

Task Force on Indigent Defense
Review of Fort Bend County's Indigent Defense Systems

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Executive Summary

In December 2010, Senator Rodney Ellis and Representative Ron Reynolds requested that the Task Force on Indigent Defense (Task Force) assess the indigent defense processes of Fort Bend County. The Task Force interviewed representatives from various departments in the criminal justice system, observed a variety of court proceedings, examined indigent defense records, and conducted a criminal defense bar survey—the results, commendations, and findings of which are presented in this report.

Fort Bend County is located southwest of Harris County (Houston) and includes the southwest portion of Houston and Katy, suburban areas in and around Sugar Land, and rural areas south of Richmond, the county seat. The 2010 US Census found that there were 585,375 residents in the County, making it the tenth largest county in Texas.¹ According to Office of Court Administration (OCA) Statistics, the County had 2,803 new felony cases, 5,592 new misdemeanor cases, and 705 new juvenile cases added to the County's dockets in FY2010 (October 2009 – September 2010).² Fort Bend County has four statutory county courts and six district courts (four of which handle criminal cases) to manage this criminal and juvenile caseload.

The Task Force review compared County procedures with the requirements of the Fair Defense Act (FDA) and found that the County has several laudable qualities. For instance, the Task Force found the Auditor's Office to have solid processes for making timely reports and for maintaining supporting data. In addition, both adult and juvenile indigent defense plans cover all core requirements of the FDA. There are sound procedures to assist arrestees with requests for counsel. The County makes use of appointment lists that separate cases that tend to be complex from cases that tend to be simple. The County further has a fair method to appoint counsel, a fair method to pay appointed counsel, and utilizes a mental health public defender office to represent persons with special needs. Each of these admirable practices contributes to providing effective representation for the poor. The Task Force would like to praise Fort Bend officials for their commitment to indigent defense and concern for ensuring that those in need are provided with their constitutionally protected right to representation.

While the Task Force identified several praiseworthy local practices, the Task Force also identified areas where the County must implement changes in order to be fully compliant with the FDA. The FDA statutorily requires judges to adopt and publish countywide procedures governing indigent defense. The procedures should be designed to create uniformity across courts for a given jurisdiction within each county. The procedures set qualifications for attorneys who apply to be on the appointment list, financial standards for determining indigence, a methodology for appointing counsel timely, and a standard payment process. As noted above, the County has developed indigent defense plans, but the indigent defense plans do not include all indigent defense practices that are carried out in the County.

In addition, not all indigent defense practices that are utilized in Fort Bend County comply with either the local plan or the FDA. The Task Force's primary areas for concern are summarized in the Key Findings section of the report. The general theme from these findings is that the County must examine certain indigent defense practices and must either improve existing procedures or implement new countywide procedures to manage the requirements of the FDA. The areas where the County has an opportunity for improvement include the following: provide prompt magistration;

¹ US Census Bureau, data available at <http://2010.census.gov/2010census/data/>.

² Office of Court Administration, data available at <http://www.dm.courts.state.tx.us/oca/reportselection.aspx>.

make indigence determinations that are in line with statute, case law, and the local indigent defense plan; appoint counsel that is from the approved appointment list; and make timely appointments of counsel for both adults and juveniles.

To summarize, Fort Bend County has put in place many admirable local practices that safeguard the interests of indigent defendants. Fort Bend County must also revise certain practices in order to meet the requirements of the FDA. Fort Bend County officials appear willing to make essential changes. As mandated by statute, we will monitor the County's transition and process improvements regarding Task Force findings.

Key Findings

To review a complete list of all commendations and recommendations, see Appendix H. Below are key findings that are discussed in the body of the report.

Statutory Data Reporting

According to Section 71.0351(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 Task Force. 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. Fort Bend County provided the required expense data, but was unable to separate appellate cases from trial cases and was unable to provide data concerning cases in which the attorney-of-the-day was appointed. In the future, the County must submit required information, but to do so will require process changes that go beyond the auditor.

Prompt and Accurate Magistration

Article 15.17(a) of the Code of Criminal Procedure guarantees the right to a hearing before a magistrate within 48 hours of arrest. At the hearing an arrestee is to be asked if he/she requests counsel, and there is to be a record made of whether the arrestee requested counsel. Fort Bend County handles all magistrate warnings at the Fort Bend County Jail. The magistrate warnings occur daily at about 10 A.M. Prior to the magistrate warnings, a prosecutor reviews all probable cause affidavits. Among other things, the monitor concluded:

- The monitor's sample indicated that the median time from arrest until magistration (felony and misdemeanor arrests combined) was 20 hours 42 minutes.
- The monitor's sample of magistrate warnings was over 97% timely.
- The process provides adequate, clear and comprehensive information regarding the right to court appointed counsel;
- Based on the monitor's sample, 59% of misdemeanor arrestees request counsel and 62% of felony arrestees request counsel from the magistrate.

Determine Indigence According to Standard Set in the Indigent Defense Plan

The Fort Bend County Indigent Defense Coordinator handles indigence determinations for adults who request counsel prior to a court appearance and for in-court felony requests. While the misdemeanor judges' practices vary, the judges themselves often handle indigence determinations for in-court misdemeanor requests. The juvenile judges handle indigence determinations for juveniles who request counsel. The standard of indigence is a net household income test based upon an income of 125 percent of the federal poverty guidelines. The application of the net income test appears to vary by court. The monitor observed one county court in which the standard was interpreted to include the parental income of an adult defendant. The monitor also observed a process that deemed bonded misdemeanor defendants not to be indigent (regardless of whether the defendant posted the bond or another person posted bond for the defendant). *Abdnor v. State*, 712 S.W.2d 136 (Tex. Crim. App. 1986) restricts the persons that may be considered in indigence determinations to the persons who are legally bound to pay for the defendant's expenses. Regarding the use of whether a defendant bonded, Article 26.04(m) notes that the courts may not consider whether the defendant has posted or is capable of posting bond, except to the extent that it reflects the defendant's financial circumstances. The County's adult indigence determinations must fall in line with Article 26.04(m) and may neither consider the income of persons other than the defendant and the defendant's spouse, nor consider whether the defendant has posted bond, except to the extent that it reflects that defendant's financial circumstances.

The misdemeanor courts utilize an attorney-of-the-day to speak to defendants who do not have counsel and to handle matters that require in-court action on docket days. When the attorney-of-the-day represents defendants, there is no advance preparation on the part of the attorney. Article 1.051 notes that the right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.

Minimum Attorney Qualifications

The Fort Bend County judges generate and maintain a list of qualifications to determine attorney eligibility to take assigned cases. The monitor found that four attorneys on the juvenile list had not submitted their annual CLE requirements to the County; therefore, the County had no record that they met the minimum State requirements to receive appointments as established by Task Force administrative rules. The County must implement procedures so that only attorneys who meet minimum State requirements are eligible to receive appointments.

Timely Appointment of Counsel

For adults, Articles 1.051(c) and 1.051(j) require that indigence be determined and counsel appointed within one working day of the request (plus 24 hours allowed to transmit the request to the appointing authority). The monitor's sample showed that counsel was appointed timely in 81% of misdemeanor cases and in 80% of felony cases. Fort Bend County must ensure that counsel is appointed to misdemeanor and felony defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

For juveniles, Section 51.10(c) of the Family Code requires that if a juvenile does not have counsel at a detention hearing that counsel be immediately appointed if there is a decision to detain the juvenile beyond the detention hearing. If a petition is filed by the prosecutor, counsel must be appointed within five working days from the date the petition was served to the juvenile. Fort Bend County does not appear to have a process to inform parents of the right to counsel or to regularly appoint counsel for juveniles at the initial detention hearing. When the juvenile was served with a petition, the juvenile probation review of case files indicated that counsel was timely appointed in 80% of cases. Task Force recommendations include:

- As required by Section 54.01(b) of the Family Code, the juvenile court must inform the parent of the child's right to counsel and to appointed counsel if indigent. The court may not make an exception to this right regarding the initial detention hearing, but may explain that the right to appointed counsel does not attach prior to the initial detention hearing.
- Fort Bend County must put in place a system to appoint counsel to juveniles either before the detention hearing or immediately after the detention hearing according to Section 51.10 of the Family Code.
- Section 51.101 of the Family Code requires that if an attorney is appointed for a detention hearing that the attorney continues the representation until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. If an attorney is appointed for a detention hearing, the attorney must continue to represent the juvenile until one of the three conditions of Section 51.101 is met.
- The juvenile courts must appoint counsel within five working days from the date the petition was served on the juvenile as required by Section 51.101(d) of the Family Code.

Fair, Neutral, and Non-Discriminatory Selection

Article 26.04(a)-(b) of the Code of Criminal Procedure and the local indigent defense plans require that a court appoint an attorney from a public appointment list. Article 26.04(b) requires that the appointments are allocated among qualified attorneys in a fair, neutral, and non-discriminatory manner. Under Task Force rules, a county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of

proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10 percent of recipient attorneys does not exceed three times their representative share (i.e., 30% of appointments). In reviewing Fort Bend County's policies, the monitor found:

- Juvenile and misdemeanor attorneys who did not appear on the public appointment list were appointed to represent indigent clients. The County must make all appointments from a public appointment list.
- When excluding appointments to attorneys not approved to be on an appointment list, all court levels had appointment distributions that fell within the Task Force thresholds that presume fair, neutral, and non-discriminatory appointment systems.
- Of the 184 attorneys who received payment for criminal or juvenile appointments in FY2010, no attorneys had appointed caseloads that exceeded those recommended by National Advisory Commission on Criminal Justice Standards and Goals (NAC) standards for total caseloads.¹

Continuing Responsibilities of the Attorney to the Client

Once appointed to represent the defendant, counsel is to represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by counsel after a finding of good cause is entered on the record. Article 26.04(j)(2) does not provide a process for appointed counsel to be appointed to a defendant with the purpose that the representation be only for a single hearing and without the possibility of representation through case disposition. Fort Bend County currently uses limited scope misdemeanor representation of defendants (only for the term of a docket) through an attorney-of-the-day. The use of attorneys-of-the-day must be consistent with Article 26.04(j)(2) and documented in the indigent defense plan.

Fee Schedules and Payment Processes

Article 26.05 sets rules governing the indigent defense payment processes. Attorneys are to be paid a reasonable fee for time spent in court and reasonable and necessary time spent out of court, supported by proper documentation. A fee schedule is to govern these payments, taking into account reasonable and necessary overhead costs. No payment is to be made to the attorney unless the judge approves the payment. If the judge disapproves the requested amount, the judge must make written findings that state the amount of payment and the reasons for any disapproval. An attorney whose request for payment is disapproved may appeal the disapproval. Counsel is to be reimbursed for reasonable and necessary investigation and expert witness fees. Expenses incurred without prior court approval must be reimbursed if the expenses were reasonably necessary and reasonably incurred.

In reviewing Fort Bend County's payment processes, Task Force findings include:

- Fort Bend County's use of an hourly payment system encourages attorneys to perform the work necessary for an appointed case rather than a cursory amount of work to dispose a case.
- The vast majority of fee vouchers met Article 26.05 requirements regarding indigent defense payments.
- The County's use of court-appointed investigators is less than predicted by the National Study Commission on Defense Services (NSC). Based on FY2010 data obtained from the auditor's office, court-appointed investigators were used in no misdemeanor cases paid, less than two percent of felony cases paid, and in less than one percent of juvenile cases paid.

¹ National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

Task Force Background

In January 2002, the Texas Fair Defense Act (FDA) became effective after its passage by the 77th Texas Legislature in 2001. The FDA established an organization, the Texas Task Force on Indigent Defense (Task Force), to oversee the provision of indigent defense services in Texas. The mission of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct. The Task Force assists counties to provide quality representation in a cost-effective manner that meets the needs of local communities and the requirements of state and constitutional laws. The Task Force is given a directive under Tex. Gov't. Code Section 71.062(b) to monitor local jurisdictions' compliance with the 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 to develop 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 to complete 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.

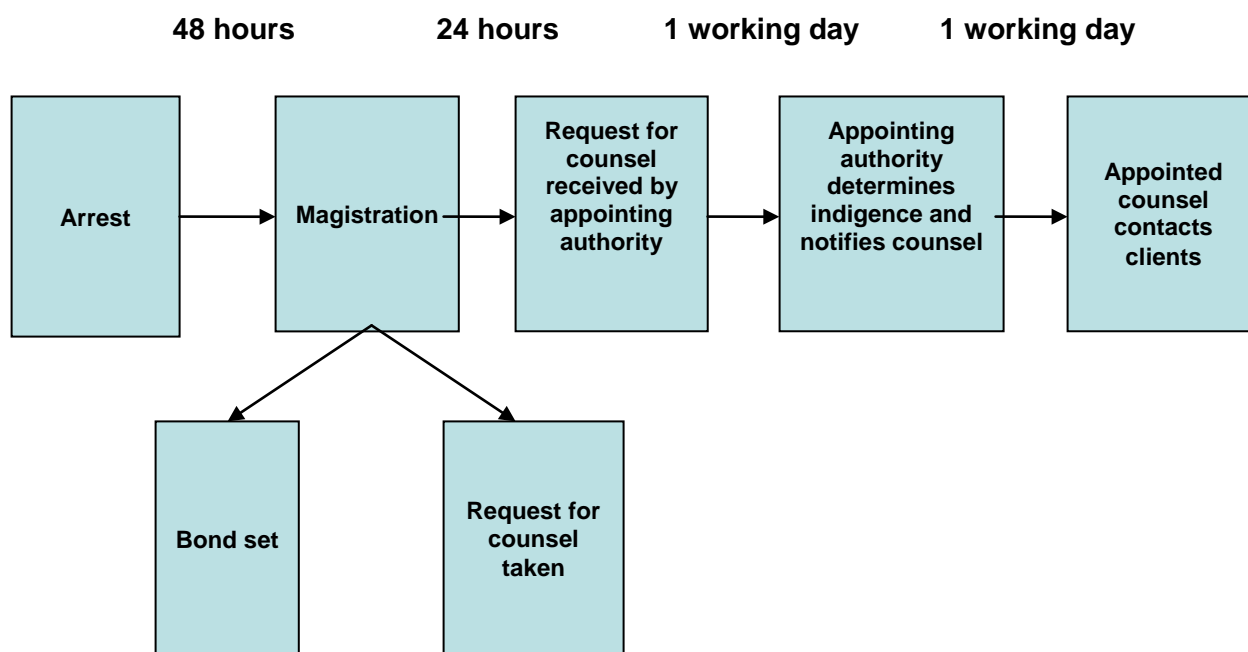
Methodology

Senator Rodney Ellis and Representative Ron Reynolds requested that the Task Force conduct a review of Fort Bend County's indigent defense processes on December 16, 2010 (see Appendix A). The legislators submitted a list of questions for the Task Force to assess. The Task Force approached this review and report in a manner similar to other monitoring reports conducted by the Task Force. The questions posed to the Task Force are answered in the report according to the section that is most relevant to each question.

The Task Force review team consisted of Jim Bethke (Executive Director), Jennifer Willyard (Grant Program Specialist), and Joel Lieurance (Policy Monitor). The review team made five visits to the County between January and April 2011. In an attempt to document local processes for managing the requirements of the FDA, we interviewed representatives from various departments in Fort Bend County's criminal justice system, observed court dockets, conducted a criminal defense bar survey, and examined records related to indigent defense. The groups interviewed by the review team included: district court judges; statutory county court judges; the county auditor's office; the indigent defense coordinator's office; multiple defense attorneys; the mental health public defender; county magistrates; the district attorney's office; the sheriff's office; the district clerk's office; the county clerk's office; and the juvenile probation office. The records examined included: the district clerk's files; the county clerk's files; juvenile case files (reviewed by the juvenile probation office); sheriff's office case files (including the time and date of arrest with the corresponding magistration form); the jurisdiction's indigent defense plan; and data that demonstrated indigent defense expenses and corresponding cases as reported by the auditor's office.

Overview of Fort Bend County's Indigent Defense System and Case Filing Practices

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



Fort Bend County has 19 local arresting agencies. All arresting agencies send their inmates to the Fort Bend County Jail, although some municipalities may hold inmates in their local jail for a few hours. Arresting agencies immediately send probable cause affidavits to the jail where the affidavits are reviewed by a prosecutor. An off-hours prosecutor is available to help police officers process cases. If there is a problem with or insufficient information in a probable cause affidavit, the prosecutor calls the law enforcement officer regarding the affidavit. In only a small percentage of cases do prosecutors call officers to address issues with probable cause affidavits. When there is a problem, it is typically with the form of the affidavit rather than substance. The prosecutor makes a bond recommendation for each affidavit.

Article 17.033 of the Code of Criminal Procedure requires that a probable cause hearing occur within 24 hours of arrest for misdemeanors and within 48 hours of arrest for felonies. The probable cause hearing is typically done concurrently with other magistrate duties including setting bond and taking requests for counsel. The combined hearing is called magistration. This hearing is usually the arrestee's initial chance to request counsel.

