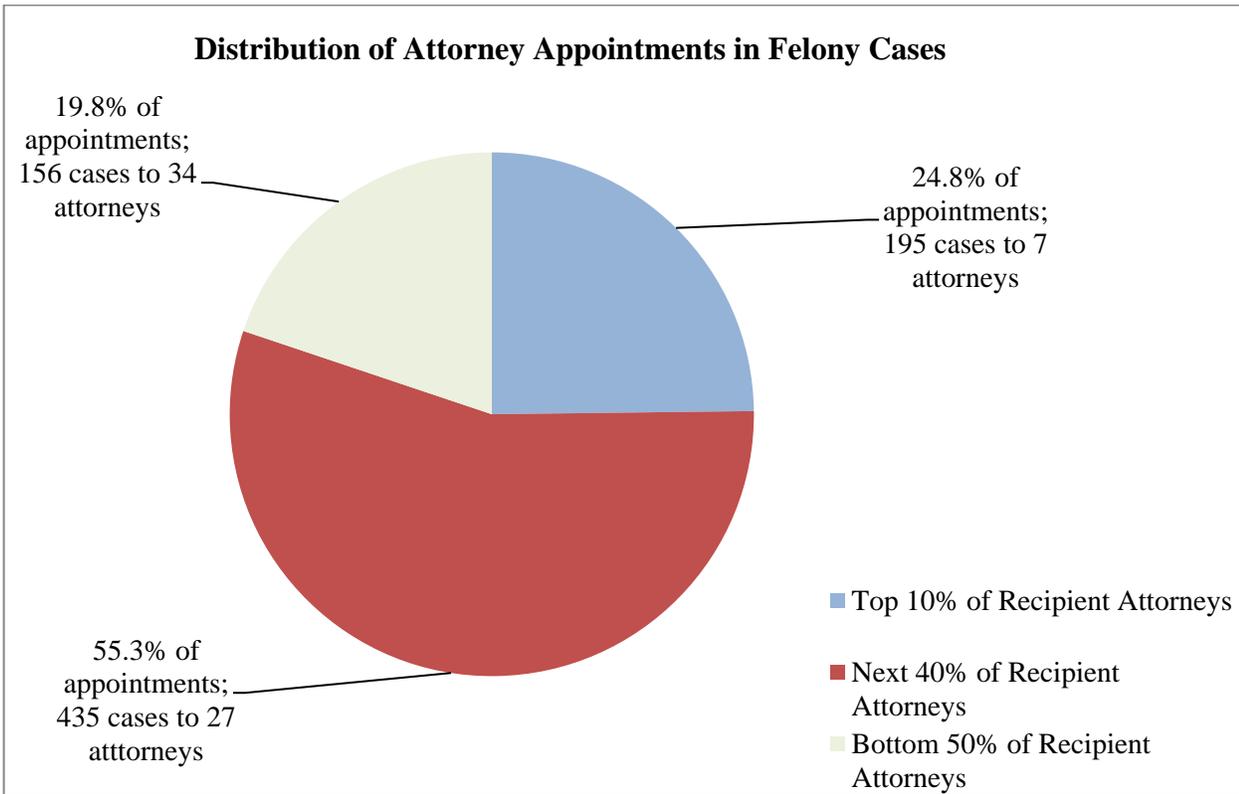
- a. State the reasons for the denial in writing;
- b. Attach the denial to the confidential request; and
- c. Submit the request and denial as a sealed exhibit to the record.

iii. Procedure Without Prior Court Approval:

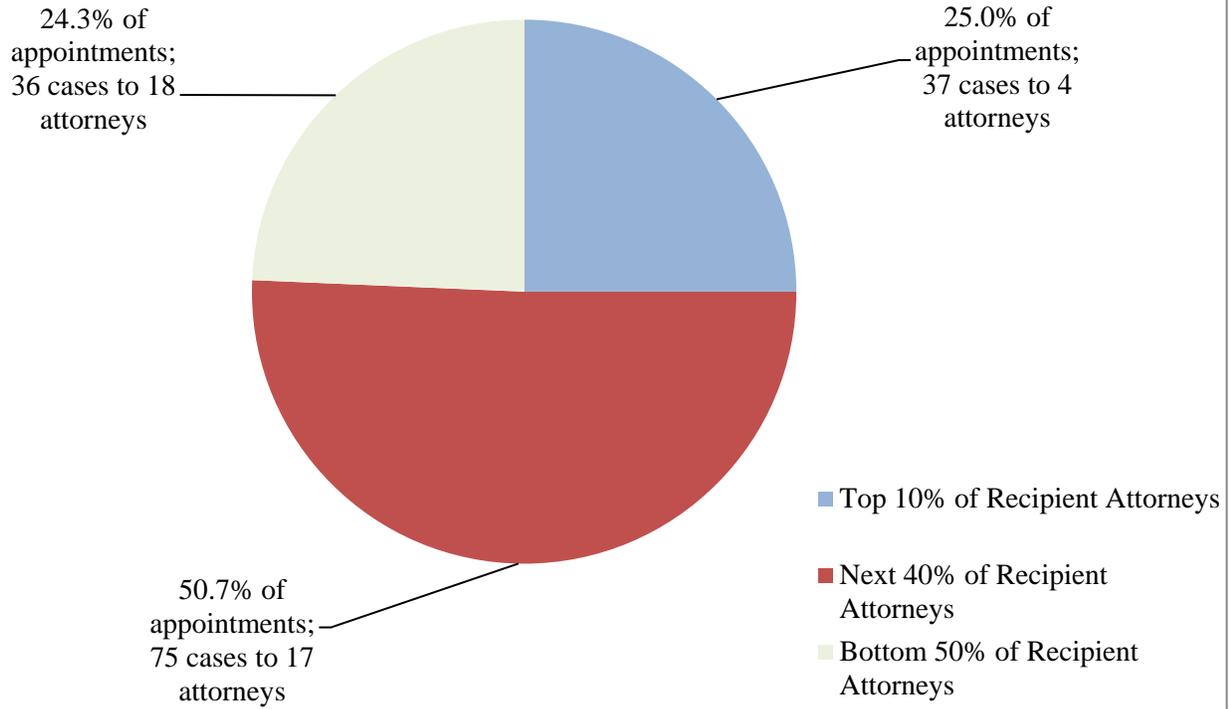
1. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

D. Section A through C above apply to assigned counsel, the CRPD shall be compensated in accordance with its budget as set by Dickens County Commissioners Court.

## Appendix C – Distribution of Attorney Appointments in Felony, Misdemeanor, and Juvenile Cases



### Distribution of Attorney Appointments in Juvenile Cases



## Appendix D – Appointed Attorney Caseloads for FY2011

| ATTORNEY                  | FELONY CASES | MISDEMEANOR CASES | JUVENILE CASES | TOTAL CASES | PERCENTAGE OF NAC CASELOAD STANDARD |
|---------------------------|--------------|-------------------|----------------|-------------|-------------------------------------|
| ABBOT, JAMES L JR         | 7            |                   |                | 7           | 4.7%                                |
| BAILEY, RUS L             | 23           | 3                 |                | 26          | 16.1%                               |
| BAKER, CARRY A            |              |                   | 8              | 8           | 4.0%                                |
| BARFIELD, W BROOKS JR     | 28           | 5                 | 2              | 35          | 20.9%                               |
| BATSON, JOSEPH D          | 10           |                   | 1              | 11          | 7.2%                                |
| BENNETT, JOHN C           | 4            |                   |                | 4           | 2.7%                                |
| BRADLEY, DAVID            | 8            |                   | 1              | 9           | 5.8%                                |
| BROWN, JOE                | 1            |                   |                | 1           | 0.7%                                |
| CANADA, MICHAEL KENT      | 9            |                   |                | 9           | 6.0%                                |
| CAREY, DARRELL R          | 22           | 4                 | 1              | 27          | 16.2%                               |
| CASTILLO, ADRIAN          | 16           | 7                 | 8              | 31          | 16.4%                               |
| CLARK, JAMES M            | 13           | 2                 |                | 15          | 9.2%                                |
| COATS, ERIC S             | 2            | 4                 | 4              | 10          | 4.3%                                |
| COURTNEY, JERRY D         | 1            |                   |                | 1           | 0.7%                                |
| CROFFORD, GRETA RAPSTINE  | 21           | 4                 | 8              | 33          | 19.0%                               |
| DENNY, STEVEN M           | 1            |                   |                | 1           | 0.7%                                |
| DODSON, CATHERINE E BROWN | 28           | 5                 | 4              | 37          | 21.9%                               |
| DODSON, CLAIBORNE B       |              | 1                 |                | 1           | 0.3%                                |
| EDWARDS, VAAVIA RUDD      | 6            | 2                 |                | 8           | 4.5%                                |
| ELDRIDGE, TATE            | 10           |                   |                | 10          | 6.7%                                |
| EVERITT, HERBERT D        | 23           | 2                 | 9              | 34          | 20.3%                               |
| FRAUSTO, TITIANA D        |              | 2                 | 3              | 5           | 2.0%                                |
| GRAHAM, JACK M            | 8            | 3                 | 6              | 17          | 9.1%                                |
| HALE, SELDEN B            | 2            |                   |                | 2           | 1.3%                                |
| HAMMONS, T D              | 27           | 11                | 12             | 50          | 26.8%                               |
| HARWOOD, GEORGE           | 27           | 8                 | 5              | 40          | 22.5%                               |
| HATTER, QUENTON TODD      | 9            | 5                 |                | 14          | 7.3%                                |
| HERRMANN, PAUL            | 8            | 1                 | 1              | 10          | 6.1%                                |
| HESTER, CHUCK             | 7            |                   |                | 7           | 4.7%                                |
| JACKSON, JOEL B           | 9            | 3                 | 5              | 17          | 9.3%                                |
| JOHNSTON, B JARRETT       |              | 3                 |                | 3           | 0.8%                                |
| JORDAN, PHILLIP LEE       | 1            |                   |                | 1           | 0.7%                                |
| KEFFLER, RICHARD A        | 10           | 6                 |                | 16          | 8.2%                                |
| KING, RICHARD LEE         | 13           |                   |                | 13          | 8.7%                                |

