

**Task Force on Indigent Defense**

**Review of Zavala County's Indigent Defense Systems**

**Site Visit: October 15, 2008**

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## **Introduction**

### **Task Force Background**

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

### **Goal**

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

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

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

### **Methodology**

The policy monitoring visit for Zavala County was conducted by Joel Lieurance on October 15, 2008. The policy monitor interviewed the following persons: the county auditor; a district judge; the county judge; the district attorney; the district clerk’s office; and a justice of the peace. Reviewer examined the following records:

- Jurisdiction’s indigent defense plan
- Jurisdiction’s standard magistration form
- Affidavits of indigence, orders appointing attorneys, and bonding information to determine the time from request to appointment of counsel
- Documentation showing the number of cases assigned to each attorney in order to determine whether appointments were made in a fair, neutral, and non-discriminatory manner

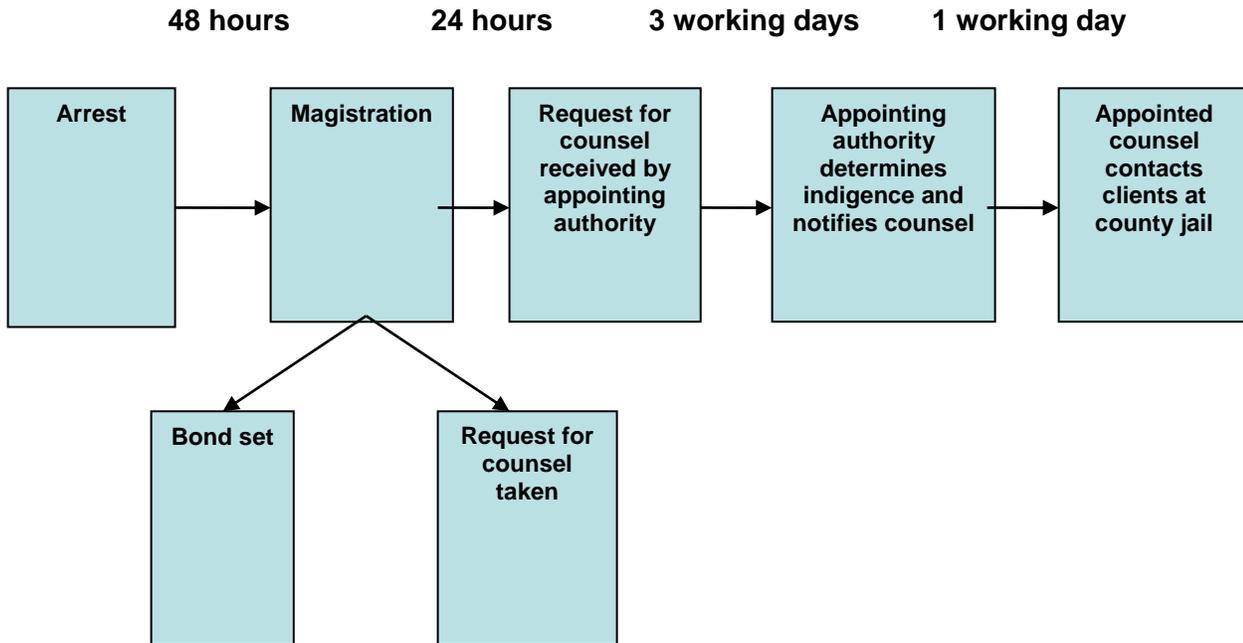
## Summary of Findings

### Areas to Address

- The County must update its magistration form to comply with Article 15.17(e) and with its indigent defense plan. The new form must state whether the individual is requesting counsel.
- Pursuant to Article 15.17, the defendant must be informed of his/her right to appointed counsel and must be asked whether or not he/she is requesting court appointed counsel. This request must be documented. The resulting determination of whether counsel is assigned or indigence denied must also be documented. Procedures for assisting with requests for counsel and for transferring these requests to the appointing authority must be established to meet the requirements of both the indigent defense plan and Article 15.17. These procedures apply to all persons receiving the Article 15.17 hearing (felonies and class A and B misdemeanors).
- A process needs to be put in place to ensure that those who have requested counsel receive a determination of indigence within statutory timelines. For bonded defendants, a process must be put in place to comply with *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008). *Rothgery* held that a criminal defendant's initial appearance before a judicial officer (typically magistration), where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself.

# Overview of Zavala County's Indigent Defense Systems

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



Persons arrested in Zavala County are booked at the Zavala County Jail. Magistrate warnings are given shortly after arrest. Generally, misdemeanor arrestees are given personal recognizance bonds. A large majority of both misdemeanor and felony arrestees make bond rather than remain incarcerated. If an arrestee does not make bond, a hearing is set where the arrestee may request appointed counsel. Counsel will then be appointed within three working days. If the arrestee makes bond, the arrestee may request counsel at the initial appearance. Once appointed, attorneys have access to the case file maintained by the district attorney. Attorneys typically are very active with indigent cases, and several motions are usually made in each case. Attorneys represent clients until final disposition of the case, and often do not request payment for services rendered.