Magistration occurs daily at the jail at about 10:00 A.M. The magistrate will make a probable cause finding, set bail, and perform the warnings described in Article 15.17 of the Code of Criminal Procedure. The magistrate will only perform these steps for persons brought to him after the probable cause affidavit has been reviewed by a prosecutor. Persons arrested before midnight will likely receive magistrate's warnings in the morning. Persons arrested after midnight will likely receive magistrate's warnings on the following day. Misdemeanor arrestees can sometimes bond before seeing a magistrate, with Class A pre-set bonds of \$750 and Class B pre-set bonds of \$500.

When magistrates set bond, the new bond takes precedence over the pre-set bond. Bond amounts set by magistrates as seen from the review of case files are shown in the table that follows.¹

Table 1: Sample Bond Amounts Grouped by Offense Level

	1 st Degree Felony	2 nd Degree Felony	3 rd Degree Felony	State Jail Felony	Class A Misdemeanor	Class B Misdemeanor
Minimum	\$5,000	\$2,500	\$500	\$500	\$500	\$200
25% quartile	\$25,000	\$10,000	\$5,000	\$4,000	\$750	\$500
Median (50% quartile)	\$50,000	\$15,000	\$10,000	\$5,000	\$1,000	\$500
75% quartile	\$62,500	\$25,000	\$16,250	\$7,500	\$2,000	\$500
Maximum	\$300,000	\$125,000	\$80,000	\$50,000	\$20,000	\$10,000

Based upon sample statistics, 85% of misdemeanor arrestees and 66% of felony arrestees make bond.² Arrestees who make bond typically do so shortly after arrest. The median time for misdemeanor arrestees to bond was one day after arrest and for felony arrestees was 2.5 days after arrest. Only 6% of misdemeanor arrestees who made bond did so later than five working days after arrest. This figure is a sign that the jail population is closely monitored so that low-risk arrestees do not spend unnecessary time in jail. When arrestees did post bond, 9.5% of misdemeanor arrestees had their bonds revoked and were re-apprehended; 15% of felony arrestees had their bonds revoked and were re-apprehended.

One way that the County manages its jail population is through jail dockets for non-bonding defendants. The dockets are conducted by the same two associate judges that handle magistration. The magistrates are familiar with the jail population, and persons who do not make bond will attend a weekly docket. The magistrates regularly set personal recognizance bonds (PR bonds) at these hearings as well as dispose cases.

Many misdemeanor offenses do not involve an arrest. Instead, a summons may be issued for cases such as theft by check. This practice allows non-violent offenders to dispose their cases without burdening the jail. This is a benefit for both the defendant and the County.

Requests for counsel made at magistration are handled by the indigent defense coordinator. Counsel is generally but not always appointed timely. According to interviews, reasons for late appointments often appear to be related to how the County manages its data. The County utilizes two case management systems—the courts use Odyssey, but the jail uses Tiburon. The two systems do not communicate with each other, and to obtain necessary information, one will often have to access both systems. For instance, most mental health information is held on the Tiburon System. Court filings are held on the Odyssey system. Indigent defense coordinator staff are hampered by the two systems as they must perform data entry for both. The timing of appointments appears to suffer because staff spend much of their time doing repetitious data entry.

In order for a case to be filed, arresting agencies must send their offense reports to the prosecutor. Initially, the officer provides enough information via affidavit to establish probable cause and later provides information to the prosecutor through the offense report. There is no departmental

¹ All sample cases were filed in FY2010. The bond amounts exclude cases where a PR bond was set at magistration. The bond amount could not be found in several misdemeanor case files. These cases were also excluded.

In this table and throughout the report, the monitor uses the terms median and quartile. The median is the middle value. The 25% quartile is the value at the 25% level of a data ranking. In other words, the 25% quartile indicates that 25% of all responses fall below the 25% quartile and 75% fall above the 25% quartile. The 75% quartile is the value at the 75% level of a data ranking. In other words, 75% of all responses fall below the 75% quartile and 25% fall above the 75% quartile.

² This figure may understate the percent of misdemeanor arrestees making bond, as this number was obtained from a review of misdemeanor case files. Several of the non-bonding misdemeanor arrestees probably had pending felony offenses.

rule about what information is needed in the offense report; the information submitted must be sufficient to go forward with the case. For example, if five officers come to a crime scene, the case can proceed without each officer sending the prosecutor a report, so long as the substantive information has been submitted. The general intake rule is that police have three working days to hand the offense report to the prosecutor. If no offense report is received, support staff calls the arresting agency to request the report. Even after the offense report has been submitted, the police can continue the investigation and submit pertinent information to the prosecutor as the information is obtained. One municipality (Missouri City) is implementing a pilot project where offense reports are paperless. The goal of this project is to speed the time of case filing.

The policy in the District Attorney's office is that prosecutors must review a case within one week of accepting that case. If the prosecutor is unable to timely review the case, support staff forward the case to another prosecutor in order to avoid delays. Cases that do not involve a lab report are often brought to the grand jury within one week of arrest. It was reported that if a lab report is required that a two month delay is not uncommon. The prosecutor files these cases when the results are returned unless there is other evidence that seems to identify substances sent to the lab. Most felony cases go through the grand jury. Very few cases involve a waiver of indictment.

Once a defense attorney begins work on a case, he/she can obtain open discovery from the prosecutor's office by signing a nondisclosure form. The defense attorney is then given a flash drive with the prosecutor's case file. According to interviews, several defense attorneys have reservations about the nondisclosure agreement, and so apparently only a portion of defense attorneys make use of the electronic open discovery. Other attorneys may review the physical case file and take hand-written notes.

Both judges and defense attorneys reported that they believed felony and misdemeanor cases could be processed in fewer hearings without compromising justice. Task Force staff examined 326 felony and 572 misdemeanor cases for FY2010 (October 2009 – September 2010). As of April 2011, 29% of the felony cases and 28% of the misdemeanor cases had not yet been disposed. Some of the judges were not happy with the length of time required to dispose a case. Several persons felt that the County would benefit from an additional statutory county court. Task Force staff also heard complaints that long disposition times were partly the result of some attorneys who failed to appear at dockets.

After an appointed case has been disposed, an attorney submits a voucher with the respective hours worked to the judge presiding over the case. The judge then approves the voucher and pays the attorney an hourly rate based on the fee schedule. The fee schedule lists a suggested range of payments rather than a specific rate, so attorneys are unaware of the amount they will receive until they are paid.

Several attorneys stated that the uncertainty regarding payment was an area that needed improvement. When defense attorneys were asked about their opinion of the payment rates and process, 24% of the responses indicated concern over unpredictability related to court and judicial variance (see Appendix H for full results). For example, one respondent stated, "Schedule is fair but the Judges' use of discretion just varies so much it makes the system unfair. Several judges pay very poorly if you get a case dismissed, no-billed or you are subbed out. Why? You often work as hard, or harder, on these cases then [sic] you do on the cases that plead." The County may benefit from further analysis of the payment voucher to give attorneys greater predictability regarding the amount they will be paid.

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.

Fort Bend County	2001 Baseline	2007	2008	2009	2010	Texas 2010
Population Estimate	370,807	503,315	523,339	545,556	585,375	25,145,561
Felony Cases Added		2,921	2,850	3,063	2,697	277,254
Felony Cases Paid		1,276	1,381	1,424	1,284	192,076
Felony Appointment Rate		43.68%	48.46%	46.49%	47.61%	69.28%
Felony Attorney Fees		\$995,588	\$1,453,396	\$1,708,759	\$1,398,875	\$99,207,718
Total Felony Expenditures		\$1,212,981	\$1,686,194	\$2,004,818	\$1,635,762	\$112,185,901
Misdemeanor Cases Added		7,543	6,206	6,439	6,145	586,357
Misdemeanor Cases Paid		1,708	1,644	1,989	1,538	226,961
Misdemeanor Appointment Rate		22.64%	26.49%	30.89%	25.03%	38.71%
Misdemeanor Attorney Fees		\$840,135	\$1,104,282	\$1,208,257	\$1,013,048	\$34,693,843
Total Misdemeanor Expenditures		\$861,691	\$1,113,759	\$1,211,754	\$1,028,167	\$35,395,081
Juvenile Cases Added		727	734	777	741	39,721
Juvenile Cases Paid		579	476	483	380	54,711
Juvenile Attorney Fees		\$460,570	\$390,490	\$379,637	\$317,737	\$10,882,200
Total Juvenile Expenditures		\$491,856	\$400,725	\$392,506	\$331,329	\$11,611,994
Total Attorney Fees	\$775,419	\$2,309,624	\$2,948,169	\$3,296,654	\$2,729,661	\$151,249,162
Total ID Expenditures	\$870,299	\$2,765,031	\$3,320,469	\$3,775,732	\$3,565,886	\$195,063,847
Increase In Total Expenditures over Baseline		217.71%	281.53%	333.84%	309.73%	119.84%
Total ID Expenditures per Population	\$2.35	\$5.49	\$6.34	\$6.92	\$6.09	\$7.76
Task Force Formula Grant Disbursement		\$215,610	\$222,789	\$231,589	\$237,953	\$11,762,746
Task Force Equalization Grant Award		\$18,109	\$237,623	\$493,192	\$519,798	\$11,999,930
Task Force Discretionary Grant Award		n/a	n/a	n/a	\$316,047	\$2,584,974
Recoupment of Fees		\$36,939	\$34,619	\$52,167	\$56,334	\$11,448,723

Program Assessment

In the assessment that follows, the core requirements of the FDA are listed, and the County is commended if it included the relevant statutory provisions in its indigent defense plans (Local indigent defense plans can be found in Appendix B and Appendix C.). The statutory provisions for each requirement are then described. If the County's practices appeared to meet the respective statutory provision, a box to the left of the provision is checked. The local processes are described, and commendations and recommendations are made regarding these processes.

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 71.0351(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 Task Force. 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 Task Force and is to include an analysis of the amount expended by the county.³ The Fort Bend County Auditor's Office timely completed the annual indigent defense expense report and maintained supporting data. The Auditor's Office has very solid reporting mechanisms in place that could be further refined to provide detailed information on all statutory items, including appellate and attorney-of-the-day cases and expenditures.

Commendation 1: As mandated by Section 71.0351 of the Texas Government Code, the Fort Bend County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.

Methods of Reporting Data

In FY2010, the Fort Bend County Auditor's Office submitted data to the Task Force that included all applicable indigent defense expenses but did not separate appellate cases from the court of original jurisdiction. The Auditor's Office stated that it was not able to track appellate cases in FY2010. The total appellate expenses and cases are captured but are reported as felony, misdemeanor, or juvenile trial-level cases and expenses and not as appeals cases.

³ For most counties, the required analysis is simply to total number of each type of indigent defense case that was paid in each respective court.

The Auditor's Office was also unable to track cases in which the attorney-of-the-day represented the defendant for the case disposition. The Auditor's Office is able to capture overall expense information, but the office receives no case identification information with attorney-of-the-day fee vouchers. In this way, when an attorney-of-the-day receives a payment, the payment is recorded but the total corresponding cases paid are recorded as zero, even though the attorney-of-the-day may have disposed of multiple cases with a given payment. The effect of not reporting cases in which an attorney-of-the-day worked is to understate the misdemeanor appointment rate in Fort Bend County.

Recommendation 1: Fort Bend County must adjust its internal procedures so that the County may annually submit accurate totals of appeals cases paid, appellate expenditures, and misdemeanor cases paid. The Auditor's Office cannot make needed procedural changes without cooperation from the courts in providing the information.

Core Requirement 1. Conduct prompt and accurate magistration proceedings.

Adult Indigent Defense Plan Provisions

Commendation 2: All statutory provisions for the prompt magistration section of the adult indigent defense plan were included in the plan.

Local Practices Compared to Adult Statutory Provisions

- The accused must be brought before a magistrate within 48 hours of arrest.⁴
 - 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.⁵
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.⁶
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.⁷
- 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.⁸
- 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 250,000.⁹
- 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.¹⁰

Jurisdiction's Process

In Fort Bend County all arresting agencies send their inmates to the Fort Bend County Jail, although some municipalities hold inmates in their local jail for a few hours. Arresting agencies immediately send their probable cause affidavits to the jail where the affidavit is reviewed by a prosecutor. Magistration occurs daily at the jail at about 10:00 A.M. The magistrate will make a probable cause finding, set bail, and perform the warnings described in Article 15.17 of the Code of Criminal Procedure. The magistrate will only perform these steps for persons brought to him after the probable cause affidavit has been reviewed by a prosecutor.

When an arrestee requests counsel at magistration, either pre-trial services staff or jail staff assist the arrestee in filling out the affidavit of indigence. Once a request for counsel has been made,

⁴ Tex. Code Crim. Proc. art. 14.06(a).

⁵ Tex. Code Crim. Proc. art. 17.033.

⁶ Tex. Code Crim. Proc. art. 15.17(a).

⁷ *Id.*

⁸ Tex. Code Crim. Proc. art. 15.17(e).

⁹ Tex. Code Crim. Proc. art. 15.17(a). This box is not checked, because the magistrate is not the appointing authority. Since the box corresponding to the transmittal of requests for counsel is checked, the County is considered to have met this requirement.

¹⁰ *Id.*

the County has 24 hours to transmit the request to the appointing authority and an additional working day to then appoint counsel or to deny indigence. The affidavit is almost always completed on the same day as the arrestee requests counsel—especially if the arrestee has not bonded out of jail prior to magistration. In many jurisdictions there are often delays in completing financial affidavits. However, in Fort Bend County, the affidavits are promptly completed. The completed affidavit is then forwarded to the indigent defense coordinator.

Commendation 3: Fort Bend County has solid processes for assisting arrestees with affidavits of indigence and for promptly transmitting requests to the appointing authority.

To assess the timeliness of magistrate warnings, the monitor performed a review of clerks’ case files. However, the arrest time was not typically included in the case files. To determine the time from arrest until magistration, the monitor examined 104 records located in the Fort Bend County Jail.¹¹ The monitor’s sample contained 59 misdemeanor cases and 45 felony cases. The sample times from arrest until the magistrate warnings ranged from 7 hours 53 minutes to 59 hours 26 minutes, with a median time from arrest until the warnings of 20 hours 42 minutes. Three arrestees in the sample received magistrate warnings more than 48 hours after arrest (97.1% timely). Task Force Administrative Rules require that a recommendation be made to the County if less than 98% of the monitor’s sample contains timely magistrate warnings.¹² We recognize that the percent of timely magistrate warnings narrowly misses our threshold for being presumed to meet the FDA requirements. If the County wishes, the Task Force can re-visit this issue and examine a much larger sample of records showing the time from arrest to magistration. See Table 2 for a summary of times from arrest until magistration.

Table 2: Sample Times from Arrest until Magistration

Fort Bend County Time to Magistration Data	Sample Size	Percent
Magistrate warnings where time to magistration could be determined	104	
Magistration Occurs x hours after arrest:		
0 – 12 hours	14	13.5%
12.01 – 24 hours	54	51.9%
24.01 – 36 hours	27	26.0%
36.01 – 48 hours	6	5.8%
Timely Magistration	101	97.1%
More than 48 hours	3	2.9%

Recommendation 2: Fort Bend County must ensure that magistrate warnings occur within 48 hours of the arrest.

¹¹ The files were picked from inmates who had recently been released from the jail. The cases were selected sequentially from piles that were in queue to be digitally scanned. The Task Force review of Fort Bend County attempted to focus on FY2010 data. Because FY2010 arrest data was not immediately available, the monitor’s sample contained data for the period of January 2010 through January 2011 (with most of the cases occurring between August 2010 and January 2011).

¹² 1 TAC §174.28.

Twelve (12) of the 59 misdemeanor arrests had magistrate warnings that occurred more than 24 hours after the arrest.¹³ The monitor did not check to see if any of these were cases with a warrant where probable cause was determined prior to the arrest. However, the process for bringing an arrestee before a magistrate to determine probable cause does not seem to be quick enough to ensure that all misdemeanor arrestees will have probable cause determined within 24 hours of arrest.

Misdemeanor Requests for Counsel

The monitor attempted to determine the percent of misdemeanor arrestees who requested counsel at magistration. The portion of arrestees that request counsel varies by region and by offense level across the State. The monitor was unable to determine the percent of misdemeanor arrestees who requested counsel from the review of county clerk's case files.¹⁴ To get a better gauge of the misdemeanor request rate, the monitor examined counsel requests from magistration forms at the jail. Magistrate warning forms are regularly put into jail records. The monitor found that of the misdemeanor jail records examined, 59% requested counsel at magistration.¹⁵ The following diagram is a binary tree that illustrates the probability that a misdemeanor defendant receives appointed counsel either as a result of a request to the magistrate or an in-court request for counsel. As just noted, these percentages are estimates and should not be taken as exact numbers due to the small sample size available.