| ATTORNEY                | FELONY CASES | MISDEMEANOR CASES | JUVENILE CASES | TOTAL CASES | PERCENTAGE OF NAC CASELOAD STANDARD |
|-------------------------|--------------|-------------------|----------------|-------------|-------------------------------------|
| LESLEY, THOMAS L        | 19           | 1                 |                | 20          | 12.9%                               |
| LEWIS, ROBIN R          | 9            | 5                 | 5              | 19          | 9.8%                                |
| LOPEZ, MARIA G          | 22           | 4                 | 2              | 28          | 16.7%                               |
| LUCERO, LORREN L        |              |                   | 2              | 2           | 1.0%                                |
| LYNCH, JASON C          | 7            | 1                 |                | 8           | 4.9%                                |
| MARTINDALE, MATTHEW C   | 9            | 5                 | 3              | 17          | 8.8%                                |
| MCELROY, C J            | 25           | 2                 |                | 27          | 17.2%                               |
| MCKIBBEN, DALLAS        | 4            |                   |                | 4           | 2.7%                                |
| MCKINNEY, WILLIAM R JR  | 25           | 1                 |                | 26          | 16.9%                               |
| MCLAUGHLIN, JERRY D     | 6            | 5                 | 6              | 17          | 8.3%                                |
| MEREDITH, MICHAEL D     | 15           | 2                 |                | 17          | 10.5%                               |
| MORALES, JERRY ELIJAH   |              | 3                 | 3              | 6           | 2.3%                                |
| MOSLEY, JAMES           | 1            |                   |                | 1           | 0.7%                                |
| MULANEX, ERIN           |              | 3                 | 5              | 8           | 3.3%                                |
| NANCE, ROBYN N          | 6            | 2                 | 6              | 14          | 7.5%                                |
| NEVAREZ JR, NICHOLAS    |              | 4                 |                | 4           | 1.0%                                |
| NORRIS, CANDACE         | 12           | 4                 | 2              | 18          | 10.0%                               |
| PALMER, APRIL A         | 5            |                   |                | 5           | 3.3%                                |
| PECK, MAXWELL C III     | 11           |                   |                | 11          | 7.3%                                |
| PEEK, PERRY L           | 1            | 3                 | 1              | 5           | 1.9%                                |
| PERRY, RICHARD          | 1            |                   |                | 1           | 0.7%                                |
| PHIFER, GREG            | 16           | 2                 |                | 18          | 11.2%                               |
| RIRTLE, CODY M          | 7            | 6                 | 1              | 14          | 6.7%                                |
| PIRTLE, TIMOTHY G       | 8            | 7                 | 4              | 19          | 9.1%                                |
| QUCKENBUSH, JESSE L     | 1            | 2                 |                | 3           | 1.2%                                |
| RAY, LENDON E           | 19           | 2                 |                | 21          | 13.2%                               |
| RIPPY, JUSTIN           |              |                   | 2              | 2           | 1.0%                                |
| RUSSWURM, RICK          | 1            |                   |                | 1           | 0.7%                                |
| SCHMIDT, JACOB D        |              | 2                 |                | 2           | 0.5%                                |
| SCHOFIELD, DONALD FRANK | 23           | 2                 | 6              | 31          | 18.8%                               |
| SMITH, LYNDA            | 15           | 5                 | 1              | 21          | 11.8%                               |
| STEMPLE, DONALD SALE    |              | 1                 |                | 1           | 0.3%                                |
| SWINDELL, JACK          | 4            |                   |                | 4           | 2.7%                                |
| TALLEY, JOHN D          | 12           | 4                 | 5              | 21          | 11.5%                               |
| TERRY JOHN EDWARD       | 9            |                   |                | 9           | 6.0%                                |
| TURMAN, RYAN LEE        | 6            | 4                 | 7              | 17          | 8.5%                                |
| WARNER, MICHAEL PC      | 22           | 1                 |                | 23          | 14.9%                               |
| WATKINS, MICHAEL        | 22           | 6                 | 7              | 35          | 19.7%                               |