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

Zavala County	2001 Baseline	2004	2005	2006	2007	Texas 2007
2000 population	11,600	11,600	11,600	11,600	11,600	20,851,820
Population Estimate	11,585	11,376	11,860	11,640	11,695	23,834,206
Felony Cases Added		46	52	48	47	275,597
Felony Cases Paid		12	14	16	31	178,108
Felony Appointment Rate		26.09%	26.92%	33.33%	65.96%	64.63%
Felony Attorney Fees		\$14,253.65	\$7,088.00	\$9,147.38	\$16,813.00	\$80,148,115
Total Felony Expenditures		\$14,253.65	\$7,088.00	\$9,147.38	\$16,813.00	\$91,226,590
Misdemeanor Cases Added		57	89	135	88	665,003
Misdemeanor Cases Paid		0	0	0	1	195,332
Misdemeanor Appointment Rate		0.00%	0.00%	0.00%	1.14%	29.37%
Misdemeanor Attorney Fees		\$0.00	\$0.00	\$0.00	\$150.00	\$28,428,958
Total Misdemeanor Expenditures		\$0.00	\$0.00	\$0.00	\$150.00	\$29,069,640
Juvenile Cases Added		3	2	6	not reported	50,615
Juvenile Cases Paid		1	3	2	14	58,137
Juvenile Attorney Fees		\$200.00	\$975.00	\$2,170.00	\$6,062.00	\$12,226,846
Total Juvenile Expenditures		\$200.00	\$975.00	\$2,170.00	\$6,062.00	\$13,307,973
Total Attorney Fees	\$7,856.00	\$14,453.65	\$8,063.00	\$11,317.38	\$23,025.00	\$127,212,957
Total ID Expenditures	\$7,856.00	\$15,203.65	\$8,813.00	\$12,167.38	\$23,025.00	\$161,097,259
Increase In Total Expenditures over Baseline		93.53%	12.18%	54.88%	193.09%	81.56%
Total ID Expenditures per Population	\$0.68	\$1.34	\$0.74	\$1.05	\$1.97	\$6.76
Task Force Formula Grant Disbursement		\$7,347.65	\$957.00	\$4,311.00	\$10,611.00	\$12,426,483
Recoupment of Fees		\$0.00	\$0.00	\$0.00	\$0.00	\$10,325,547

## **Quality Assessment**

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

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

- Inform and explain right to counsel to accused;
- Provide reasonable assistance to accused in completing necessary forms to request counsel;
- Maintain magistrate processing records.

### **Statutory Provisions**

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

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

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

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

[http://www.oag.state.tx.us/AG\\_Publications/pdfs/vienna\\_guidebook.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/vienna_guidebook.pdf) (*Magistrate's Guide to the Vienna Convention on Consular Notifications*).

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

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

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

### **Jurisdiction's Indigent Defense Plan**

The jurisdiction's adult indigent defense plan comports with Article 15.17 requirements for timely magistration. The jurisdiction has not submitted its standard magistration form with its indigent defense plan. This standard form must require that the magistrate mark whether the arrestee is requesting appointed counsel.

### **Adult Plan:**

#### ***2.01 Prompt appearance before a magistrate***

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

*(b) The judges of this county will work with the magistrates, prosecutors, and law enforcement agencies in the county to devise appropriate procedures for meeting the time standards set forth in Rule 2.01(a).*

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

*(d) Each time a magistrate or a judge has reasonable cause to believe that a law enforcement officer has engaged in unnecessary delay in taking a defendant before a magistrate after arrest, the magistrate or judge will inform the law enforcement officer's supervisors. In the event of repeated incidents of unnecessary delay by a law enforcement agency or officer, the judges will initiate communication with the law enforcement agency regarding corrective measures to ensure compliance with Rule 2.01(a) and with any procedures adopted pursuant to Rule 2.01(b).*

**2.02 Responsibilities of the Magistrate.**

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

- (1) The magistrate shall specifically inform the person arrested of the person's right to request appointment of counsel if the person cannot afford counsel.*
- (2) The magistrate shall specifically ask the person arrested whether the person wants to request appointment of counsel.*
- (3) The magistrate shall specifically inform the person of the procedures for requesting appointment of counsel.*
- (4) The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the time of the Article 15.17 hearing.*
- (5) The magistrate shall ensure that the above information and assistance are provided in a manner and using terminology and language that the arrested person can understand.*
- (6) If the arrested person does not speak and understand the English language or is deaf, the magistrate shall ensure that the information and assistance are provided with the assistance of an interpreter consistent with Articles 38.30 and 38.31 of the Code of Criminal Procedure.*
- (7) If a magistrate has cause to believe that a person is not mentally competent to decide whether to request counsel, the magistrate will enter a request for counsel on the person's behalf. The magistrate shall record this request for counsel in a way that alerts the person making the appointment that counsel competent to represent mentally ill defendants should be appointed.*

*(b) In each case in which an arrested person is taken before a magistrate for an Article 15.17 hearing, the magistrate will make an electronic or written record documenting:*

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

*(c) The record required under Rule 2.02 may be combined on the same form used to record the arrested person's request for appointment of counsel and to transmit that request to the person making the appointment.*

*(d) The records required under this Rule shall be maintained for the same period required for all official records of criminal court proceedings.*

**2.03 Transmittal of Request for Appointed Counsel.**

*If the person arrested requests appointment of counsel and has completed the necessary forms, the magistrate shall transmit or cause to be transmitted to the appointing judge or person(s) designated by the judges to appoint counsel the forms requesting appointment of counsel. The*

*forms requesting appointment of counsel shall be transmitted without unnecessary delay so that the person making the appointment receives the forms no later than 24 hours after the request is made.*

**Jurisdiction’s Process**

Persons arrested in Zavala County are booked at the Zavala County Jail. Magistrate warnings are given shortly after arrest. Generally, misdemeanor arrestees are given personal recognizance bonds. A large majority of both misdemeanor and felony arrestees make bond rather than remain incarcerated. If an arrestee does not make bond, a hearing is set where the arrestee may request appointed counsel. Counsel will then be appointed within three working days. If the arrestee makes bond, the arrestee may request counsel at the initial appearance.