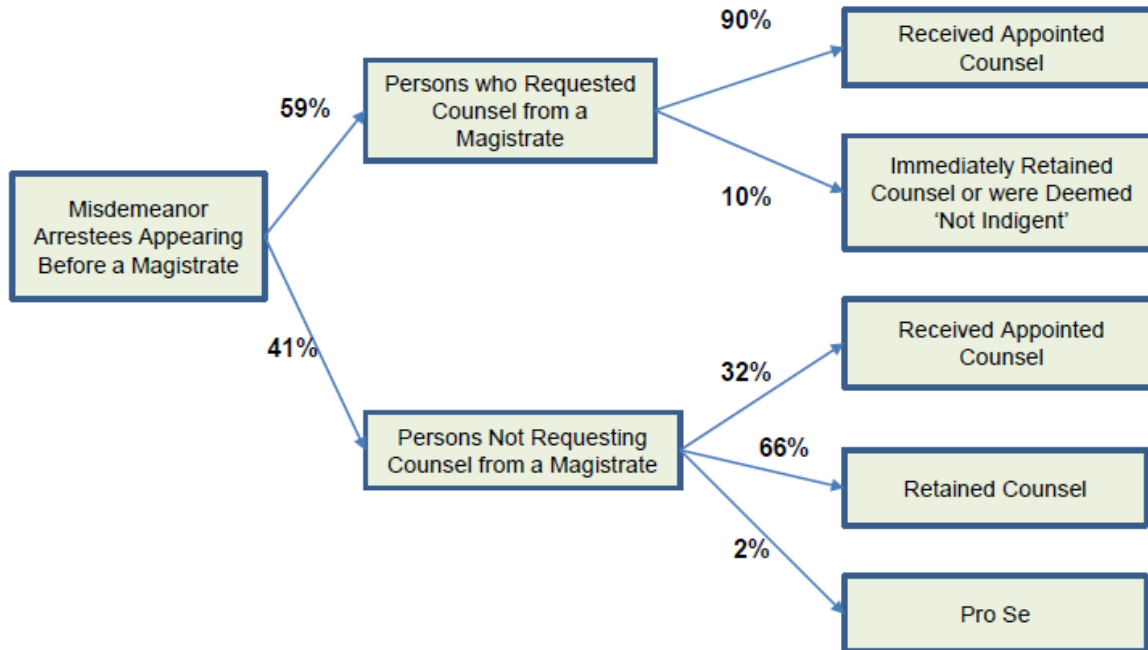
¹³ The monitor's procedures do not attempt to examine compliance with Article 17.033 of the Code of Criminal Procedure or to determine whether the pre-set bond satisfies Article 17.033 requirements. Article 17.033(a) states:
(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

¹⁴ The monitor examined 572 misdemeanor case files online from the county clerk's office. Fifty-seven (57) of the cases did not involve an arrest but rather a summons, and so the defendant would never have received magistrate warnings. That leaves 515 sample misdemeanor cases where an arrestee faced a magistrate and could have requested counsel.

Based upon forms reviewed in the county clerk's files, the monitor found 194 misdemeanor case files that included the magistration form. Of these cases, 133 requested counsel (69% of misdemeanor arrestees requested counsel at magistration). Where the clerk's online case file contained a magistration form, 65% of the misdemeanor arrestees who received magistrate warnings later received appointed counsel. When the clerk's file did not contain a record of the magistrate warnings and the defendant was arrested, 37% of misdemeanor defendants received appointed counsel. This stark difference of appointment rates between cases with a record of the magistrate warning and cases without the record is an indication that the form is more likely to be included in the case file if there is a request for counsel.

¹⁵ At a 95% confidence level, the confidence interval for this sample was +/-12.7%. In other words, one could say with 95% confidence that the true percentage of misdemeanor arrestees requesting counsel from the magistrate was between 47% and 72%.

Figure 1: Misdemeanor Requests for Counsel¹⁶



Felony Requests for Counsel

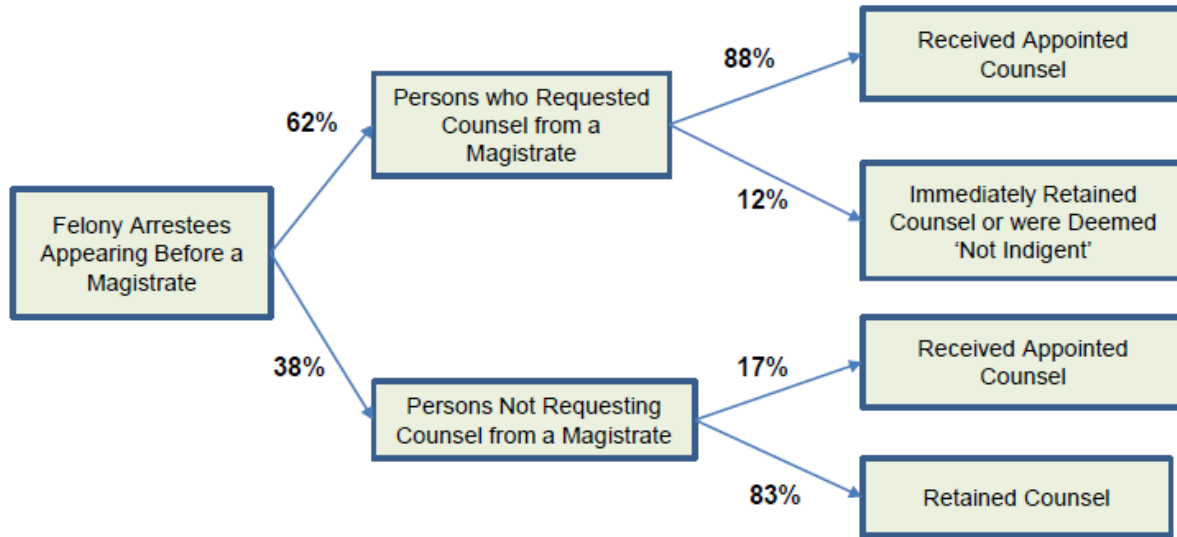
The monitor was unable to determine the percent of felony arrestees who requested counsel from the review of county clerk’s case files.¹⁷ To get a better gauge of the felony request rate, the monitor examined counsel requests from magistration forms at the jail. Magistrate warning forms are regularly put into jail records. The monitor found that of the felony jail records, 62% requested counsel at magistration.¹⁸ The following diagram is a binary tree that illustrates the probability that a felony defendant receives appointed counsel either as a result of a request to the magistrate or an in-court request for counsel. As just noted, these percentages are estimates and should not be taken as exact numbers due to the small sample size available.

¹⁶ While the percent of persons requesting counsel at magistration came from jail files, outcomes after this request came cases in the monitor’s sample of county clerk files. Cases with no evidence of whether a request was made at magistration were thrown out. Persons were only considered pro se if the respective case was disposed. Cases without counsel that were not disposed were excluded.

¹⁷ When the monitor examined felony case files online from the district clerk’s office, the monitor found that of 326 felony case files examined that the magistrate warning form was found in 162 case files. Of these cases, 117 requested counsel (72% of felony arrestees requested counsel at magistration). Where the clerk’s online case file contained a magistration form, 73% of the felony arrestees who received magistrate warnings later received appointed counsel. When the clerk’s file did not contain a record of the magistrate warnings and the defendant was arrested, 49% of felony defendants received appointed counsel. This stark difference of appointment rates between cases with a record of the magistrate warning and cases without the record is an indication that the form is more likely to be included in the case file if there is a request for counsel.

¹⁸ At a 95% confidence level, the confidence interval for this sample was +/-14.5%. In other words, one could say with 95% confidence that the true percentage of misdemeanor arrestees requesting counsel from the magistrate was between 48% and 77%.

Figure 2: Felony Requests for Counsel¹⁹



Juvenile Indigent Defense Plan Provisions

Commendation 4: All elements required for the prompt detention section of the juvenile indigent defense plan were included in the plan.

Local Practices Compared to Juvenile Statutory Provisions

- If a child is taken into custody, the court must hold detention hearing by the second working day, or the first working day if detained on a Friday or a Saturday.²⁰
- Prior to the detention hearing, the court must inform the parents of the child's right to appointed counsel if they are indigent.²¹

Jurisdiction’s Process

The monitor observed a juvenile detention hearing docket for twelve juveniles. This was the initial detention hearing for five of the juveniles. For those initial detention hearings, the judge informed the juvenile of the right to remain silent and of the right to counsel during an interview with law enforcement. The judge then noted that this was an initial detention hearing and that the juvenile was not entitled to counsel at the initial detention hearing. No procedures for requesting or obtaining counsel were set out at the detention hearing.

The court is statutorily obligated to explain the right to counsel as noted in Section 54.01(b) of the Family Code:

... Prior to the commencement of the hearing, the court shall inform the parents of the child’s right to counsel and to appointed counsel if they are indigent and of the child’s right to remain silent with respect to any allegations of delinquent conduct, conduct

¹⁹ While the percent of persons requesting counsel at magistration came from jail files, outcomes after this request came cases in the monitor’s sample of district clerk files Cases with no evidence of whether a request was made at magistration were excluded.

²⁰ Tex. Family Code § 54.01(a). The Task Force requires this item to be in the local indigent defense plan, but does not review the items as part of its monitoring process.

²¹ Tex. Family Code § 54.01(b).

indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court.

While the court is statutorily required to inform the parents of the right to counsel, the right to appointed counsel does not attach prior to the initial detention hearing. However, if the court decides to detain the child by making on one of the five findings set out in Section 54.01(e), Section 51.10(c) notes that the child is immediately entitled to representation by an attorney. The court is then required to either order the retention of an attorney or to appoint counsel. Section 51.10(c) of the Family Code states:

If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court shall order the retention of an attorney according to Subsection (d) or appoint an attorney according to Subsection (f).

Recommendation 3: As required by Section 54.01(b) of the Family Code, the juvenile court must inform the parent or guardian of the child’s right to counsel and to appointed counsel if indigent.

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

Adult Indigent Defense Plan Provisions

Commendation 5: All elements required for the indigence determination standards section of the adult indigent defense plan were included in the plan.

Local Practices Compared to Adult Statutory Provisions

- Provide detailed procedures used to determine whether a defendant is indigent.²²
- State the financial standard(s) to determine whether a defendant is indigent.²³
- List factors courts the court will consider when determining whether a defendant is indigent.²⁴

Jurisdiction’s Process

According to the County’s indigent defense plan (see Appendix B),

A person is considered indigent if their net household income does not exceed 125% of the federal poverty guideline for Annual Household Income (adjusted by number of persons in the household) as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Those Poverty Guidelines may change from year to year and shall be calculated by the Court Services Coordinator for each calendar year to be used during that calendar year.

²² Tex. Code Crim. Proc. art. 26.04(l)-(r).

²³ Tex. Code Crim. Proc. art. 26.04(l).

²⁴ Tex. Code Crim. Proc. art. 26.04(m).

The plan then directs the Pre-trial Services Department to collect information that includes the arrestee's income, expenses, assets, language spoken, and any mental health/mental capacity issues.

In practice, the standard of indigence described in the plan is followed if a request for counsel is brought before the indigent defense coordinator. If a person makes bond and requests counsel in court, the standard of indigence may vary from the procedure for detained arrestees. The monitor observed a hearing where an unmarried adult defendant requested counsel and was asked to provide data showing the income of his/her parents. *Abdnor v. State*, 712 S.W.2d 136 (Tex. Crim. App. 1986) restricts the persons that may be considered in indigence determinations to the persons who are legally bound to pay for the defendant's legal expenses. Conversations between the judge and the defendant at the bench did not reveal whether the defendant's parents were legally bound to pay for his/her legal expenses.

The monitor also observed a misdemeanor docket where all persons who posted bond were deemed not to be indigent and to be able to afford retained counsel. The indigence determinations did not look to whether the defendant posted bond or whether another person posted bond for the defendant. Article 26.04(m) speaks to the manner in which bonding is allowed in making indigence determinations by stating,

...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 listed in this section.

Following additional in-court procedures (described in the attorney-of-the-day section below), some of the defendants who posted bond were directed to the indigent defense coordinator to be screened for indigence after their initial denial.

Recommendation 4: 1) Indigence determinations must fall in line with *Abdnor v. State* and may only consider the income of persons legally bound to pay for the defendant's legal expenses.

2) Indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

The Role of the Attorney-of-the-Day in Indigence Determinations

In the misdemeanor courts, an attorney-of-the-day is used for the following: to manage re-sets for defendants who appear in court but whose attorney does not appear; to handle pro se defendants who are unsure if they want to request counsel; and to represent defendants who want to plea that day. The attorney-of-the-day was initially instituted to handle waivers of counsel problems that might occur when HB 1178 went into effect in FY2008. The attorney-of-the-day serves two roles: administrator and legal counsel. As an administrator, the attorney-of-the-day determines which defendants need a re-set and informs defendants of the procedures for requesting counsel. This administrative role appears to help the flow of the dockets and prevent issues related to waivers of counsel. As legal counsel, the attorney-of-the-day reads evidence against the defendant from the prosecutor's file, gives recommendations to the defendant, and handles pleas for the defendant.

In some instances, the attorney-of-the-day seems to function as a gatekeeper to the indigent defense coordinator, effectively placing defendants in a state between indigence and non-indigence. The monitor observed a docket where bonded defendants were discouraged from requesting counsel. The defendants were told that rather than make formal requests for counsel, the defendants should see if they could review and/or dispose their cases through the attorney-of-the-day. The attorney-of-the-day then examined the respective case files and gave recommendations concerning which attorneys the

defendants could retain for the cases. Two defendants were directed to speak to the indigent defense coordinator, but only after their cases had been reviewed by the attorney-of-the-day. Defendants met with the attorney-of-the-day as part of a group and not individually in a private place. If a defendant's case was not disposed that day, the defendant would then come back to the next scheduled docket with either retained or appointed counsel—an attorney who is different than the attorney-of-the-day they initially visited (most attorneys-of-the-day specifically tell the defendants that they will not take on their cases as retained or appointed counsel). If any defendant had not obtained counsel by the next docket, however, the process would continue and the defendant would meet with the next attorney-of-the-day.

Article 1.051 provides that the right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding. Article 1.051(a) of the Code of Criminal Procedure states:

A defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.

The attorney-of-the-day system as implemented does not provide for the ability to consult in private with counsel in advance of a proceeding or allow for preparation for a proceeding.

Recommendation 5: The misdemeanor courts must provide a method of appointment so that all persons who require appointment of counsel have the ability to consult with their attorney sufficiently in private in advance of a proceeding. While a defendant may instead choose to plead to a case on the day of the appointment, the defendant must be provided counsel who will continue to represent the defendant if the defendant chooses not to plea to the case.

Juvenile Indigent Defense Plan Provisions

Commendation 6: All elements required for the indigence determination standards section of the juvenile indigent defense plan were included in the plan.

Juvenile Statutory Provisions

Procedures for determining indigence in juvenile cases were not observed. However, the County had submitted all elements required for the determination of indigence section of the juvenile indigent defense plan. For juveniles (see Appendix C), the same financial standard of indigence applies as with adults, except that the standard of indigence applies to the person responsible for the welfare of the child.²⁵ The juvenile may also be considered indigent if the parent is serving a sentence in a correctional facility or if the parent is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

²⁵ Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

Core Requirement 3. Establish minimum attorney qualifications.

Adult Indigent Defense Plan Provisions

Commendation 7: All elements required for the minimum attorney qualifications section of the adult indigent defense plan were included in the plan.

Local Practices Compared to Adult Statutory Provisions

- Establish objective qualification standards for attorneys to be on an appointment list.²⁶
 - 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.²⁷
- Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.²⁸

Jurisdiction's Process:

The Fort Bend County Indigent Defense Plan creates appointment lists to which attorneys apply. According to the indigent defense plan, the appointing authority is to make an appointment “using a system of rotation from a list of approved counsel.” Besides the indigent defense plan, Article 26.04(b)(5) of the Code of Criminal Procedure requires that local procedures “ensure that each attorney appointed **from a public appointment list** to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics.”

When an individual requests counsel and the selection of counsel is made by the indigent defense coordinator, the selection of counsel follows the appointment wheel (that only consists of persons on the appointment list). Persons who request counsel from the jail and felony dockets have their requests for counsel routed to the indigent defense coordinator. All of these appointments are made from attorneys on an appointment list.

When misdemeanor defendants make requests for counsel that do not go through the indigent defense coordinator, the process for determining indigence and selecting counsel varies by court. Sometimes an attorney may be appointed who is not on an approved appointment list. If an appointment is made to an attorney not on the appointment list, the appointment follows neither the local indigent defense plan nor statute, and payments made to those attorneys may not, therefore, be proper. From the auditor's data of FY2010 cases paid, 20 misdemeanor attorneys not on an approved appointment list received payments in FY2010 for cases filed in FY2010. While we understand that those persons not on a list were likely new attorneys being mentored by more experienced attorneys, the FDA is very clear that all appointments are to be made to attorneys on an appointment list. If the misdemeanor courts feel that quickly giving these new attorneys appointments is important, the courts could allow them to be added to an appointment list by approval of the majority of the misdemeanor judges.

²⁶ Tex. Code Crim. Proc. art. 26.04(d).

²⁷ 1 TAC §§174.1-174.4.

²⁸ Tex. Code Crim. Proc. art. 26.04(d).

Recommendation 6: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan and with Article 26.04(b)(5).