| <b>ATTORNEY</b>           | <b>FELONY<br/>CASES</b> | <b>MISDEMEANOR<br/>CASES</b> | <b>JUVENILE<br/>CASES</b> | <b>TOTAL<br/>CASES</b> | <b>PERCENTAGE OF NAC<br/>CASELOAD STANDARD</b> |
|---------------------------|-------------------------|------------------------------|---------------------------|------------------------|--|
| WEAVER, RICHARD<br>WALTON | 1                       | 1                            |                           | 2                      | 0.9%   |
| WEST, JAMES THOMAS        | 14                      | 1                            |                           | 15                     | 9.6%   |
| WILCOX, BRIAR L           | 7                       |                              | 2                         | 9                      | 5.7%   |
| WILLETT, DAVID W          |                         | 1                            |                           | 1                      | 0.3%   |
| WILLIAMSON, L VAN         | 26                      | 2                            |                           | 28                     | 17.8%  |
| WILSON, JOE MARR          | 34                      | 1                            |                           | 35                     | 22.9%  |
| WOODBURN, JOSHUA R        | 5                       | 3                            |                           | 8                      | 4.1%   |
| WOOLDRIDGE, JAMES E       | 2                       |                              |                           | 2                      | 1.3%   |

## Appendix E - Miscellaneous Notes about Misdemeanor Case File Examination

### Breakdown of Sample by Type of Counsel

| 75 Misdemeanor Cases Examined | Number from Sample | Percent of Sample |
|-------------------------------|--------------------|-------------------|
| Appointed <sup>47</sup>       | 9                  | 12.0%             |
| Retained <sup>48</sup>        | 19                 | 25.3%             |
| Pro Se <sup>49</sup>          | 47                 | 62.7%             |

### Dispositions by Type of Counsel <sup>50, 51</sup>

| <b>19 CLASS A MISDEMEANOR CASES</b>   |   |  |
|---|---|--|
| <b>11 pro se cases</b>  | <b>5 appointed counsel cases</b>                                    | <b>3 retained cases</b>  |
| 2 cases pending   | 1 case pending  |  |
| 1 case dismissed  | 1 case dismissed  |  |
| 2 cases def'd adjud. (1 for 12 month term; 1 for 18 month term)   | 2 cases def'd adjudication (1 for 6 month term; 1 for 9 month term) | 2 cases probation (both for 18 month terms)  |
| 6 cases pled to term of confinement (1 for 3 days; 1 for 15 days; 1 for 27 days; 2 for 30 days; 1 for 45 days)                                  | 1 case pled to term of confinement (270 days)                       | 1 case pled to term of confinement (60 days)   |
| <b>55 CLASS B MISDEMEANOR CASES</b>   |   |  |
| <b>35 pro se cases</b>  | <b>4 appointed counsel cases</b>                                    | <b>16 retained cases</b>   |
| 2 cases pending   |   | 1 case pending   |
| 8 cases dismissed   | 1 case dismissed  |  |
| 8 cases pled to class C offense   |   | 2 cases pled to class C offense  |
| 1 case probation (18 month term);<br>10 cases def'd adjud. (3 for 6 month term; 2 for 9 month terms; 4 for 12 month terms; 1 for 18 month term) | 1 case def'd adjud.(18 month term)                                  | 2 cases probation (both for 12 month terms);<br>5 cases def'd adjud. (1 for 6 month term; 2 for 9 month terms; 2 for 12 month terms) |
| 6 cases pled to term of confinement (2 for 3 days; 1 for 15 days; 3 for 30 days)  | 2 cases pled to term of confinement (1 for 6 days; 1 for 120 days)  | 6 cases pled to term of confinement (5 for 3 days; 1 for 6 days)   |
| <b>COMBINED CLASS A AND B DISPOSITION RATES (Removing pending cases from sample)</b>  |   |  |
| Dismissal rate – 21.4%  | Dismissal rate – 25.0%  | Dismissal rate – 0%  |
| Rate of Def'd Adjudication or Probationary Sentence – 31.0%   | Rate of Def'd Adjudication or Probationary Sentence – 37.5%         | Rate of Def'd Adjudication or Probationary Sentence – 50.0%  |
| Rate of Plea to Term of Confinement – 28.6%   | Rate of Plea to Term of Confinement – 37.5%                         | Rate of Plea to Term of Confinement – 38.9%  |