For those persons given magistration warnings at the county jail, there is no current process to request counsel at magistration. The magistration form does not list whether the arrestee is requesting counsel, and there is no process for giving these arrestees forms necessary to request counsel at the magistration hearing. See Appendix A for the sample Zavala County magistration form in use at the time of the monitoring visit. Reviewer did not review magistration forms to check for timeliness of magistrate’s warnings.

**Recommendation:** The County must update its magistration form to comply with Article 15.17(e) and with its indigent defense plan. The new form must state whether the individual is requesting counsel.

Action Plan:

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**Contact person(s):** \_\_\_\_\_  
**Completion date:** \_\_\_\_\_

**Recommendation:** Pursuant to Article 15.17, the defendant must be informed of his/her right to appointed counsel and must be asked whether or not he/she is requesting court appointed counsel. This request must be documented. The resulting determination of whether counsel is assigned or indigence denied must also be documented. Procedures for assisting with requests for counsel and for transferring these requests to the appointing authority must be established to meet the requirements of both the indigent defense plan and Article 15.17. These procedures apply to all persons receiving the Article 15.17 hearing (felonies and class A and B misdemeanors).

Action Plan:

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Contact person(s): \_\_\_\_\_

Completion date: \_\_\_\_\_

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

**Statutory Provisions**

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

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

- (1) complete under oath a questionnaire concerning his financial resources;
  - (2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or
  - (3) complete the questionnaire and respond to examination by the judge or magistrate.
- Tex. Code Crim. Proc. art. 26.04(n).

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

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

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

A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigence or non-indigence is made, the defendant, the defendant's counsel, or

the attorney representing the state may move for reconsideration of the determination. Tex. Code Crim. Proc. art. 26.04(p).

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

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

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

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

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

### **Jurisdiction's Indigent Defense Plan**

The jurisdiction's indigent defense plans comport with Article 26.04(m) standard of indigence requirements.

#### **Adult Plan:**

##### ***3.02 Financial Standards for Determining Indigence.***

*The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant if the county.*

*(a) A defendant is considered indigent if:*

- (1) the defendant's net household income does not exceed 125% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and*
- (2) the value of the non-exempt assets and property owned by the defendant:*
  - (i) does not exceed \$2,500.00;*
  - (ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized;*
  - (iii) does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.*

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

*(c) A defendant is considered indigent if the defendant.*

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

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

### **3.03 Appointing Counsel for Partially Indigent Defendants.**

*(a) A defendant determined to be partially indigent shall be eligible for appointment of counsel. If a defendant determined to be partially indigent pleads or is found guilty, the court may order the defendant to comply with a payment schedule to reimburse the county for all indigent defense costs in the case,*

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

- (1) the defendant's net household income is greater than 125% but does not exceed 175% of the Poverty Guidelines as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register; and*
- (2) the value of the non-exempt assets and property owned by the defendant:
  - (i) does not exceed \$2,500.00;*
  - (ii) does not exceed \$5,000.00 in the case of a defendant whose household includes a person who is age 60 or over, disabled, or institutionalized; or*
  - (iii) does not exceed double the estimated cost of obtaining private legal representation on the offense(s) with which the defendant is charged.**

### **3.04 Factors Not to be Considered.**

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

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

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

#### **Statutory Provisions**

Judges of the statutory county courts are to establish an appointment list of qualified attorneys to provide representation in misdemeanor cases. Likewise, judges of the district courts are to establish an appointment list of qualified attorneys to provide representation in felony cases. The judges are to specify objective qualifications necessary to be included on the list and may establish graduated lists, according to the seriousness of the offense. Each attorney applying to be on an appointment list must be approved by a majority of the judges who try criminal cases at that court level. In a county where a public defender is used, the courts may appoint the public defender to represent defendants. Tex. Code Crim. Proc. art. 26.04(d)-(f). Attorneys accepting appointments are required to annually obtain 6 hours of criminal law continuing legal education (CLE) credit per Title 1, §174.1 of the Texas Administrative Code.

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

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

#### **Jurisdiction's Indigent Defense Plan**

The jurisdiction's indigent defense plans meet Texas Administrative Code requirements for attorney CLE hours.