The monitor examined the attorney appointment lists for felony and misdemeanor cases. Felony appointments utilize five levels and special language designations for their list. Appointment levels are present for 3g offenses²⁹, first degree felony, second degree felony, third degree felony, and state jail felony cases. Misdemeanor appointments utilize four levels with a special language designation. Level 1 offenses include DWI cases, drug cases, domestic violence cases, and cases in which a defendant is under 21 years of age and charged with a crime of moral turpitude. Level 2 offenses include most remaining Class A offenses. Level 3 offenses include most Class B offenses. Level 4 offenses include DWLS and DWLI cases. All attorneys must apply to be on the respective lists and must annually obtain at least six criminal CLE hours or be board certified in criminal law.

Commendation 8: The utilization of multiple levels of appointment lists is a useful tool for matching cases with greater complexity with attorneys who can effectively handle those cases. The Fort Bend County judges are congratulated for their thoughtfulness in separating attorneys in this manner.

The combined felony lists had 64 attorneys who received appointments during FY2010 and were still active in March 2011. All of these attorneys had submitted at least the required minimum of their respective CLE hours to the courts.

The combined misdemeanor lists had 99 attorneys who received appointments during FY2010 and were still active in March 2011. All but one of these attorneys had submitted at least the required minimum of their respective CLE hours to the courts. The remaining attorney is on medical leave and so is not currently seeking appointments. The Task Force Administrative Rules require that counties can only give proper payments to attorneys who have either submitted their CLE credentials or who are Board Certified in criminal law. When this attorney comes back from medical leave, this attorney is not eligible for appointments until there is evidence that the attorney has met the Task Force CLE requirements.

²⁹ See Tex. Code Crim. Proc. art. 42.12 § 3g. for a list of 3g offenses.

Juvenile Indigent Defense Plan Provisions

Commendation 9: All elements required for the minimum attorney qualifications section of the juvenile indigent defense plan were included in the plan.

Local Practices Compared to Juvenile Statutory Provisions

- Establish objective qualification standards for attorneys for three levels of conduct.³⁰
 - 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.³¹
- 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.³²

From the auditor's data of FY2010 juvenile cases paid, 30 attorneys not on an approved appointment list received payments in FY2010 for cases filed in FY2010.

Recommendation 7: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan, with Article 26.04(b)(5) of the Code of Criminal Procedure, and with Section 51.102 of the Family Code.

The monitor examined the attorney appointment lists for juvenile cases. Juvenile appointments utilize four list levels: CINS offenses and cases with indeterminate sentencing where TYC is not possible; intermediate cases where TYC commitment is possible; determinate sentencing cases; and cases where the juvenile may be sentenced as an adult. All attorneys must apply to be on the respective lists and must annually obtain at least six juvenile CLE hours or be board certified in juvenile law.

Commendation 10: The utilization of multiple levels of appointment lists is a useful tool for matching cases with greater complexity with attorneys who can effectively handle those cases. The Fort Bend County judges are congratulated for their thoughtfulness in separating attorneys in this manner.

The juvenile list had 35 attorneys who received appointments during FY2010 and were still active in March 2011. All but four of these attorneys had submitted at least the required minimum of their respective CLE hours to the courts. Those attorneys who did not meet the minimum CLE requirement are not eligible for new appointments until they submit evidence of obtaining the minimum CLE threshold. These attorneys have not been removed from the appointment lists and continue to receive appointments.

³⁰ Tex. Fam. Code § 51.102(a),(b)(2).

³¹ 1 TAC §§174.1-174.4.

³² Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d).

Recommendation 8: Attorneys who are not eligible to receive appointments because of failure to meet Task Force requirements must be removed from the appointment list and may not receive appointments until Task Force requirements are met.

Fairness and Effectiveness of Appointment Lists for Adult and Juvenile Cases

Several judges expressed frustration during Task Force interviews about attorneys who do not appear at scheduled dockets. The judges can establish procedures to remove attorneys from the appointment list or can establish conditions that must be met to remain on the appointment list. As an example, attorneys who do not meet CLE requirements do not meet the conditions for remaining on the appointment list. Even though no vote may have taken place to remove attorneys who do not meet CLE hours requirements, the attorneys without adequate CLE hours are not eligible for appointments. Similarly, the judges can set a condition that attorneys who miss a certain number of dockets without an excuse are no longer eligible for appointments. If an attorney fails the condition, the attorney would be automatically removed from the list, and the attorney must re-apply to get back on the appointment list.

The judges face a balancing test whenever they consider whether attorneys should be added to or removed from an appointment list. The judges must ensure that attorneys are qualified to handle appointed cases. This assurance can be gained from knowing attorneys' past work experience and from observing attorneys demonstrate their abilities in court. The judges must also ensure that attorneys provide competent representation to appointed counsel. If attorneys regularly miss dockets or do not seem to advocate for their clients, they may be "paper-qualified" to handle their respective cases but may not actually provide the quality representation expected by the jurisdiction.

When our review began, the judges noted that they never removed attorneys from appointment lists. This changed during our visit, when several attorneys were removed for not appearing at dockets. While we make no judgment as to how strict judges should be in monitoring attorney performance, judges are free to note attorneys' conduct and to make changes to the appointment list as they see are necessary.

The survey of the criminal defense bar asked attorneys practicing in Fort Bend County about the fairness and ease of being added to the attorney appointment lists. One question from the survey asked attorneys, "Do you think the process for being added to the appointment list is fair and effective?" About half of respondents (47%) indicated that the process is fair and effective. About a quarter (24%) indicated that it is not necessarily fair and effective with responses stating that it takes too long to be added to the list or that it was too easy to be added to the list. Another fifth of respondents (21%) indicated that there is a lack of structure, accountability, or transparency. These respondents expressed concern that some attorneys do not try cases or do not always attend dockets. Overall, the comments seemed to indicate that attorneys are either happy with the system or feel that the courts could be more stringent about attorney performance. See Figure 3 below for full responses to the question.

Figure 3: Survey Question about the Fairness and Effectiveness of Appointment Lists

Q 4.3: Do you think the process for being added to the appointment list is fair and effective?				
	41 responses	2 thrown out	53 statements	4 categories
<p>A pie chart illustrating the distribution of responses to the survey question. The largest segment is 'Yes' at 47% (blue), followed by 'No' at 24% (red), 'Lacks Structure' at 21% (green), and 'Other' at 8% (purple).</p>				
Yes: 25 statements (47%)	<p>16 responses were simply “yes” or “fair” with no explanation or follow-up. Additional statements:</p> <ul style="list-style-type: none"> • “Reasonably so.” • “My process to be on the wheel was fine.” • “I feel the list is run fairly.” 			
No: 13 statements (24%)	<p>Within this category of statements, there were three subcategories. First, was the simple “no” group, 3 of which provided no explanation or follow-up. Additionally, attorney statements fell into the following subcategories:</p> <ul style="list-style-type: none"> • Too difficult/takes too long: 3 statements <ul style="list-style-type: none"> ○ “I think the central list should be opened up more to lawyers new to the criminal defense practice, at least for minor offenses.” ○ “Takes too long to be added to the list.” ○ “I think it could be better. Especially the delay in the process.” • Too easy: 4 statements <ul style="list-style-type: none"> ○ “I feel it is too fair.” ○ “It is more liberal in Fort Bend County than all the other surrounding counties.” ○ “It is too fair. It is possible for there to be too many attorneys on the list, which has a negative effect of [sic] representation.” 			
Wheel Lacks Structure, Accountability, or Transparency: 11 statements (21%)	<ul style="list-style-type: none"> • “The problem is that the criteria for receiving appointments in Fort Bend County is that the process lacks structure. Especially for the 3g list. It needs to be very structured. There are several attorneys who do not try cases. This is a disgrace to their client who may need or want to try the case.” • “I am only irritated that those who do not make it out to court for their clients are not removed from the list. Many attorneys go to many different counties and may be stretching themselves too thin. There should be better monitoring as to who those who obtain numerous resets for the attorney’s failure to appear.” • “No the appointment list qualifications is [sic] out of date, there needs to be an annual review of attorney [sic] to see who is actually trying cases and not just pleading people out. Fort Bend has very few actual trial attorneys.” 			
Other: 4 statements (8%)	<ul style="list-style-type: none"> • Two stated that they could only speak to their personal experience with the wheel. • One statement suggested that mentoring programs for young attorneys are needed. • One statement suggested the some judges are more open to appointing new attorneys than others. 			

Core Requirement 4. Appoint counsel promptly.

Adult Indigent Defense Plan Provisions

Commendation 11: All elements required for the prompt counsel appointment section of the adult indigent defense plan were included in the plan.

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 250,000.³³
- 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.³⁴
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.³⁵

Jurisdiction's Process

Process for Requesting and Receiving Appointed Counsel

The process for appointing counsel in Fort Bend County varies depending upon the offense level, the assigned court, and the time that counsel is requested. Once a request for counsel has been made, the County has 24 hours to transmit the request to the appointing authority and an additional working day to appoint counsel or to deny indigence.

When an arrestee requests counsel at magistration, either pre-trial services staff or jail staff assist the arrestee in filling out the affidavit of indigence. The completed affidavit is then forwarded to the indigent defense coordinator. The indigent defense coordinator must enter data into the jail management system and again into the courts' management system. This double data entry is very time consuming and sometimes causes delays in appointing counsel. After data entry is finished, the indigent defense coordinator compares the data on the affidavit with the local standard of indigence, and, if the requesting person qualifies as indigent, appoints counsel. If the person does not qualify, indigence is denied.

If a person cannot bond, jail dockets are held for both felony and misdemeanor arrestees. Persons in jail without counsel are brought to jail dockets even if no case has been filed. The dockets make use of an attorney-of-the-day, and counsel can be requested through the attorney-of-the-day's assistance. If a request is made, the request is forwarded to indigent defense coordinator staff.

All felony cases are initially brought through the jail docket, and are transferred to the felony courts at the earlier of 60 days after the arrestee bonds or after the arrestee has been indicted. In felony cases, defendants who appear in court without counsel are advised of the procedures for requesting counsel. If appointed counsel is desired, the defendant is given a financial affidavit to complete. The request for counsel is typically forwarded to the indigent defense coordinator, who appoints counsel.

Misdemeanor cases are also brought to the jail docket, and they are only transferred to the County Courts at Law after an arrestee bonds out of jail. Misdemeanor arrestees are given a pre-

³³ Tex. Code Crim. Proc. art. 1.051(c).

³⁴ Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

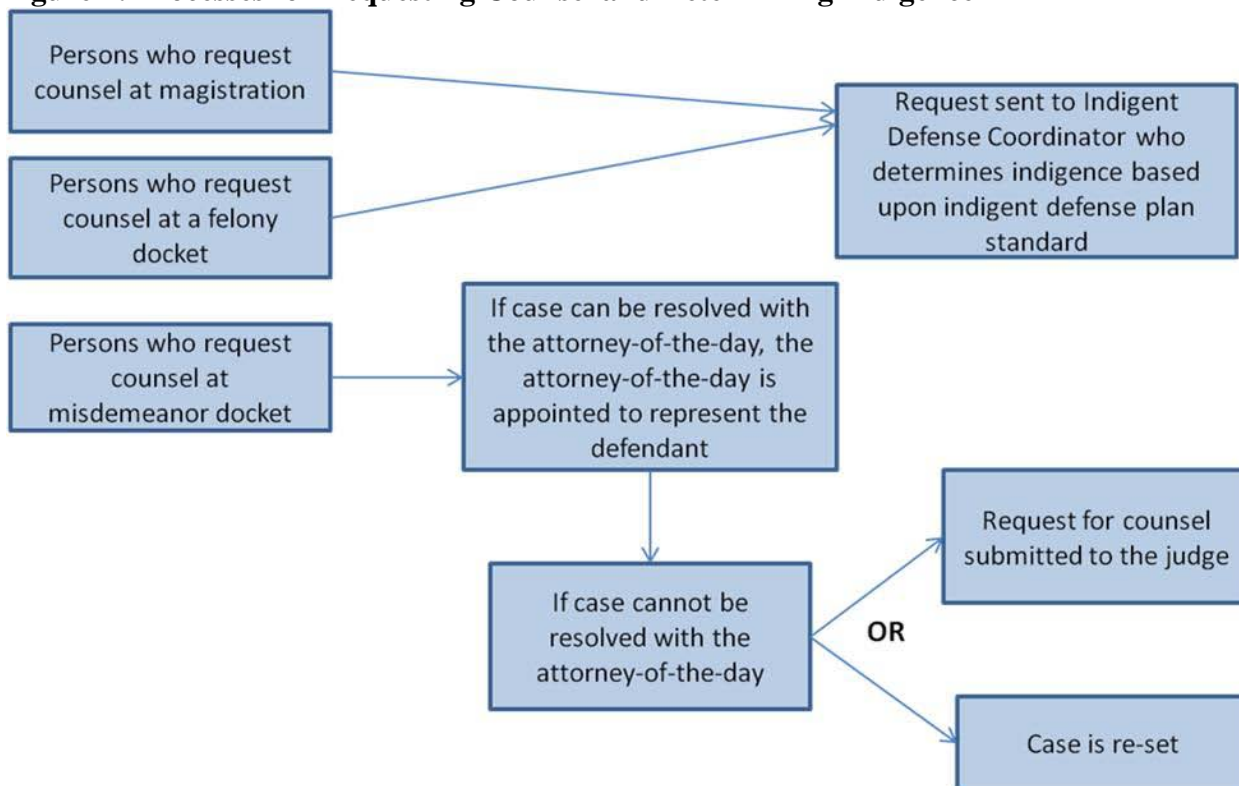
³⁵ Tex. Code Crim. Proc. art. 1.051(f-2).

magistration bond (usually \$500 for a Class B misdemeanor or \$750 for a Class A misdemeanor). Similarly, persons arrested on a felony warrant may bond before having an opportunity to request counsel. If these arrestees bond before appearing in front of a magistrate, their first warning concerning the right to appointed counsel should be at the initial appearance in court.

When a misdemeanor defendant appears in court without counsel, the attorney-of-the-day meets with the defendant and is tasked with advising him/her of her right to appointed counsel. The defendant may choose to go ahead with the case pro se, resolve the case that day with the attorney-of-the-day representing the defendant, request appointed counsel, or ask for a re-set to hire retained counsel. If the defendant chooses to request appointed counsel, the defendant is either given the affidavit of indigence to complete in court or is sent to the indigent defense coordinator's office for financial screening and appointment of counsel. If the defendant completes the form during the court docket, the court may either make a determination of indigence (and select appointed counsel) or send it to the indigent defense coordinator's office for a determination of indigence (and selection of appointed counsel). In misdemeanor cases, some courts may appoint counsel rather than forward the affidavit to the indigent defense coordinator.

If an unrepresented defendant appears in court without counsel and is unsure what to do, the defendant will likely ask the attorney-of-the-day for advice with how to proceed with the case. The attorney-of-the-day may examine the defendant's file and see what offer the prosecutor is willing to make. If the defendant agrees to the offer, the defendant takes the plea. If the defendant does not agree to the offer, the attorney-of-the-day's representation of the defendant ends. Other appointed counsel may later be appointed to the case. Figure 4 below outlines the process for routing requests for counsel.

Figure 4: Processes for Requesting Counsel and Determining Indigence



Timeliness of Misdemeanor Appointments

The monitor examined 572 misdemeanor case files and 326 felony case files in an attempt to accurately gauge the timeliness of appointments. The case examination was made much easier because both the county and district clerks maintain case information online. The monitor feels that maintaining these records online is a great benefit to the public and instills public confidence in the judicial function.

Commendation 12: The county and district clerks’ utilization of online case records is a great benefit to the public and instills public confidence in the judicial function.

The monitor found that in misdemeanor cases, counsel was appointed timely in 81% of cases examined.³⁶ The time to appointment ranged from zero working days to 158 working days. When appointments were late, they were either marginally late or very late. Marginally late appointments were considered to be those appointments made within six working days. Very late appointments were those made later than six working days. Marginally late appointments composed 12.6% of the misdemeanor sample. Marginally late appointments appeared to occur because either the request was not submitted to the indigent defense coordinator promptly or because the indigent defense coordinator did not act on the request promptly. Very late appointments composed 6.3% of the misdemeanor sample. Very late appointments appeared to occur because a request for counsel was lost or because a denial of indigence did not get into the case file.

³⁶ The monitor’s misdemeanor case sample consisted of 572 case files filed in FY2010 (October 2009 – September 2010) and selected by means of a random number generator. From this sample, the monitor found 271 cases where the time from request to determination could be determined. Some of these appointments did not have a separate request form from the appointment form but appeared to be made in court on the day of appointment. In those cases without a separate request form, the time from request until appointment was listed as zero working days.

Table 3: Misdemeanor Timely Appointments

Fort Bend Misdemeanor Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	271		
Appointment / Denial of Indigence Occurred in:			
0 work days		129	47.6%
1 work day + 24 hour transfer		91	33.6%
Total timely appointments / denials		220	81.2%
2 work days + 24 hour transfer		24	8.9%
3 to 6 work days + 24 hour transfer		10	3.7%
Greater than 6 working days + 24 hour transfer		17	6.3%
Total late appointments / denials		51	18.8%

Timeliness of Felony Appointments

The monitor found in felony cases that counsel was appointed timely in 80% of cases examined.³⁷ The time to appointment ranged from zero working days to 333 working days. Marginally late appointments composed 16.7% of the felony sample. Very late appointments composed 3.4% of the felony sample.