<sup>47</sup> One appointed case had a conflict of interest and new counsel was appointed.

<sup>48</sup> One retained case had counsel withdraw, and the defendant then pled pro se.

<sup>49</sup> Five of the pro se cases were still pending, and so could still be disposed with counsel.

<sup>50</sup> Type of counsel listed in this chart is the initial counsel type associated with the case.

<sup>51</sup> One case not listed in this table is a class C misdemeanor.

### **Days from Arrest to Bonding**

Of the 75 misdemeanor case files examined, the monitor could determine the days from arrest to bonding in 40 of these case files. Of the remaining 35 cases, 12 appeared to have remained in confinement until case disposition, 22 may have been arrested but did not have an arrest date in the case file, and 1 appeared to have bonded but the case file did not contain a bonding record. Where the time from arrest until the date of bonding could be determined, the time ranged from bonding on the same day as arrest to bonding eight days after arrest. The distribution is shown in the following table.

| 40 Misdemeanor Cases Where Days from Arrest to Bonding Could be Determined | Days from Arrest Until Bonding |
|--|--------------------------------|
| Minimum  | 0                              |
| 25% Quartile   | 0                              |
| Median (50% Quartile)  | 0                              |
| 75% Quartile   | 1                              |
| Maximum  | 8                              |

### **Days from Arrest to Case Filing**

Of the 75 misdemeanor case files examined, the monitor could determine the days from arrest to case filing in 52 cases. Twenty-four (24) of these cases had a case filing date occurring before the arrest date listed in the case file. Where the time from arrest until case filing could be determined, the longest time examined was 111 days.

| 52 Cases Where Days from Arrest Until Case Filing Could Be Determined | Days from Arrest Until Case Filing |
|---|------------------------------------|
| Minimum   | -144                               |
| 25% Quartile  | -14.5                              |
| Median (50% quartile)   | 1.5                                |
| 75% Quartile  | 8                                  |
| Maximum   | 111                                |

### **Days from Case Filing to Case Disposition**

Of the 75 misdemeanor case files examined, the monitor could determine the days from case filing to disposition in 68 cases (7 cases are still pending including the class C misdemeanor). A quarter of the sample cases were disposed in just over two weeks, and half of the cases were disposed in just over two months. The distribution is shown in the following table.

| 68 Misdemeanor Cases Where Days from Case Filing Until Disposition Could be Determined | Days from Case Filing Until Disposition |
|--|---|
| Minimum  | 2                                       |
| 25% Quartile   | 16                                      |
| Median (50% Quartile)  | 62                                      |
| 75% Quartile   | 131                                     |
| Maximum  | 416                                     |

## Appendix F - Miscellaneous Notes about Felony Case File Examination

### Breakdown of Sample by Type of Counsel<sup>52</sup>

| 78 Felony Cases Examined | Number from Sample | Percent of Sample |
|--------------------------|--------------------|-------------------|
| Appointed <sup>53</sup>  | 56                 | 71.8%             |
| Retained <sup>54</sup>   | 13                 | 16.7%             |
| Pro Se <sup>55</sup>     | 9                  | 11.5%             |