#### **Adult Plan:**

##### ***4.03 Attorney Qualifications.***

*At any time, attorneys may apply to be included on one or more of the appointment lists. To be eligible for placement on each list, attorneys must have met the following minimum qualifications.*

*(a) State Jail Felony and Misdemeanor Classification. In order to be eligible for appointment to class A/B misdemeanors, state jail felonies, revocations of probation, and extraditions, the appointed attorney must*

- (1) Be currently licensed and in good standing with the State Bar of Texas, and maintain mandatory annual continuing legal education requirements;*

- (2) *Have practiced in the area of criminal and/or civil litigation for at least one (1) year;*
- (3) *Be familiar with the practice and procedure of the criminal courts of Texas.*
- (4) *Have exhibited proficiency and commitment to providing quality representation to defendants;*
- (5) *Have exhibited professionalism and reliability when providing representation to defendants;*
- (6) *Have averaged eight (8) hours a year of continuing legal education courses relating to criminal law as recognized by the State Bar of Texas, which must be completed within one (1) year of initial application and preliminary certification under these standards.*

**(b) Second and Third Degree Felony Classification.** *In order to be eligible for appointment to second and third degree felonies, the appointed attorney must*

- (1) *Have met the qualifications for appointment to State Jail Felonies and Misdemeanors;*
- (2) *Have practiced in the area of criminal law for at least two (2) years;*
- (3) *Have tried to verdict as first chair or second chair at least two (2) trials. The trials may be one of any grade felony, including state jail felonies or class A/B misdemeanors. At least one of these trials must be a jury trial.*

**(c) First Degree Felony Classification.** *In order to be eligible for appointment to first degree felonies (including enhanced felonies) and capital felonies (non-death penalty), the appointed attorney must*

- (1) *Have met the qualifications for appointment to state jail felonies and misdemeanors;*
- (2) *Have practiced in the area of criminal law for at least four (4) years;*
- (3) *Be familiar with the Texas Rules of Evidence and have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence.*
- (4) *Have tried to verdict as first chair or second chair at least three (3) trials of any grade felony. At least (2) of these trials must be jury trials.*

**(d) Mentor Classification.** *In order to be eligible to serve as a mentor to an attorney who is appointed to a criminal case of any degree felony offense, the mentor attorney must*

- (1) *Have met the qualifications for appointment to first degree felonies and non-death penalty capital murder felonies; and*
- (2) *Be willing and available to assist less experienced attorneys who have been appointed to represent criminal defendants in the preparation and/or trials of their cases.*

**(e) Appellate Classification 1.** *In order to be eligible to serve as appellate counsel for capital offenses whether or not the death penalty has been assessed and first degree felonies, the appointed attorney must*

- (1) *Have met the qualifications for appointment to state jail felonies and misdemeanors;*
- (2) *Have practiced in the area of criminal law for at least three (3) years; and*

*(3) Have filed a brief and/or argued two (2) cases before the Courts of Appeals of the State of Texas, the Texas Supreme Court, the Texas Court of Criminal Appeals, the Fifth Circuit Court of Appeals and/or the United States Supreme Court.*

*(f) **Appellate Classification 2.** In order to be eligible to serve as appellate counsel in all other felonies and misdemeanors, the appointed attorney must*

- (1) Have met the qualifications for appointment to state jail felonies and misdemeanors;*
- (2) Have filed a brief and/or argued one (1) case before the Courts of Appeal for the State of Texas, the Texas Court of Criminal Appeals, the Texas Supreme Court, the Fifth Circuit Court of Appeals and/or the United States Supreme Court; or*
- (3) Have practiced in the area of criminal law for at least two (2) years.*

*(g) **Appellate Classification 3.** In order to be eligible to serve as writ counsel in capital felonies where the death penalty has been assessed, the appointed attorney must*

- (1) Have met the qualifications for appointment to state jail felonies and misdemeanors;*
- (2) Have practiced in the area of criminal law for at least three (3) years; and*
- (3) Have filed a brief and/or argued at least one (1) case before the Courts of Appeal of the State of Texas, the Texas Supreme Court, the Texas Court of Criminal Appeals, the US District Court, the Fifth Circuit Court of Appeals and/or the United States Supreme Court.*

*(h) **Appellate Classification 4.** In order to be eligible to serve as writ counsel for all other grades of offenses, an appointed attorney for any writ of habeas corpus must have met the qualifications for appointment to state jail felonies and misdemeanors.*

#### **4.04 Approval of Attorneys by the Judges.**

*(a) The local administrative judge shall evaluate and classify all new applicants for all lists, and will approve the eligibility of those attorneys who meet the objective qualifications set forth in Rule 4.03 for placement on the appropriate list. The local administrative judge will notify the other district judge(s) and county judge of the name of the new applicant and the attorney's classification, based on the objective qualifications.*

*(b) In addition to meeting the objective qualifications described in Rule 4.03, an attorney may be placed on one or more of the felony appointment lists only if a district judge approves the attorney's placement on each such list for his/her particular court.*

#### **Juvenile Plan:**

##### **A. Public Attorney Appointment List**

*The Juvenile Courts in Dimmit, Maverick and Zavala Counties, Texas, will maintain three public appointment lists of attorneys qualified to represent indigent juveniles as follows:*

- 1. Trial Category A for those cases in which a release or transfer hearing has been requested, determinate sentence proceedings have been initiated, or in which certification proceedings have been initiated;*
- 2. Trial Category B for all other juvenile cases; and*

3. *Appellate Categories for those cases in which an appealable order or judgment has been entered.*