Table 4: Felony Timely Appointments

Fort Bend Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	204		
Appointment / Denial of Indigence Occurred in:			
0 work days		77	37.7%
1 work day + 24 hour transfer		86	42.2%
Total timely appointments / denials		163	79.9%
2 work days + 24 hour transfer		25	12.3%
3 to 6 work days + 24 hour transfer		9	4.4%
Greater than 6 working days + 24 hour transfer		7	3.4%
Total late appointments		41	20.1%

Article 1.051(c) of the Code of Criminal Procedure states, "... In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel." Task Force Administrative Rules require that a recommendation be made to the County if the monitor's sample of appointments in felony, misdemeanor or juvenile cases is less than 90% timely.³⁸ To ensure timely appointments, the County could consider reviewing and revamping the data entry process used by the Indigent Defense Coordinator's Office.

³⁷ The monitor's felony case sample consisted of 326 case files filed in FY2010 (October 2009 – September 2010) and selected by means of a random number generator. From this sample, the monitor found 204 cases where the time from request to determination could be determined. Some of these appointments did not have a separate request form from the appointment form but appeared to be made in court on the day of appointment. In those cases without a separate request form, the time from request until appointment was listed as zero working days.

³⁸ 1 TAC §174.28.

Recommendation 9: Fort Bend County must ensure that counsel is appointed to misdemeanor and felony defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

Juvenile Indigent Defense Plan Provisions

Commendation 13: All elements required for the prompt counsel appointment section of the juvenile indigent defense plan were included in the plan.

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.³⁹
- 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.⁴⁰

Juvenile Appointments:

The monitor attempted to document the attorney appointment process for juveniles with respect to detention hearings and with respect to petitions filed. The monitor observed a detention hearing and a juvenile docket. Juvenile probation staff (not Task Force staff) examined case records.

Juvenile Detention Hearings

The monitor observed a juvenile detention hearing docket for twelve juveniles. This was the initial detention hearing for five of the juveniles. For those initial detention hearings, the judge informed the juvenile of the right to remain silent and of the right to counsel during an interview with law enforcement. The judge then stated that this was an initial detention hearing and that the juvenile was not entitled to counsel at the initial detention hearing. A decision to detain the juvenile for up to ten working days was made in all five instances. One parent asked the judge how long the detention would be, and the judge stated that it would be for ten working days when there would be another hearing. No procedures for requesting or obtaining counsel were set out at the detention hearing. None of the juveniles had counsel appointed at the time when the initial detention hearings ended. The judge made no order that the parents retain an attorney for the juvenile. Section 51.10(c) of the Family Code requires that when there is a decision to detain the juvenile that the judge immediately either appoint counsel or order the retention of counsel.

After the hearings, the monitor asked the judge when counsel would be appointed for the juveniles. The judge responded that it would vary. Some may have counsel by the end of the day, but others could be appointed later. The time to appointment depended on how quickly the parents of the juvenile made a request for counsel and completed the affidavit of indigence.

Detention hearings were also heard for seven other juveniles who had previously been detained. The court used a juvenile detention attorney-of-the-day for five of these cases. The attorney-of-the-day did not know if other counsel had been appointed for the juveniles but represented the juvenile for purpose of this hearing. The judge stated that this representation was only for the hearing and was not

³⁹ Tex. Fam. Code § 51.10(c).

⁴⁰ Tex. Fam. Code § 51.10(c)-(d).

to continue beyond the hearing. The attorney-of-the day also substituted for another attorney and represented one additional juvenile. A decision was made to continue the detention of six of these juveniles. A seventh juvenile was released. The monitor believed that this juvenile had retained counsel who was present at court that morning before the hearing. The retained counsel did not appear with the juvenile at the release instructions, but there seemed to be a clear agreement in place that the juvenile would be released.

If an attorney is appointed to represent a juvenile either at the detention hearing or immediately after the hearing, Section 51.101(a)-(b) sets the time duration of the appointment.

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

(b) *If there is an initial detention hearing without an attorney and the child is detained, the attorney appointed under Section 51.10(c) 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.*

The fact that the court states that the representation is to only be for duration of the hearing does not discontinue the representation unless the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

Recommendation 10: If an attorney is appointed for a detention hearing, the attorney must continue to represent the juvenile until one of the three conditions of Section 51.101 of the Family Code is met. Section 51.101 requires that if an attorney is appointed for a detention hearing that the attorney continues the representation until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

When the decision is made to detain the juvenile, Section 51.10(c) states:

If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney. The court shall order the retention of an attorney according to Subsection (d) or appoint an attorney according to Subsection (f).

The fact that the parents did not request counsel does not affect the fact that the child shall immediately be entitled to representation by an attorney. Neither does it discharge the court's duty to either order the retention of an attorney or to appoint an attorney.

The Juvenile Justice Code requires that juveniles receive immediate representation of counsel upon a determination to detain the juvenile beyond the detention hearing. If a juvenile was not represented by counsel at the detention hearing, the attorney can make a de novo motion for another detention hearing. The hearing must be held within two working days of the motion. According to Section 54.01(n):

An attorney appointed by the court under Section 51.10(c) because a determination was made under this section to detain a child who was not represented by an attorney may request on behalf of the child and is entitled to a de novo detention hearing under this section. The attorney must make the request not later than the 10th working day after the date the attorney is appointed. The hearing must take place not later than the second

working day after the date the attorney filed a formal request with the court for a hearing.

The monitor attempted to document the timeliness of appointments to juveniles at detention hearings through the examination of case files. Instead, the Fort Bend County Juvenile Probation Department examined 153 cases from FY2010 (October 2009 – September 2010) in which juveniles attended detention hearings.⁴¹ According to the case examination made by the Fort Bend County Juvenile Probation Department (not Task Force staff), 57 of these juveniles received appointed counsel at the initial detention hearing, 84 juveniles had no counsel to represent them, and 12 juveniles had retained counsel. See the table below for a description of timely appointments at the initial juvenile detention hearings. If the judge presiding over the detention hearing had authority to appoint counsel at the detention hearing, the County might be able to cure issues with untimely appointments for juveniles at detention hearings.

Table 5: Timely Appointments for Juvenile Detention Hearings

	Total
Total Initial Detention Hearings in Sample	153
Cases that Retained Counsel	12
Counsel not Appointed by Date of Detention Hearing, but Juvenile Released after Hearing	4
Total Cases Requiring Either an Order Appointing Counsel or an Order to Retain Counsel by the Conclusion of the Detention Hearing	137
Counsel Appointed by Date of Detention Hearing	57
Timely Appointment of Counsel at Initial Detention Hearing	42%

Recommendation 11: If the child is not represented by counsel at the detention hearing and there was a decision to detain the child, the court must appoint counsel or order the parent to retain counsel. Section 51.10(c) of the Family Code requires that if the child was not represented by counsel at the detention hearing and there was a decision to detain the child, the child is entitled to immediate representation by an attorney.

Juveniles Served with a Petition

On the filing of a petition, the juvenile court must make a determination of indigence 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.⁴² Once the juvenile is served with the petition, the court has five working days to appoint counsel.⁴³

The monitor attempted to document the timeliness of appointments to juveniles served with a petition. The Fort Bend County Juvenile Probation Department examined 149 cases from FY2010 (October 2009 – September 2010) in which juveniles were served with a petition. According to the

⁴¹ The Fort Bend County Juvenile Probation Department handled the review of juvenile cases. The monitor asked the probation department to select every third juvenile case and to list relevant case information. The probation department reviewed a total of 205 juvenile cases from FY2010. Data with an initial detention hearing outside of the October 2009 – September 2010 time frame was excluded as were any hearings without a date listed for the hearing.

⁴² Tex. Fam. Code § 51.101(c).

⁴³ Tex. Fam. Code § 51.101(d).

Juvenile Probation case examination, 100 cases had timely appointment of counsel, 25 cases did not have counsel appointed timely (counsel was appointed timely in 80% of cases), and 24 cases had retained counsel. Task Force Administrative Rules require that if counsel was appointed timely in less than 90% of the sample examined that a recommendation be made to the County.⁴⁴

Table 6: Timeliness of Counsel Appointments When a Petition Was Served on the Juvenile⁴⁵

	Total
Instances where Petition Served on Juvenile ⁴⁶	149
Instances where Juvenile Retained Counsel	24
Total Cases Requiring Either an Order Appointing Counsel or an Order to Retain Counsel	125
Counsel Appointed within 5 Working Days	100
Counsel not Appointed within Working Days and Indigence was not Denied	25
Percent of Timely Appointments	80.0%

Recommendation 12: The juvenile courts must appoint counsel within five working days of the petition being served on the juvenile as required by Section 51.101(d) of the Family Code.

⁴⁴ 1 TAC §174.28.

⁴⁵ Some of the cases were listed as having both assigned and retained counsel. If the date of counsel retention was different than the date of appointment, the case was counted. It was considered an appointed case if the juvenile was listed as receiving assigned counsel after the retained date but within five working days of the service on the juvenile. It was considered a retained case if the juvenile was listed as receiving appointed counsel after the assignment date but within five working days of the service on the juvenile. The case was thrown out if the date of appointment was the same as the date of retaining counsel. If a case had a denial of indigence more than five working days after service on the juvenile, it was considered untimely.

⁴⁶ This includes instances where the case was filed and the juvenile had counsel but the petition was never served on the juvenile.

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

Adult and Juvenile Indigent Defense Plan Provisions

Commendation 14: All elements required for the attorney selection process section of the adult indigent defense plan were included in the plan.

Commendation 15: All elements required for the attorney selection process section of the juvenile indigent defense plan were included in the plan.

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.⁴⁷
- 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.⁴⁸
- Alternative appointment method:⁴⁹
 - 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.⁵⁰

Jurisdiction's Process

Concerning the method for selecting counsel in misdemeanor cases, the Adult Indigent Defense Plan states:

All appointed counsel for criminal arrestees in Fort Bend County, in the District and County Courts at Law, in both felony and misdemeanor cases, shall be selected pursuant to the requirements of the Texas Code of Criminal Procedure, Art. 26.05, et seq., and this Plan, using a system of rotation from a list of approved counsel.

The plan makes no mention of the attorney-of-the-day system. The misdemeanor lists have four graduated levels, but these levels do not correspond to the attorney-of-the-day. Tex. Gov't. Code Section 71.0351 requires that in each county the local administrative statutory county judge must submit "a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05."

⁴⁷ Tex. Code Crim. Proc. art. 26.04(a). Only one of the boxes in this section needs to be met to meet statutory requirements.

⁴⁸ Tex. Code Crim. Proc. art. 26.044. The County has a mental health public defender office, but since the public defender is specialized, the County's method of appointment is considered to be rotational.

⁴⁹ Tex. Code Crim. Proc. art. 26.04(g)-(h).

⁵⁰ 1 TAC §§174.10-174.25.

Recommendation 13: The indigent defense plan must describe Fort Bend County’s use of the attorney-of-the-day system.

Distribution of Appointments

The monitor examined the distribution of appointments in misdemeanor, felony, and juvenile cases. The monitor only examined appointments made to attorneys on an appointment list whose members were active on the list in FY2010. The appointments are based on the number of cases disposed in FY2010 as reported by the auditor through voucher payments. Such appointments do not include attorney-of-the-day appointments.

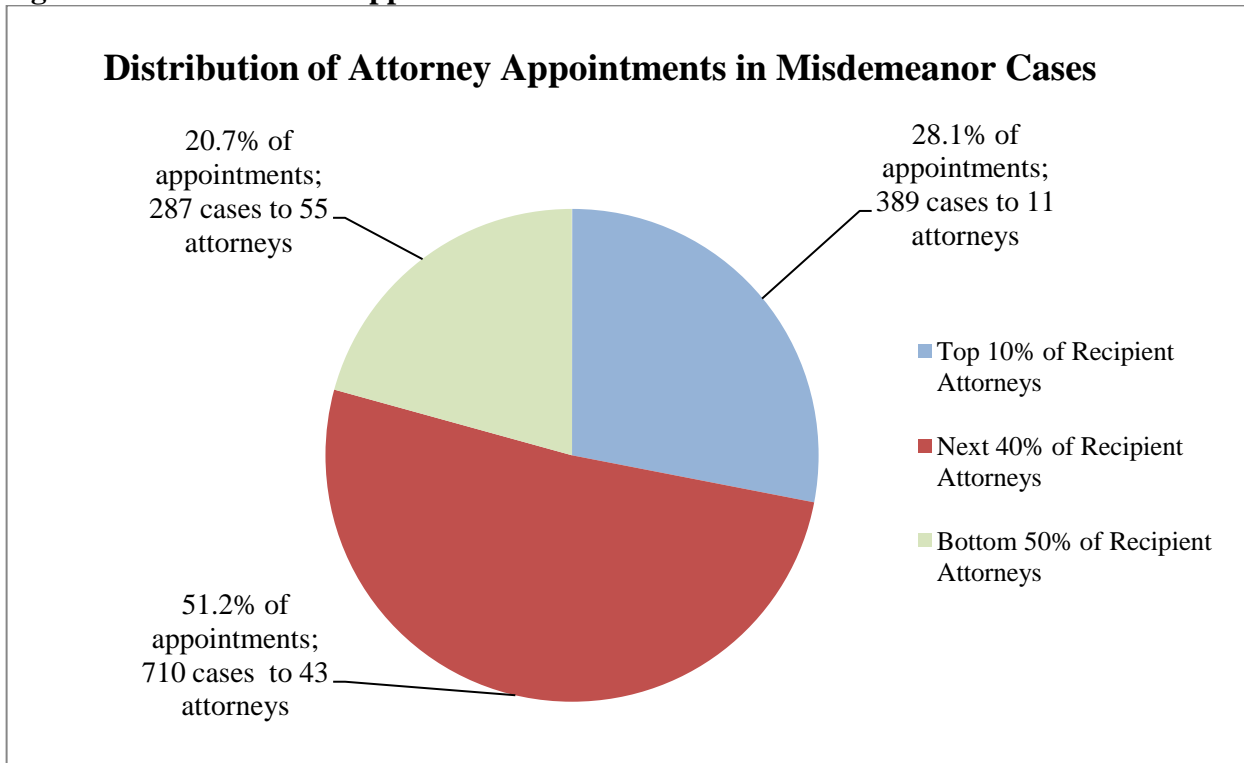
Misdemeanors

A total of 153 attorneys received payments for misdemeanor appointments in FY2010. However, for the purposes of examining the distribution of cases, only 109 attorneys were considered. Attorneys not on a misdemeanor appointment list, attorneys who withdrew from the list during FY2010, and attorneys whose payments came only from cases prior to FY2010 were not considered. Attorneys who received special language appointments were grouped together with attorneys only speaking English. From this group of 109 attorneys, the top 11 attorneys that accept court appointments (top 10.1%) received 28.1% of total misdemeanor appointments, or 2.8 times their representative share. This portion falls within the threshold set by Task Force Administrative Rules that if the top 10% of recipient attorneys receive less than three times their representative share of appointments, the appointment system is considered fair, neutral, and non-discriminatory.⁵¹ See the following pie chart that displays the share of appointments received by different groups of attorneys.⁵²

⁵¹ 1 TAC §§174.10-174.25.