### Dispositions by Type of Counsel

| <b>12 First Degree Felony Cases</b>   |                                       |
|---|---------------------------------------|
| <b>7 appointed counsel cases</b> <sup>56</sup>  | <b>5 retained cases</b>               |
| 6 cases pending   | 5 cases pending                       |
| 1 case def'd adjudication (1 for 10 year term)  |                                       |
| <b>12 Second Degree Felony Cases</b> <sup>57</sup>  |                                       |
| <b>7 appointed counsel cases</b> <sup>58</sup>  | <b>2 retained cases</b>               |
| 6 cases pending   | 2 cases pending                       |
| 1 case def'd adjudication (1 for 3 year term)   |                                       |
| <b>29 Third Degree Felony Cases</b> <sup>59</sup>   |                                       |
| <b>19 appointed counsel cases</b> <sup>60</sup>   | <b>4 retained cases</b>               |
| 8 cases pending   | 3 cases pending                       |
| 9 cases def'd adjudication (4 for 2 year terms; 1 for 3 year term; 1 for 4 year term; 3 for 5 year terms);                        | 1 case probation (1 for 10 year term) |
| 2 cases probation (1 for 8 year term; 1 for 10 year term)   |                                       |
| <b>25 State Jail Felony Cases</b>   |                                       |
| <b>23 appointed counsel cases</b>   | <b>2 retained cases</b>               |
| 9 cases pending   | 2 cases pending                       |
| 13 cases def'd adjudication (1 for 9 month term; 2 for 1 year terms; 2 for 2 year terms; 4 for 4 year terms; 4 for 5 year terms); |                                       |
| 1 case probation (1 for 2 year term)  |                                       |

<sup>52</sup> Counsel type was determined by the initial type of counsel on a particular case. For instance, if a defendant initially retained counsel but later was represented by appointed counsel, the counsel type listed would be retained counsel.

<sup>53</sup> Four appointed counsel cases were later replaced by retained counsel. Three appointed counsel cases had counsel withdraw to be replaced by other appointed counsel.

<sup>54</sup> Three retained counsel cases had counsel withdraw for other retained counsel.

<sup>55</sup> Of the nine pro se cases, eight were still pending and one was dismissed.

<sup>56</sup> One appointed first degree felony case later retained counsel. This case is still active.

<sup>57</sup> Three second degree cases had pro se counsel that are not shown. Two are still pending. One was dismissed.

<sup>58</sup> One appointed second degree felony case later retained counsel. This case is still active.

<sup>59</sup> Six third degree cases had pro se counsel that are not shown. All six are still pending.

<sup>60</sup> Two cases later retained counsel. Both cases are still pending.

### **Days from Arrest to Bonding**

Of the 78 felony case files examined, the monitor could determine the days from arrest to bonding in 55 of these case files. Of the remaining 23 cases, 17 did not appear to have bonded; 2 were cases where the date of arrest could not be determined; and 4 were cases where the defendant appeared to have bonded but the date of bonding could not be determined. Where the time from arrest until the date of bonding could be determined, the time ranged from bonding on the same day as arrest to bonding 140 days after arrest. The distribution is shown in the following table.

| 55 Felony Cases Where Days from Arrest to Bonding Could be Determined | Days from Arrest Until Bonding |
|---|--------------------------------|
| Minimum   | 0                              |
| 25% Quartile  | 1                              |
| Median (50% Quartile)   | 2                              |
| 75% Quartile  | 15                             |
| Maximum   | 140                            |

### **Days from Arrest to Case Filing**

Of the 78 felony case files examined, the monitor could determine the days from arrest to case filing in 58 cases. Ten of these cases had a case filing date occurring before the arrest date listed in the case file. Where the time from arrest until case filing could be determined, the longest time examined was 111 days. The distribution is shown in the following table.

| 58 Cases Where Days from Arrest Until Case Filing Could Be Determined | Days from Arrest Until Case Filing |
|---|------------------------------------|
| Minimum   | -301                               |
| 25% Quartile  | 5                                  |
| Median (50% quartile)   | 34                                 |
| 75% Quartile  | 107.25                             |
| Maximum   | 391                                |

### **Days from Case Filing to Case Disposition**

Of the 78 felony case files examined, the monitor could determine the days from case filing to disposition in 28 cases (49 cases are still pending). The distribution is shown in the following table.

| 28 Misdemeanor Cases Where Days from Case Filing Until Disposition Could be Determined | Days from Case Filing Until Disposition |
|--|---|
| Minimum  | 0                                       |
| 25% Quartile   | 41                                      |
| Median (50% Quartile)  | 102                                     |
| 75% Quartile   | 202                                     |
| Maximum  | 400                                     |