*Attorneys who desire to represent indigent persons shall file a sworn APPLICATION TO BE PLACED ON PUBLIC APPOINTMENT LIST FOR DIMMIT, MAVERICK AND ZAVALA COUNTIES with the Board of Judges to have his/her name approved on one more of the Public Appointments Lists, attached hereto as Exhibit "A". The Juvenile Board shall meet and approve a list of eligible attorneys for each List. A copy of each Public Appointment List shall be posted outside the County Clerk and District Clerk's Offices and available to the public upon request.*

### **QUALIFICATIONS OF APPOINTED ATTORNEYS**

#### **A. General qualifications for attorneys on all juvenile appointment lists**

1. *An attorney must be a member in good standing with the State Bar of Texas.*
2. *An attorney must have a functioning fax machine.*
3. *An attorney must have the ability to produce typed motions or orders.*
4. *An attorney must have on file with the Juvenile Board a completed application for inclusion on the juvenile public appointment list approved by the local County Juvenile Board.*
5. *An attorney shall promptly notify the Juvenile Board of any changes to the information contained in the application for the juvenile public appointment list.*
6. *An Attorney shall promptly notify the Juvenile Board of any matter that would disqualify the attorney from receiving appointments under these guidelines or any other law, regulation or rule.*
7. *An attorney must have on file with the Juvenile Board a list of continuing Legal Education (CLE) hours completed during the preceding 12 months. Attorneys seeking qualification for Categories A, B, and C are required to complete the minimum number of appropriate CLE for the trial category under which they are seeking appointments.*
8. *An attorney shall comply with any additional requirements that may be later imposed by the Juvenile Board.*

#### **B. Trial Category A**

1. *A separate master list will be maintained of attorneys who request and are approved for appointment to those cases in which a release or transfer hearing has been requested, determinate sentence proceedings have been initiated, or certification proceedings have been initiated.*
2. *All attorneys who request appointments in this category must meet the following criteria:*
  1. *have been licensed to practice law in Texas for at least three years, and*
  2. *have completed at least 6 hours Criminal Law Continuing Legal Education during the preceding year.*

#### **C. Trial Category B**

1. *A separate master list will be maintained of attorneys who request and are approved for appointment to those cases in which the allegation is delinquent conduct, and a*

*release or transfer hearing has not been requested, determinate sentence proceedings have: not been initiated, or certification proceedings have not been initiated.*

2. All attorneys who request appointments in this category must be
  - (a) qualified for appointment under Trial Category A, or
  - (b) meet the following criteria:
    1. be licensed to practice law in Texas, and
    2. have completed six hours of Criminal Law CLE during the 12 months prior to the appointment,

#### ***D. Appellate Qualifications and Appointments***

1. A separate master list will be maintained of attorneys who request and are approved for appointment to those cases in which an appealable order of judgment has been entered.
2. An attorney qualified for trial appointment for any level may receive an

#### ***E. Special Language Qualifications and Appointments***

1. Each attorney who speaks more than one language, or who can communicate using sign language, should note this fact when requesting appointment to any Public Appointment List.
2. Whenever possible, the Juvenile Court shall appoint an attorney that is capable of communicating in a language understood by the juvenile-respondent.

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

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

#### **Statutory Provisions**

An indigent defendant is entitled to have an attorney appointed to represent him/her in any adversarial judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Tex. Code Crim. Proc. art. 1.051(a). If the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not more than 24 hours after the request, transmit or cause to be transmitted to the appointing authority, the forms requesting counsel. Art. 15.17(a). For counties with a census population over 250,000, **if an indigent defendant is not released from custody prior to the appointment of counsel**, the court or court's designee shall appoint counsel as soon as possible, but **not later than the end of the first working day** after the date on which the court or the court's designee receives the defendant's request for appointment of counsel. Art. 1.051(c). **If an indigent defendant is released from custody prior to the appointment of counsel** under this section, appointment of counsel is not required until **the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.** Art. 1.051(j).

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

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

### **Jurisdiction's Indigent Defense Plan**

The jurisdiction's indigent defense plans meet the appointment time requirements set in Article 1.051.

#### **Adult Plan:**

##### ***2.04 Prompt Appointment of Counsel.***

*Counsel shall be appointed in the manner specified in Rule 4 below [Rule 4.05], as soon as possible, but not later than the end of the third working day after the date on which the appointing judge or person(s) designated by the judges to appoint counsel receives the defendant's request for counsel. "Working day" means Monday through Friday, except for official state holidays.*

##### ***3.05 Procedures for Determining Indigence***

*(a) As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, the arresting law enforcement agency shall provide each arrested person who wants to request appointment of counsel with a form approved by the judges on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arresting law enforcement agency shall provide the arrested person reasonable assistance in completing the form.*

*(b) The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person(s) designated by the judges to appoint counsel in accordance with Rules 2.03 and 4.05.*

*(c) The appointing judge or persons(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in Rule 3.02. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.*

*(d) The arrested person may be required by the magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.*

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

*(a) The local administrative judge will serve as appointing judge for all defendants charged with felonies prior to indictment, and the county judge will serve as appointing judge for defendants charged with misdemeanors. Following indictment the district judge in whose court the case is pending will serve as appointing judge for said defendant.*

*(b) The appointing judge will*

*(1) determine whether each defendant requesting appointed counsel is indigent, as provided in Rule 3;*

*(2) select and appoint the appropriate counsel to represent each indigent defendant as provided in this Rule; and*