⁵² The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 10.1%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Figure 5: Distribution of Appointments in Misdemeanor Cases



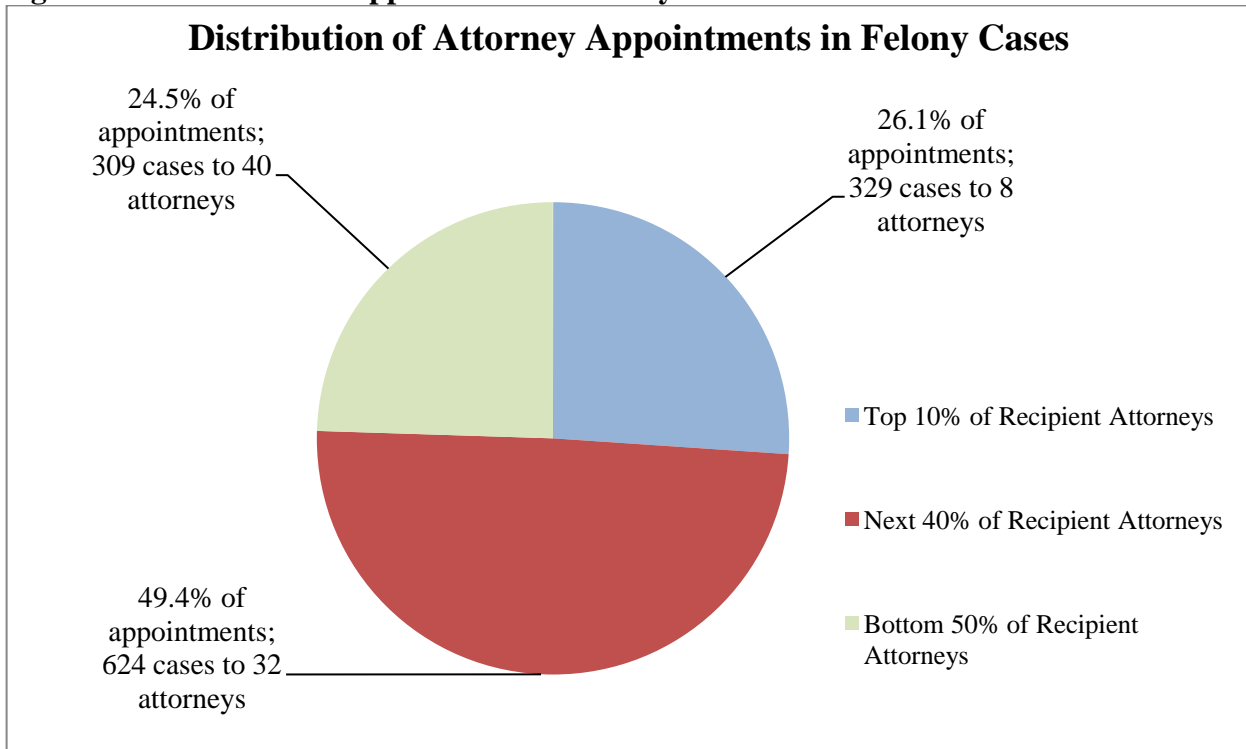
Commendation 16: The misdemeanor appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Felonies

A total of 93 attorneys received payments for felony appointments in FY2010. However, for the purposes of examining the distribution of cases, only 80 attorneys were considered. Attorneys who withdrew from the list during FY2010 and attorneys whose payments came only from cases prior to FY2010 were not considered. Attorneys who received special language appointments were grouped together with English-only attorneys. From this group of 80 attorneys, the top 8 attorneys who accept court appointments (top 10.0%) received 26.1% of total felony appointments, or 2.6 times their representative share. This portion falls within the threshold set by Task Force Administrative Rules that if the top 10% of recipient attorneys receive less than three times their representative share of appointments, the appointment system is considered fair, neutral, and non-discriminatory. See the following pie chart that displays the share of appointments received by different groups of attorneys.⁵³

⁵³ The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 10.1%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Figure 6: Distribution of Appointments in Felony Cases



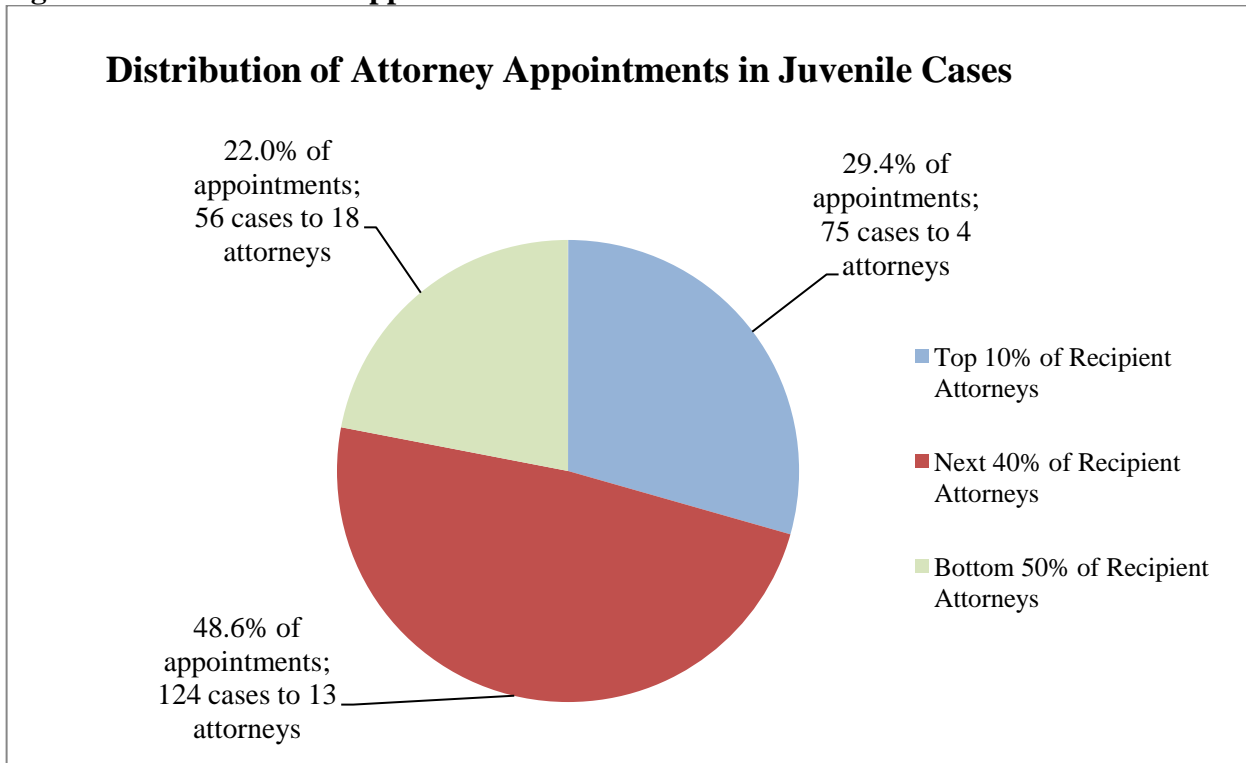
Commendation 17: The felony appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Juveniles

A total of 65 attorneys received payments for misdemeanor appointments in FY2010. However, for the purposes of examining the distribution of cases, only 35 attorneys were considered. Attorneys not on a juvenile appointment list were not considered. From this group of 35 attorneys, the top 4 attorneys who accept court appointments (top 11.4%) received 29.4% of total misdemeanor appointments, or 2.6 times their representative share. This portion falls within the threshold set by Task Force Administrative Rules that if the top 10% of recipient attorneys receive less than three times their representative share of appointments that the appointment system is considered fair, neutral, and non-discriminatory. See the following pie chart that displays the share of appointments received by different groups of attorneys.⁵⁴

⁵⁴ The pie chart breaks down appointments by the top 10% of recipient attorneys, the next 40% of recipient attorneys, and the bottom 50% of recipient attorneys. The top 10% here is really the top 11.4%, but is displayed as the top 10% in order to display the top 10% without splitting attorneys.

Figure 7: Distribution of Appointments in Juvenile Cases



Commendation 18: The juvenile appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Appointed Caseloads for Adult and Juvenile Cases

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for criminal defense attorneys, which are detailed in the following table.⁵⁵

Table 7: 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 who handles 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 should not be assigned more than 80 misdemeanors (or 20 percent of the misdemeanor maximum).

⁵⁵ National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

The NAC standards are a good starting point to develop 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 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.

Based on the number of cases paid by the auditor in FY2010, no attorney approached the caseload threshold established by NAC for their appointed caseload. In Fort Bend County, 184 attorneys received attorney fees for criminal or juvenile cases in FY2010.⁵⁶ Of the 184 unique attorneys who received a criminal or juvenile appointment, the highest appointed caseload was just over 50% of the maximum total recommended caseload.⁵⁷ This does not mean that no attorney exceeded the threshold, as neither cases from other jurisdictions, nor 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 they accept appointed cases. See Appendix E for more details (see also Appendix H regarding self-reports of attorney-of-the-day appointments).

Commendation 19: The appointment methods for criminal and juvenile cases appear to distribute appointments in such a manner that attorneys do not have excessive appointed caseloads.

To examine how Fort Bend County criminal appointments relate to attorneys' overall practices, the criminal defense bar survey asked attorneys about the makeup of their practices. Based upon survey results, the typical respondent's practice composed the following: 30% to 40% of the practice dedicated to appointed criminal cases in Fort Bend County; 30% to 40% dedicated to retained criminal cases; and 10% to 20% dedicated to civil cases. A significant minority of respondents either accepted criminal appointments outside of Fort Bend County or took federal cases. According to the survey, the median level of monthly Fort Bend criminal appointments per attorney was two misdemeanor cases, two felony cases, and one juvenile case. The median level of monthly retained cases received was two misdemeanor cases, one felony case, and one juvenile case. These survey results are a further suggestion that caseloads of attorneys who accept appointments are generally reasonable.

Continuing responsibilities of the attorney to the client

Both judges and attorneys in the county noted to Task Force staff that it is not uncommon for attorneys to miss their clients' misdemeanor dockets, often because of conflicts with appearances in other jurisdictions. When the attorney does not show up, the attorney-of-the-day meets with the defendant and either marks the defendant down for a re-set or may, if directed by the court, be appointed to the case and resolve the case at that court appearance. Based upon the monitor's review of 572 misdemeanor case files, 265 cases contained a record of having been represented at some point by appointed counsel. Of these 265 misdemeanor cases, 23 of the cases had been disposed with the

⁵⁶ Some payments were made for cases initiated prior to FY2010; similarly, some cases filed in FY2010 will not be paid until FY2011 or later. In short, the payment data for FY2010 can be a useful instrument to examine attorney caseloads in a given year because appointments made in a prior year but paid in the current year will be offset by appointments made in the current year but paid in future years.

⁵⁷ The attorney caseloads do not consider appointments made in an attorney-of-the-day capacity. Where attorney-of-the-day payments occurred, the number of payments for attorney-of-the-day work is noted. This only captures the number of times an attorney served as attorney-of-the-day, however, because attorneys-of-the-day are paid on a daily, rather than a case-based, rate. Attorneys-of-the-day do not document cause numbers on their submitted vouchers, so the report can only summarize the number of times attorneys served in that capacity, rather than the number of cases handled by that attorney on that day.

attorney-of-the-day after being appointed another attorney for the case (9% of misdemeanor cases with counsel appointed had a case disposed with a different attorney who was acting as attorney-of-the day).

The attorney-of-the-day does not receive an order appointing counsel unless the client agrees to a plea. The attorney-of-the-day typically examines the case, receives an offer from the prosecutor, and gives advice to the defendant, but the term of service is only for the hearing. If the client does not agree to a plea, the term of service ends, and the court does not issue an order appointing counsel. However, according to the Attorney Selection Process section of the Adult Indigent Defense Plan, representation of the client is to continue through all pre-trial, post-trial, and appellate levels. The plan states:

E. Continuing Responsibilities: An attorney who is appointed to represent an indigent defendant, regardless of the degree of offense, is expected to represent that defendant through all pretrial, post trial and appellate levels. In the event an appointed attorney desires to withdraw from representing an indigent defendant through the appellate process, such attorney shall promptly, upon completion of post trial matters, move to withdraw with good and satisfactory cause cited and bring such motion to the immediate attention of the judge.

Texas statute requires that appointed attorneys provide continuous representation of their defendants unless good cause is found on the record to replace the attorney. No allowance is made for appointing an attorney for partial representation of a defendant. Article 26.04(j)(2) states:

(j) An attorney appointed under this article shall:

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

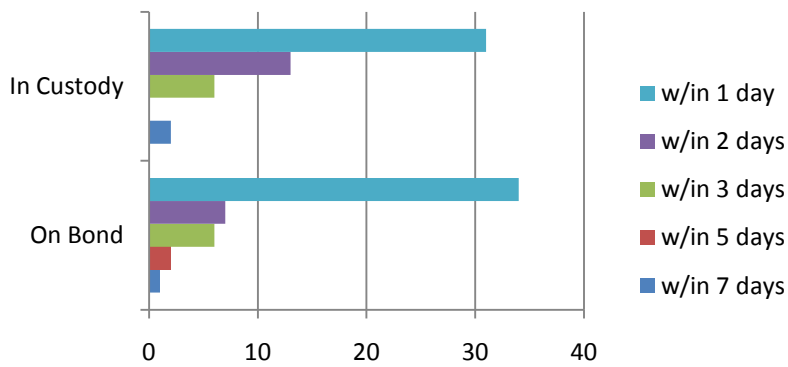
<p>Recommendation 14: Attorney-of-the-day appointments must be consistent with Article 26.04(j)(2).</p>
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Appointed Counsel Obligations to Contact and to Meet with the Client

Article 26.04(j)(1) states that appointed counsel “shall make every effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.” The monitor’s survey asked defense attorneys how soon they contact clients and how soon they meet with clients. According to the survey, most attorneys contact in-custody clients within one day of appointment, but several attorneys listed that they take significantly longer. The results for bonded clients were very similar to in-custody clients. The survey followed up on the issue with a second question asking when client interviews are conducted. Most attorneys noted that they interview in-custody clients within one day of appointment. Again, a few attorneys listed a much later time for the interview. For bonded clients, the time until the client interview varied. See Figure 8 and Figure 9 below for more details (charts are found in Appendix H as well).

Figure 8: Time from Appointment until Attorney Contacts the Client

Q 2.3: How soon after appointment do you contact an appointed client:



	1 day	2 days	3 days	4 days	5 days	6 days	7 days	# Responses
In Custody	31	13	6	0	0	0	2	52
On Bond	34	7	6	0	2	0	1	50

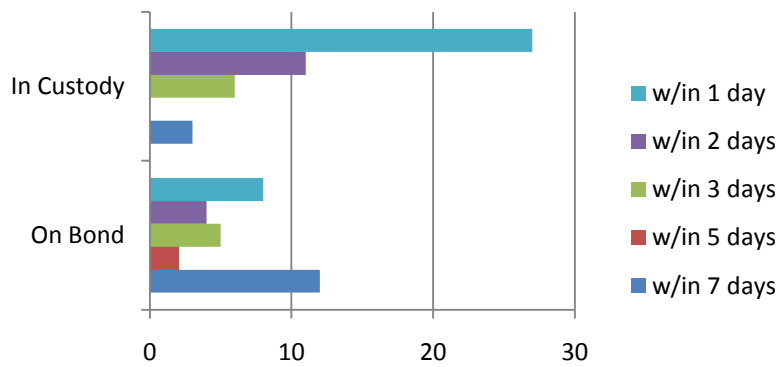
Additional text responses:

On Bond:

- “Depends when I can find them.”
- “At their earliest convenience.”

Figure 9: Time from Appointment until Attorney Interviews the Client

Q 2.4: How soon after appointment do you meet with an appointed client:



	1 day	2 days	3 days	4 days	5 days	6 days	7 days	# Responses
In Custody	27	11	6	0	0	0	3	48
On Bond	8	4	5	0	2	0	12	48

Additional text responses:

In Custody:

- "When something changes."

On Bond:

- "Prior to first court appearance."
- "At next crt [sic] setting."
- "Depends on client's schedule."
- "Depends."
- "Varies."
- "Depends on client."
- "At their convenience."
- "Before or on next Court satting [sic]."
- "When something changes."
- "On court date unless they want to come to my office before court."
- "Depends, court or office after call."
- "Usually not until 1st court appearance so it could be a month."
- "Whenever they respond."

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

Adult and Juvenile Indigent Defense Plan Provisions

Commendation 20: All elements required for the standard payment process section of the adult indigent defense plan were included in the plan.

Commendation 21: All elements required for the standard payment process section of the juvenile indigent defense plan were included in the plan.

Local Practices Compared to Adult and Juvenile Statutory Provisions

- ✓ Payments shall be in accordance with a schedule of fees adopted by the judges.⁵⁸
- ✓ No payment shall be made until the judge approves payment after submission of the attorney fee voucher.⁵⁹
- ✓ 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.⁶⁰
- ✓ Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.⁶¹

Jurisdiction's Process

Methods of Requesting and Approving Payments

In Fort Bend County, attorneys are paid on an hourly basis. An attorney submits a fee voucher with an itemized listing of the hours spent on the case. The judge approves or denies the number of hours submitted and sets an hourly rate for those hours. According to the local indigent defense plan, the suggested hourly rate for felony cases is between \$100 and \$200 per hour. Level 1 misdemeanor cases have a range between \$65 and \$150 per hour. Levels 2 through 4 misdemeanor cases have a range between \$65 and \$125 per hour. Juvenile CINS offenses have a range between \$75 and \$100 per hour. Juvenile intermediate cases have a range between \$75 and \$125 per hour. Higher level juvenile cases have a range between \$125 and \$150 per hour. The judge may approve additional expenditures upon good cause shown and reserves the discretion to deviate upward or downward in awarding an attorney fee.

The monitor examined a sample of fee vouchers from FY2010 in order to determine if payments comported with the local fee schedule and with the requirements of Article 26.05. See the following tables that describe the amount of hours submitted by attorneys and the hourly rate approved. The distributions are independent of each other, so the median felony hours submitted will not necessarily have any correspondence with the median rate approved by felony judges.

⁵⁸ Tex. Code Crim. Proc. art. 26.05(b).

⁵⁹ Tex. Code Crim. Proc. art. 26.05(c).

⁶⁰ *Id.*

⁶¹ Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).