*(3) cause all interested parties to be notified of the appointment as provided in Rule 6.*

*(c) Any appointing judge may delegate any of the responsibilities described in this Rule to a magistrate or the appointing judge's court coordinator.*

*(d) Each attorney appointed under this Rule to represent the defendant in the trial court is appointed to represent the defendant through trial and post-trial proceedings in the trial court, and until all appeals are exhausted, or until the court, after entering a finding of good cause on the record, discharges the attorney and/or substitutes the attorney with other counsel.*

#### **Juvenile Plan:**

##### **B. Appointment of Counsel for Detained Juveniles.**

*1. At the initial detention hearing, each juvenile-respondent, or parent or person responsible for each juvenile-respondent, shall be provided the opportunity to request court appointed counsel.*

*2. Upon request, or on the Court's own motion, the Juvenile Court shall appoint an attorney from the appropriate Public Appointment List using a system of rotation. The Court shall appoint the attorney from among the next five names of the Public Appointment List in the order in which the attorney's name appears on the List, unless the Court makes a finding of good cause on the record for appointing an attorney out of order. Where the juvenile-respondent has been accused of committing multiple offenses and determinate sentence or certification proceedings have been initiated for at least one of those offenses, the Court shall appoint an attorney from the List of attorneys who qualify*

*The attorney appointed from Trial Category A shall continue to represent the juvenile-respondent until the matter is concluded in Juvenile Court or concluded in Adult Criminal Court. The Court or the Court Designee shall sign an Order Appointing Counsel. The order shall be included within the juvenile respondent's file maintained by the juvenile probation department.*

*3. The Court or Court Designee shall notify the attorney of the appointment by the most expeditious means available, and provide counsel with a copy of the Order Appointing Counsel*

*and the last known location of the juvenile-respondent. If the attorney does not accept the appointment, the attorney shall immediately advise the court or the juvenile probation department and the above appointment process shall be repeated.*

*4. If the parents/custodian of the Juvenile-Respondent elect to retain counsel, they shall retain an attorney immediately. The parents shall notify the Juvenile's probation officer by noon of the next working day of the name of the juvenile's attorney. If the parents have not retained an attorney by noon of the next working day following the initial detention hearing, the probation officer shall submit a request for appointment of counsel for the detained juvenile.*

### ***C. Appointment of Counsel for Juvenile-Respondents not in Detention***

*1. If a juvenile is released prior to the initial detention hearing, the probation officer shall inform the juvenile and the juvenile's parents of the right to request a court appointed attorney. Forms to request a court appointed attorney shall be provided to the juvenile or the juvenile's parents upon request.*

*2. The Juvenile Court, upon receiving a request for a court appointed attorney, shall appoint an attorney on or before the fifth working day after the date a petition for adjudication or discretionary transfer hearing has been served on the child. Included in the summons shall be the following language: "The said Juvenile-Respondent must have an attorney. It is the responsibility of the parent(s)/guardian(s) to pay for legal expenses. However, if the parent(s)/guardian(s) are too poor to afford an attorney, one will be appointed to represent the Juvenile-Respondent and the parent(s)/guardian(s) may appear in Juvenile Court following service of this summons and present proof of indigence to the court in order to have an attorney appointed pursuant to Tex. Fam. Code § 55.101".*

*3. The Juvenile Court, upon receiving a request for a court appointed attorney, shall appoint an attorney on or before the fifth working day after the motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed. Upon request, the probation officer shall provide forms to request court appointment of an attorney to the juvenile and the juvenile's parents before referring a case to the prosecutor's office for the purpose of filing a motion to modify a juvenile's probation. The form to request court appointment of an attorney shall accompany the motion to modify when the prosecutor files the motion with the District Clerk. When the motion to modify is filed, the request for appointment of counsel shall immediately be submitted to the court. Upon receipt of the request for appointment of counsel, the court shall appoint an attorney from the public attorney appointment list and the Court Designee shall immediately notify the attorney.*

### **Jurisdiction's Process**

**Felony Appointments:** Reviewer examined 14 indigence determinations for the district courts to see if determinations were timely. The indigence determinations occurred between October, 2007 and September, 2008. Overall, timely determinations of indigence were made in 85.7% of cases where the defendant did not make bond and counsel was assigned. See the following chart for a summary table of timely appointments.

<b>Zavala Felony Appointment Sample Data</b>	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	14		
Persons bonding before requesting and receiving counsel		7	50.0%
Persons not bonding and receiving counsel		7	50.0%
Persons not bonding who received counsel (or denial) in:	7		
0 work days (often initial appearance)		5	71.4%
1 work day + 24 hour transfer		1	14.3%
2 work days + 24 hour transfer		0	0.0%
3 work days + 24 hour transfer		0	0.0%
<b>Timely appointments for persons not bonding</b>		<b>6</b>	<b>85.7%</b>
More than 3 work days + 24 hour transfer		1	14.3%

**Recommendation:** A process needs to be put in place to ensure that those who have requested counsel receive a determination of indigence within statutory timelines. For bonded defendants, a process must be put in place to comply with *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008). *Rothgery* held that a criminal defendant's initial appearance before a judicial officer (typically magistration), where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself.

Action Plan:

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**Contact person(s):** \_\_\_\_\_

**Completion date:** \_\_\_\_\_

**Misdemeanor Appointments:** Reviewer did not examine the timeliness of misdemeanor appointments. In fiscal year 2007, Zavala County reported that it had appointed counsel for misdemeanors in one case. The statewide misdemeanor appointment rate in 2007 was 29%. Like felony cases, indigent persons in misdemeanor cases are entitled to appointment of counsel. According to Rule 3.04 of the indigent defense plan, defendants who remain in custody as well as those who make bond are entitled to court appointed counsel if they qualify.

**Juvenile Appointments:** Reviewer did not examine the timeliness of juvenile appointments as only one juvenile case for fiscal year 2008 was found.

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

### **Statutory Provisions**

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

### **Jurisdiction’s Indigent Defense Plan**

The jurisdiction’s indigent defense plans are all consistent with Article 26.04 requirements regarding attorney selection process.

#### **Adult Plan:**

***4.06 Method of Appointment.*** Attorneys shall be appointed to represent indigent defendants from appointment lists using a system of rotation.

*(a) Appointments will be made from a rotating list of the names of eligible attorneys, in alphabetical order.*

*(b) The appointing judge shall make any effort to insure that an attorney will receive only one (1) defendant per rotation on the appointment list unless the attorney notifies the appointing judge that he/she is willing to represent more than one defendant per rotation; however, the appointing judge may, in his/her sole discretion, appoint any attorney to more than one defendant per rotation if the judge’s caseload, the availability of other counsel to represent the defendant, and the interests of justice so demand.*

*(c) In felony cases, an attorney may receive appointment for the highest level of offense for which he/she is qualified and for any lower level offense in which he/she has chosen to participate.*

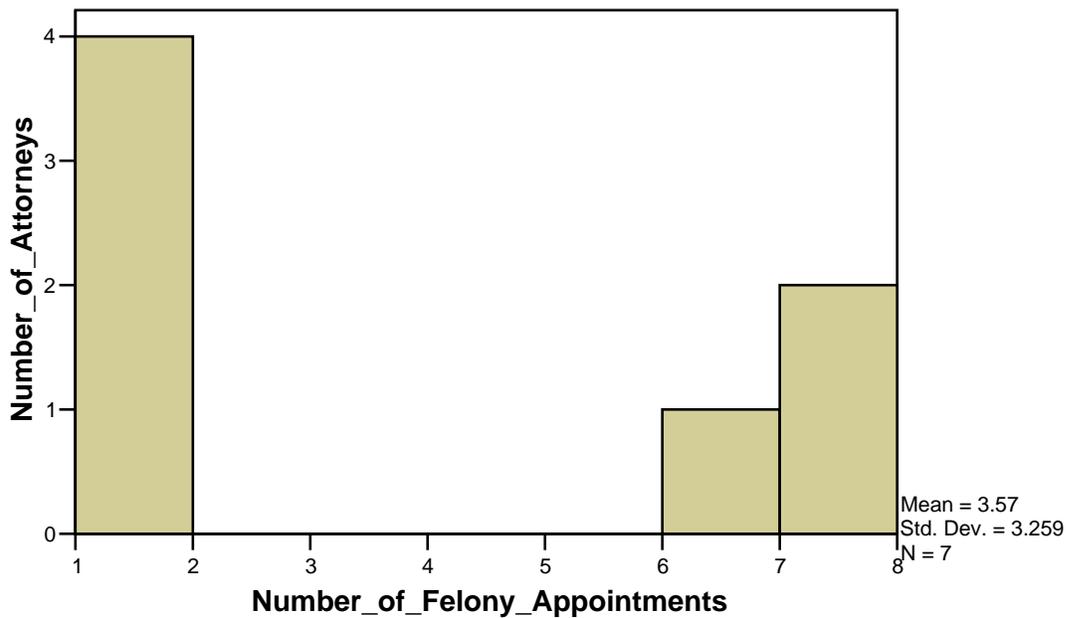
(d) In the interest of justice and to promote judicial economy, the appointing judge may, in open court, appoint any qualified attorney who is on the appointment list and who is present in court on the day that the appointment is necessary, without regard to the attorneys placement in order on the list.

**Juvenile Plan:**

Upon request, or on the Court’s own motion, the Juvenile Court shall appoint an attorney from the appropriate Public Appointment List using a system of rotation. The Court shall appoint the attorney from among the next five names of the Public Appointment List in the order in which the attorney’s name appears on the List, unless the Court makes a finding of good cause on the record for appointing an attorney out of order.

**Jurisdiction’s Process**

**Felonies:** Reviewer examined attorney appointment information from the district clerk’s office in order to find the distribution of felony appointments. Seven different attorneys received felony appointments in fiscal year 2008. The number of appointments per attorney ranged from one to eight. The top recipient of appointments (top 14.3% of recipients) received 32.0% of appointed cases, or 2.2 times their representative share. The median number of appointments was 1.0. A graph showing the distribution of felony appointments follows.



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

**Statutory Provisions**

Attorneys are to be paid a reasonable fee for the following: time spent in court making an appearance; reasonable and necessary time spent out of court on the case, supported by

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

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

### **Jurisdiction's Indigent Defense Plan**

The jurisdiction's indigent defense plans are consistent with Article 26.05's requirement for a standard attorney fee schedule and payment process.