Table 8: Hours Submitted by Attorneys on Fee Vouchers

	Misdemeanor Hours Submitted (238 vouchers reviewed) (does not include attorney-of-the-day vouchers)	Felony Hours Submitted (237 vouchers reviewed)	Juvenile Hours Submitted (138 vouchers reviewed)
Minimum	0.5	1	0.5
25% Quartile	2.2	4.5	2
Median (50% quartile)	3.5	7	3.5
75% Quartile	5.4	13	6.2
Maximum	88.4	57.1	79

Table 9: Hourly Rate Approved by Judges

	Misdemeanor Rate Approved (238 vouchers reviewed) (does not include attorney-of-the-day vouchers)	Felony Rate Approved (237 vouchers reviewed)	Juvenile Rate Approved (138 vouchers reviewed)
Minimum	\$21	\$50	\$59
25% Quartile	\$100	\$100	\$118
Median (50% quartile)	\$130	\$120	\$150
75% Quartile	\$150	\$150	\$160
Maximum	\$375	\$200	\$300

Local payment process comport with National Legal Aid and Defender Association (NLADA) best practices recommending that assigned counsel be paid an hourly rate “designed to compensate attorneys for effort, skill and time actually, properly and necessarily expended in assigned cases.”⁶² The NLADA’s recommendation is based upon the idea that a flat fee structure encourages appointed attorneys to limit the amount of time spent on a case, while a fair hourly rate encourages attorneys to provide whatever work is required for a given case.

Commendation 22: Fort Bend County’s use of an hourly payment system encourages attorneys to perform the work necessary for an appointed case rather than a cursory amount of work to dispose a case.

Article 26.05(c) states that if a judge disapproves the requested amount of payment, the judge must make written findings stating the amount approved and the reason the amount was different than requested. The monitor examined 738 total fee vouchers. Of these vouchers, there were six vouchers with a reduction noted. Five of the reductions were reductions in hours and not in the requested amount of payment. Of these five hourly reductions, three listed a reason for the reduction in approved hours. The other two reductions in hours submitted did not list a reason for the reduction, but the total payment approved was within the suggested range on the fee schedule for both the total hours approved and the total hours listed by the attorney. The final voucher was for support services and had a reduction in the amount approved for payment without listing a reason for the reduction. Because attorneys do not submit a dollar amount on their vouchers, it would be virtually impossible for the judges to reduce the requested payment other than by reducing the number of hours (Appendix H lists

⁶²Nat’l Legal Aid and Defender Ass’n, *Guidelines for Legal Defense Systems in the United States*, Guideline 3.1 Assigned Counsel Fees and Supporting Services (1976).

the survey results concerning attorneys’ opinions of Fort Bend County payment processes). See the following table for a summary of the voucher review.

Table 10: Fee Vouchers Reviewed for Payment Reductions

	Attorney Fee Vouchers Reviewed	Investigator, Expert Witness, or Other Direct Litigation Vouchers Reviewed	Total
Vouchers approved as submitted	693	38	731
Vouchers with some kind of reduction	5	1	6
Vouchers with a reduction in payment and no reason was listed	0	1	1
Percent of vouchers meeting Article 26.05 requirements			99.9%

Commendation 23: The vast majority of the vouchers reviewed in Fort Bend County met Article 26.05 requirements.

A complaint made by many attorneys concerned the time to payment for their services. The criminal defense bar survey asked, “What is your opinion of Fort Bend County’s payment rates and payment process?” The top response to this question (composing 31% of the responses) was that payments to attorneys were too slow. The review of attorney fee vouchers indicated that the median time from attorney request until payment in misdemeanor cases was 22 days, in felony cases was 41 days, and in juvenile cases was 25 days.⁶³ The fee voucher review showed that there was a wide range in the time to payment, with a substantial number of cases paid within two weeks of request and another substantial number paid more than 60 days after the request for payment.

Use of Support Services

The monitor attempted to document the use of support services (investigators and expert witnesses) used by defense attorneys in representing indigent defendants. The monitor examined the FY2010 indigent defense data maintained by the Auditor’s Office used for their submission of the Task Force’s Indigent Defense Expense Report. This data is summarized in the following tables.⁶⁴

⁶³ The review only considered those attorney fee vouchers for which the monitor was able to determine the date of submission by the defense attorney, the date of approval by the judge, and the date of payment.

⁶⁴ Total felony, misdemeanor, and juvenile attorney fee vouchers were the total number of cases paid in each category from FY2010 as reported on the Indigent Defense Expense Report (IDER) to the Task Force. The associated expenses were also obtained from the IDER. Cases with investigator fees, expert witness fees, and other litigation fees were not obtained from the IDER but rather from the monitor’s review of Auditor’s Office data. Some cases classified by the auditor as attorney fees appeared to be support service expenses to the monitor. These cases and their corresponding expenses are the data listed for investigator fees, expert witness fees, and other litigation expenses.

Table 11: Use of Support Services in Misdemeanor, Felony, and Juvenile Cases

	Total Cases	Percent of Cases	Total Expenses
Misdemeanor Attorney Fee Vouchers	1516		\$1,013,049
Misdemeanor Cases with Investigator Fees	0	0.0%	\$0
Misdemeanor Cases with Expert Witness Fees	13	0.9%	\$14,625
Misdemeanor Cases with Other Litigation Expenses	1	0.1%	\$494

	Total Cases	Percent of Cases	Total Expenses
Felony Attorney Fee Vouchers	1280		\$1,398,875
Felony Cases with Investigator Fees	24	1.9%	\$22,618
Felony Cases with Expert Witness Fees	108	8.4%	\$108,094
Felony Cases with Other Litigation Expenses	51	4.0%	\$111,800

	Total Cases	Percent of Cases	Total Expenses
Juvenile Attorney Fee Vouchers	380		\$317,738
Juvenile Cases with Investigator Fees	3	0.2%	\$2,002
Juvenile Cases with Expert Witness Fees	6	0.5%	\$9,928
Juvenile Cases with Other Litigation Expenses	6	0.5%	\$1,820

The National Study Commission on Defense Services (NSC) drafted a standard for investigative expenses⁶⁵ using caseloads based on the NAC public defender standard (see Table 7), that calls for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. Assuming the full cost for one investigator is \$50,000⁶⁶, to be in line with national standards suggested by the NSC, Fort Bend County could expect to pay \$237,000 on 4.7 full-time equivalent (FTE) investigators, as seen in Table 12. Fort Bend County spent \$24,620 on investigative expenses during fiscal year 2010. Using the above NSC standards, the total predicted cost would have been \$237,056; therefore, the county spent 10 percent of the predicted amount.

Table 12: Predicted Investigative Costs versus Actual Cost

Misdemeanor Investigators Needed per NSC Standards	Felony Investigators Needed per NSC Standards	Juvenile Investigators Need per NSC Standards	NSC Standards Predicted Investigative Costs	Total Investigative Costs	Percent of Predicted Amount Spent
1.3 for 1,516 cases	2.8 for 1,280cases	0.6 for 380 cases	\$237,056	\$24,620	10.4%

The criminal defense bar survey attempted to examine attorneys' strategic use of investigators. The survey responses seem to indicate that appointed attorneys almost always perform some kind of

⁶⁵ National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976).

⁶⁶ The State of Texas determines benefits and taxes at 28.57 percent of a full time equivalent's salary; therefore, a \$50,000 investigator would not only make a salary of \$38,889.32, but also cost an additional \$11,110.68 per year in benefits.

investigation into the facts of a case. However, the investigation most commonly involves an interview with the client and a review of the district attorney's case file. A minority portion of defense attorneys rely on staff to perform an investigation. About half of appointed attorneys in misdemeanor and juvenile cases never hire an investigator. In felony cases, 85% of attorneys reported that they hire investigators in some cases. See Appendix H for more survey details.

The FY2010 indigent defense data supplied by the auditor indicated that investigator expenses are incurred and reimbursed by the County in about 1.9% of appointed felony cases, in 0% of misdemeanor cases, and in about 0.2% of juvenile cases. The auditor data indicated that investigative expenditures were incurred at a rate that is lower than the criminal defense bar survey suggests. Investigations are important to the work of a defense attorney because investigations are needed to ascertain the reliability of alleged facts. However, the percent of cases that incurred investigative expenses in Fort Bend County indicates that attorneys may underutilize investigative resource options available to them. The percent of appointed cases that incur investigative expenses is an area where the County may want to conduct additional analysis.

Effects of Counsel on Case Outcomes

The monitor examined case outcomes in felony and misdemeanor cases filed in FY2010 as one variable to examine the effectiveness of counsel.⁶⁷ The monitor compared disposition outcomes for defendants based on type of offense, whether the defendant made bond or remained in jail, and whether counsel was retained or appointed. This analysis cannot be seen as definitive, but it can provide useful insight into factors that affect defendants' case outcomes.

One would expect that case outcomes would be very closely related to the type of a crime for which a defendant is charged. As an example, if one compared the outcomes of ten defendants accused of Class A misdemeanor assault and family violence with ten defendants accused of Class A misdemeanor criminal trespass, one may expect that the ten defendants accused of assault and family violence would tend to receive harsher penalties, even though this does not take into account the quality of evidence available in the cases. In other words, if one grouped together large numbers of cases and classified them by type of offense, other factors being equal, one would expect defendants charged with more threatening offenses to receive harsher penalties than those charged with less threatening offenses.

Using the previous sample of misdemeanor and felony case files, the monitor grouped sample cases together according to case type. The case types included violent crime⁶⁸, drug crime⁶⁹, property crime including theft⁷⁰, driving offenses⁷¹, and other offenses⁷², which was used as a catch-all for

⁶⁷ A recent paper (Thomas H. Cohen, U.S. Bureau of Justice Statistics, *Who's Better at Defending Criminals? Does Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* (July 1, 2011)) also examined case outcomes. The paper examined case outcomes in the nation's 75 largest cities and found that clients of private attorneys and public defenders received similar adjudication and sentencing outcomes for their clients. Defendants with assigned counsel, however, received less favorable outcomes compared to their counterparts with public defenders.

⁶⁸ Violent crime cases were considered to include the following: capital murder; murder; arson; assault; aggravated assault; sexual assault; indecency with a child; injury to an elderly person or child; intoxicated assault; assault and family violence; assault causing bodily injury; robbery; aggravated robbery; kidnapping; and terroristic threats.

⁶⁹ Drug crime cases were considered to include the following: manufacture / delivery of a controlled substance; delivery of marijuana; possession of a controlled substance; possession of marijuana; prohibited substance in a correctional facility; fraudulent possession of a prescription drug; and illegal barter / expenditure in marijuana.

⁷⁰ Property crime cases were considered to include the following: theft of property; theft of service; theft from person; theft by check; debit / credit card abuse; money laundering; burglary of a habitation; burglary of a building; burglary of a vehicle; criminal mischief; criminal trespass; illegal barter / expenditure of property / finance; Medicaid fraud; forgery of a financial instrument; and unauthorized use of a motor vehicle.

offenses that did not fit into the other categories. The monitor compared cases by classification, as well as by whether the defendant bonded or remained in jail and by whether the defendant retained counsel or was appointed counsel.

To provide meaningful of analysis of dispositions across case types, the ability to bond, and the type of counsel, the monitor grouped offense levels together to provide an adequate number of cases in each category. Comparisons were made for first and second degree felonies combined third degree and state jail felonies combined, Class A misdemeanors, and Class B misdemeanors.⁷³ Because of the fact that felony offense levels were grouped together and because some sample sizes were relatively small, one should approach the comparisons with caution.

These analyses assumed that a plea to a term of confinement was the least desirable outcome for defendants; that probation or deferred adjudication were better outcomes for the defendant than confinement; and that dismissals or acquittals were better outcomes than probation or deferred adjudication. While in reality these assumptions are not always accurate (for instance, a defendant who could agree to time already served may not want to accept a probation agreement that would entail future obligations), they provide a set of general assumptions about the severity of case dispositions.

First and Second Degree Felony Comparison

Analysis Based on Type of Offense

In the monitor's review of cases based on offense classification for first and second degree felony cases, only classifications of violent crime and property crime had a sample size large enough to be considered useful.⁷⁴ From this violent crime sample, just under half (49%) pled to a term of confinement (median sentence of six years). In property crimes cases, one third (33%) pled to a term of confinement (median sentence of six years). Conversely, 27% of the violent crime sample received a disposition of probation or deferred adjudication, while 54% of the property crimes sample received a disposition of probation or deferred adjudication. Comparing the two groups, those arrested for violent crimes appeared more likely to receive dispositions of terms of confinement, while those arrested for property crimes appeared more likely to receive dispositions of probation or deferred adjudication. See Figure 10 below for a full comparison.

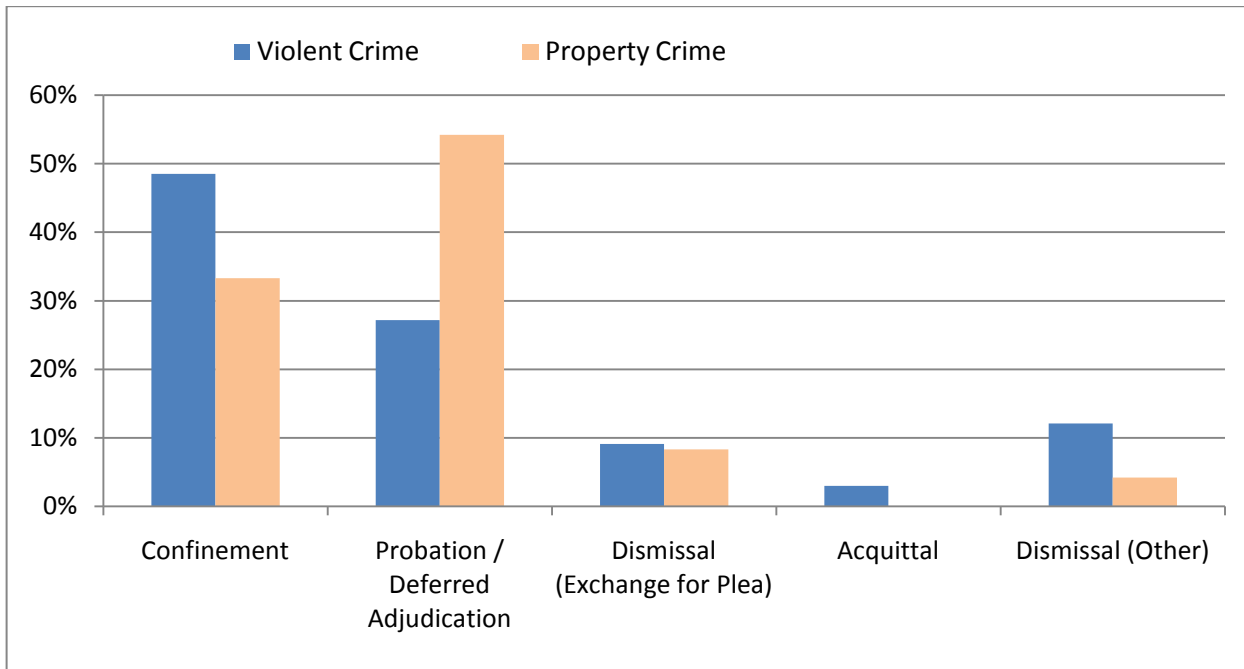
⁷¹ Driving offenses were considered to include the following: driving with intoxication; accident involving injury; accident involving damage to a vehicle; duty on striking a fixture; driving with license invalid; fictitious / obscured registration or inspection sticker; obstruction of a highway; possession and operation of a salvaged motor vehicle; and reckless driving.

⁷² Other offenses were a catch-all and included the following: violation of a protective order; unlawful possession of a firearm; possession of a prohibited weapon; attempt to take weapon from an officer; unlawful carrying of a weapon; engaging in organized criminal activity; evading / resisting arrest; fleeing police officer; escape from custody; interference with an emergency call; failure to identify / give false information; false report; tampering with a government record; tampering with physical evidence; interference with public duties; escape from custody; fraudulent use of identification; unlawful restraint; fraudulent destruction, removal, or concealment of writing; illegal dumping; violation of clean air act; purchase / furnish alcohol to a minor; sale of alcohol to a minor; stalking; abandonment of a child; prostitution; online harassment; sex offender's duty to register; and possession of child pornography.

⁷³ All case outcome comparisons only examined cases that were disposed. Cases that were still active at the time of the review were excluded.

⁷⁴ The first and second degree violent crime sample consisted of 33 disposed cases, and the property crime sample consisted of 24 disposed cases.

Figure 10: Comparison of Dispositions of First and Second Degree Felony Cases Based on Offense Classification



Analysis Based on Bond

If we take this same first and second degree felony sample (with all crime classifications included) and compare cases based upon whether defendants made bond or remained in jail, we may expect that persons who made bond would tend to have better case outcomes than persons who remained in jail. Persons who make bond are in a much better position to let negotiations progress over an extended period of time. The question becomes to what extent bonded persons receive better case outcomes. While we may expect violent crimes to tend to have harsher outcomes than non-violent crimes, a defendant’s ability to post bond may outweigh case-type differences.