### **Adult Plan:**

#### ***Rule 8. Attorney Fee Schedule and Compensation of Appointed Attorneys***

*8.01 In order to ensure reasonable compensation for court appointed counsel, considering the necessary overhead costs and availability of qualified attorneys will to accept the stated rates, the following guidelines shall be used to claim attorney's fees for court appointed counsel in felony and misdemeanor criminal cases, effective January 1, 2007.*

#### *(a) Compensation Rates and Requests for Payment*

*See Appendices iv and v:*

*Fee Guidelines for Appointed Counsel in Misdemeanor Criminal Cases*

*Fee Guidelines for Appointed Counsel in Felony Criminal Cases*

*(b) Court appointed counsel will be compensated for all necessary expenses, i.e., long distance telephone charges, copying expenses, and auto mileage outside of county. All major expenses, such as investigators and expert witnesses, will require written approval by the Court prior to the expense being incurred.*

*(c) Expenses incurred without prior court approval will not automatically be reimbursed. Such expenses shall be reimbursed if the Court determines that they are reasonably necessary and reasonably incurred upon representation of a claim for reimbursement.*

*(d) At the conclusion of the case, the appointed counsel shall present the completed voucher to the presiding judge for approval according to the fee schedules adopted by the District and County Judges. No payment shall be made until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge has approved payment.*

*(e) An attorney whose request for payment is disapproved is entitled to a copy of the judge's findings for approving an amount different from the requested amount. The attorney may appeal the disapproval by filing a motion with the presiding judge of the Administrative Judicial Region, as provided in Article 26.05(c) Texas Code of Criminal Procedure.*

*(f) In a felony case, upon written motion filed no later than the date of the plea agreement deadline, and for good cause shown, the judge presiding may authorize payment based on an hourly rate. The hourly rate shall be \$60-\$90 per hour for all documented in-court-time and \$50-\$80 per hour for all documented out-of-court time that is actually spent on the case that reasonable professionals would agree was objectively necessary for a qualified criminal defense attorney in the community to represent the client.*

*(g) In a misdemeanor cases claims for payment based on an hourly rate shall not be authorized except for exceptional circumstances, as approved by the county judge. A written motion must be filed prior to the plea agreement deadline documenting said exceptional circumstances. If an hourly rate is authorized, it shall be paid at the rate of \$50 per hour for all documented in-court-time and out-of-court time that is actually spent on the case that reasonable professionals would agree was objectively necessary for a qualified criminal defense attorney in the community to represent the client.*

*(h) For good cause or exceptional circumstances, an appointed attorney may request payment at an hourly rate above the rates specified in subsections (a) and (b) of this Rule, subject to review and approval by the judge presiding over the case as specified in Rule 8.02.*

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

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

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

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

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

### **Jurisdiction's Process**

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

## **Recommendations Not Included in the Quality Assessment**

### **Self-Assessment**

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

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

See Appendix B for more details.

### **Direct Electronic Filing in Criminal Cases**

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

### **Conclusion**

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

# Appendix A – Zavala Magistration Form

**MAGISTRATE WARNING  
CAUSE NUMBER**

STATE OF TEXAS

&

IN THE \_\_\_ COURT

VS.

&

CITY OF CRYSTAL CITY

&

ZAVALA COUNTY, TEXAS

Before me the undersigned magistrate in the State of Texas, on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, a peace officer, not later than 48 hours after said person was arrested, and said person was given following warning by me:

1. You are charged with the offense of \_\_\_\_\_  
( ) A misdemeanor, ( ) A Felony ( ) An affidavit charging you with this offense (has) (has not) been filed.
2. You have the right to hire an attorney to represent you.
3. You have the right to have an attorney present prior to and during any interview and questioning by peace officer or attorneys representing the State.
4. You have the right to remain silent.
5. You are not required to make a statement, and any statement you make can and will be used against you in court.
6. You have the right to stop any interview or questioning at any time.
7. You have the right to have an examining trial (felonies Only).
8. You have the right to request appointment of counsel if you cannot afford counsel.

Pursuant number 8 above, I explained the local procedures for requesting appointment of counsel in a manner the defendant could understand. I provided any necessary paperwork and reasonably assisted in its completion. I forwarded the paperwork, if any, to the appropriate authority, with out unnecessary delay, in no event more than 24 hours.

Bail is set \$ \_\_\_\_\_ ( ) Bail not determined ( ) Bail denied

I acknowledge that I was given the above warning and that I understand my rights and the procedures for requesting appointment of counsel as explain to me by the magistrate.

Magistrate \_\_\_\_\_

Place of warning: \_\_\_\_\_

Time: \_\_\_\_\_

Date: \_\_\_\_\_, 2003

Witness (if any)

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Person warned

Accused refused to sign acknowledgment of warning

Magistrate \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Remarks:

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

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

### **Self-assessment items**

#### **1. Time to magistration**

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

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

#### **2. Timely appointment of counsel**

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

appoint counsel is reached, counsel is to be appointed by the earlier of the initiation of adversarial judicial proceedings (the indictment or information) or the defendant's initial appearance (arraignment).

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

### **3. Review attorney qualifications**

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

### **4. Review attorney selection process**

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

### **5. Review indigence standards**

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

### **6. Review payment for indigent services**

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

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