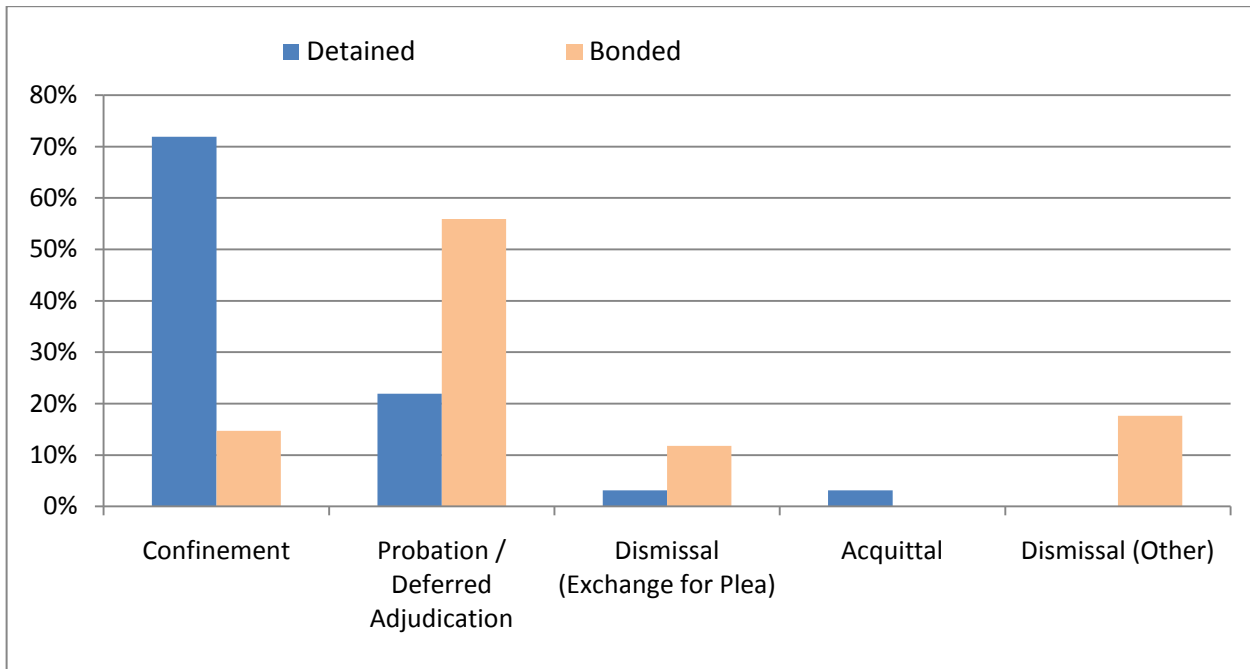
From the monitor’s sample, 72% of first and second degree felony detained defendants pled to a term of confinement,⁷⁵ compared to 15% of bonded defendants.⁷⁶ The median sentence of the detained group was six years compared to five years for the bonded group. The fact that the percent of detained defendants that pled to terms of confinement was significantly higher than the group accused of violent crimes is striking. This sample gives a preliminary indication that a person’s ability to make bond may impact a case outcome more than the type of crime charged.

The ability to obtain a dismissal or to reach an agreement on some kind of alternative sentencing seems more likely for bonded persons than for detained persons. Twenty-two percent (22%) of the detained defendants received either probation or deferred adjudication compared to 56% of the bonded group. None of the detained defendants received a dismissal not made in exchange for a plea, but one defendant received an acquittal. Eighteen percent (18%) of the bonded group received a dismissal not made in exchange for a plea. See Figure 11 below for a comparison of case outcomes.

⁷⁵ The first and second degree detained sample consisted of 32 disposed cases. The monitor could not determine whether the person made bond in two cases.

⁷⁶ The first and second degree bonded sample consisted of 34 disposed cases.

Figure 11: Comparison of Dispositions of First and Second Degree Felony Cases Based on Whether the Defendant Bonded



The fact that detained defendants received less desirable case outcomes than bonded defendants does not necessarily mean that defendants’ inability to make bond caused the less desirable outcomes. Other factors could have caused these outcomes. For instance, defendants who appear to be a risk to let loose in the community will likely have higher bonds than defendants who appear to be relatively harmless but to have made an error in judgment.

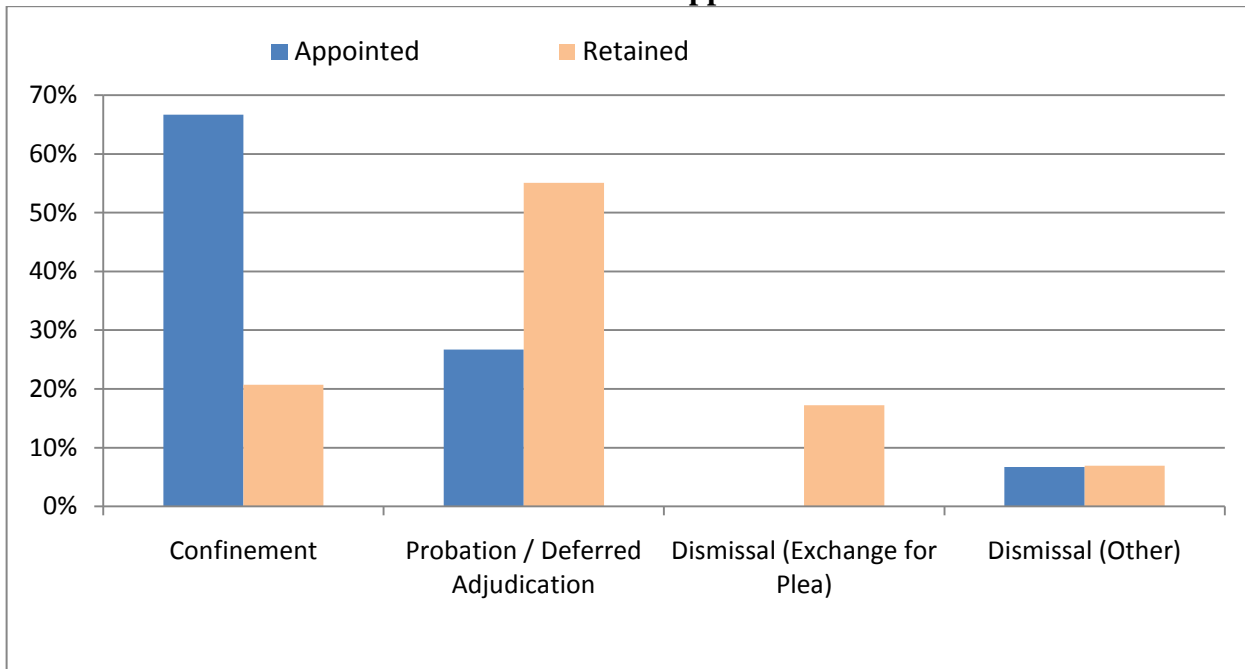
Analysis Based on Counsel Type

Another factor that could have affected case outcomes is the type of counsel that represented defendants. As a note of caution, when examining the effects of counsel type, one has to consider the other forces that can affect case outcomes. As mentioned, detained defendants may receive less desirable case outcomes than bonded defendants, and defendants who commit more serious crimes may also receive less desirable case outcomes. Type of counsel is just one important variable in the mix of factors that may impact final dispositions because when a defendant cannot make bond, the defendant is very likely to receive appointed counsel. Alternatively, when a defendant can make bond, the defendant is likely to retain counsel.

From the monitor’s sample of defendants represented by appointed counsel in first and second degree felony cases, 67% of defendants pled to a term of confinement (median sentence of six years).⁷⁷ Twenty-seven percent (27%) received either probation or deferred adjudication. Retained counsel, on the other hand, had 21% of defendants plea to a term of confinement (median sentence of 5.5 years) and 55% of defendants agree to probation or deferred adjudication. See Figure 12 for a comparison of appointed counsel case outcomes as compared to retained counsel case outcomes.

⁷⁷ The monitor’s sample consisted of 30 disposed cases where counsel was appointed and 29 disposed cases where counsel was retained. The samples did not consider 12 cases where defendants switched from appointed counsel to retained counsel or 7 cases where defendants switched from retained to appointed counsel.

Figure 12: Comparison of Dispositions of First and Second Degree Felony Cases Based on Whether Counsel was Appointed or Retained



The outcomes were clearly better for defendants with retained counsel than for defendants with appointed counsel. However, appointed counsel represented **detained defendants** in 57% of their cases, while retained counsel represented **detained defendants** in only 19% of their cases. This may indicate a strong co-occurrence between the two variables of bonding condition and type of counsel: if detained defendants receive less desirable outcomes than bonded defendants, and if detained defendants are often represented by appointed counsel while bonded defendants are often represented by retained counsel, it is possible that the combination of factors, rather than case characteristics individually, influences outcomes. In other words, the factors of type of crime, ability to post bond, and type of counsel may be intricately tied together and influence one another. Appointed or retained counsel alone may not predict case outcome, but rather plays a role in a larger dynamic.

Comparisons for Other Offense Levels

One can argue that the comparisons made in first and second degree felony cases could be misleading because of the relatively small sample size. To help combat the effects of small samples and examine this trend over other types of cases, the monitor performed similar comparisons for third degree and state jail felonies, class A misdemeanors, and class B misdemeanors. Rather than repeat the same analysis for each offense level separately, all comparisons are listed together. While there are differences in the comparisons across offense levels, many of the trends observed with first and second degree felony cases also appear in lower level offenses.

The monitor found no obvious relationship between case outcomes and the type of crime charged. Intuitively, one may expect persons accused of violent crime to have a strong tendency to receive confinement as a case disposition and to receive probation or deferred adjudication less frequently. However, the third degree and state jail felony violent crime sample had outcomes with higher levels of probation than the other crime classifications. (This could have been due to a small sample size.) With property crime, the percent of persons who received a sentence of confinement varied between 27% and 56% across all offense levels, while the percent of persons who received probation or deferred adjudication varied between 31% and 54%. With drug crimes, the percent of persons receiving a sentence of confinement varied between 29% and 44% across all offense levels, while the percent of persons receiving probation or deferred adjudication varied between 28% and

40%. In summary, some correlation between type of crime and case dispositions may exist, but a strong correlation is not readily apparent from these samples. See the two tables below for sample results that demonstrate case outcome based on crime classification.

Table 13: Case Outcomes in Felony Cases Based on Classification of Crime

Offense Level	Group	Sample Size	Confinement	Probation or Deferred Adjudication	Dismissal (Exchange for Plea)	Dismissal (Other)	Other Outcome
1st and 2nd Degree Felonies	Violent Crime	33	48.5%	27.2%	9.1%	12.1%	3.0%
1st and 2nd Degree Felonies	Property Crime	24	33.3%	54.2%	8.3%	4.2%	0.0%
3rd Degree and State Jail Felonies	Violent Crime	20	30.0%	60.0%	5.0%	5.0%	0.0%
3rd Degree and State Jail Felonies	Property Crime	58	56.9%	31.0%	3.4%	8.6%	0.0%
3rd Degree and State Jail Felonies	Drug Crime	39	41.0%	28.2%	12.8%	17.9%	0.0%
3rd Degree and State Jail Felonies	Other Crime	34	38.2%	26.5%	23.5%	11.8%	0.0%

Table 14: Case Outcomes in Misdemeanor Cases Based on Classification of Crime

Offense Level	Group	Sample Size	Confinement	Probation or Deferred Adjudication	Dismissal (Exchange for Plea)	Dismissal (Other)	Other Outcome
Class A Misdemeanors	Violent Crime	31	51.6%	19.3%	16.1%	6.5%	6.4%
Class A Misdemeanors	Property Crime	26	26.9%	30.7%	30.8%	11.5%	0.0%
Class A Misdemeanors	Drug Crime	28	28.6%	39.2%	14.3%	17.9%	0.0%
Class A Misdemeanors	Other Crime	31	31.7%	34.2%	24.4%	7.3%	2.4%
Class B Misdemeanors	Driving Crime	85	48.2%	20.0%	2.4%	8.2%	21.2%
Class B Misdemeanors	Property Crime	82	28.0%	31.7%	9.8%	23.2%	7.3%
Class B Misdemeanors	Drug Crime	86	44.2%	27.9%	12.8%	10.5%	4.7%
Class B Misdemeanors	Other Crime	21	57.1%	4.8%	19.0%	9.5%	9.5%

Analysis Based on Bond

When case outcomes are compared with whether the defendant made bond, some clear patterns emerge. A large portion of defendants who did not post bond pled to a term of confinement, and very few of these defendants received a dismissal not made in exchange for a plea. Based on the samples, if a defendant made bond, the defendant was between 2.6 times and 13.3 times more likely to receive probation or deferred adjudication than defendants who did not make bond across all offense levels. Conversely, a defendant who did not make bond was between 2.2 times and 4.9 times more likely to plead to a term of confinement than a defendant who made bond. The following table lists case outcomes based upon whether the defendant made bond.

Table 15: Case Outcomes Based on Whether the Defendant Made Bond

Offense Level	Group	Sample Size	Confinement	Probation or Deferred Adjudication	Dismissal (Exchange for Plea)	Dismissal (Other)	Other Outcome
1st and 2nd Degree Felonies	Detained	32	71.9%	21.9%	3.1%	0.0%	3.1%
1st and 2nd Degree Felonies	Bonded	34	14.7%	55.9%	11.8%	17.6%	0.0%
3rd Degree and State Jail Felonies	Detained	49	69.4%	16.3%	8.2%	6.1%	0.0%
3rd Degree and State Jail Felonies	Bonded	100	31.0%	45.0%	11.0%	13.0%	0.0%
Class A Misdemeanors	Detained	34	70.6%	8.8%	14.7%	2.9%	2.9%
Class A Misdemeanors	Bonded	97	26.8%	39.2%	16.5%	15.5%	2.1%
Class B Misdemeanors	Detained	43	86.0%	2.3%	11.6%	0.0%	0.0%
Class B Misdemeanors	Bonded	210	35.7%	30.5%	8.1%	12.9%	12.9%

Analysis Based on Counsel Type

Many of the patterns that appeared in the initial comparison of defendants who did not bond also appeared for defendants who were represented by appointed counsel. Defendants with retained counsel were between 1.3 times and 2.8 times more likely to receive probation or deferred adjudication across all offense levels than defendants with appointed counsel. Conversely, defendants with appointed counsel were between 2.1 times and 3.2 times more likely to plead to a term of confinement than defendants with retained counsel. The differences between defendants with retained and appointed counsel are quite large, even though they are smaller than the differences between bonded defendants and detained defendants. See the following table that lists case outcomes based upon whether the defendant received appointed counsel or retained counsel.

Table 16: Case Outcomes Based on Whether the Defendant Retained or Was Appointed Counsel

Offense Level	Group	Sample Size	Confinement	Probation or Deferred Adjudication	Dismissal (Exchange for Plea)	Dismissal (Other)	Other Outcome
1st and 2nd Degree Felonies	Appointed	30	66.7%	26.7%	0.0%	6.7%	0.0%
1st and 2nd Degree Felonies	Retained	29	20.7%	55.1%	17.2%	6.9%	0.0%
3rd Degree and State Jail Felonies	Appointed	102	69.4%	16.3%	8.2%	6.1%	0.0%
3rd Degree and State Jail Felonies	Retained	56	31.0%	45.0%	11.0%	13.0%	0.0%
Class A Misdemeanors	Appointed	84	45.2%	28.5%	17.9%	7.1%	1.2%
Class A Misdemeanors	Retained	50	22.0%	38.0%	18.0%	18.0%	4.0%
Class B Misdemeanors	Appointed	132	60.6%	20.4%	9.8%	4.5%	4.5%
Class B Misdemeanors	Retained	117	25.6%	35.1%	9.4%	12.8%	17.1%

Discussion of Analysis

This report has alluded to that possibility that one reason for the large outcome differences between appointed and retained counsel seems to be the fact that most defendants who did not make bond received appointed counsel. In class A misdemeanor cases, 32 of 34 non-bonding defendants with disposed cases were appointed counsel. In class B misdemeanor cases, 40 of 43 non-bonding defendants with disposed cases were appointed counsel. This reinforces the effects seen in the initial comparison and seems to indicate that although type of counsel may have an impact on case outcomes, other factors such as the ability to post bond also affect case outcomes.

A possible explanation for how bonding affects case outcomes is that persons who cannot make bond have few available disposition options. If a defendant does not make bond, the defendant is probably not a good candidate for probation. Ideal candidates for probation will have little criminal history, at least a minimum level of education, family ties, and a job. If a defendant cannot make bond, those factors that make an ideal probation candidate are either missing or are quickly eroding. If the defendant cannot obtain some form of probation, available options to the defendant include: accept a plea to a term of confinement; obtain a dismissal; and go to trial. If the prosecutor does not believe a dismissal is an appropriate option, the defendant can either plead to a term of confinement or wait for a trial. The time to trial may be longer than the term of confinement offered by the prosecutor, making the trial option less appealing. In that scenario, a term of confinement—especially time served—may actually be preferable for the defendant. In this manner, the system itself influences the process. Detained defendants may be led down a path toward a plea for a term of confinement, as they are unlikely to receive either probationary options or a dismissal and are unlikely to attempt to obtain an acquittal as such attempts will likely require more time in jail than a guilty plea.

The criminal defense bar survey attempted to document any reported differences in how attorneys handle appointed and retained cases. An example of how clients are treated differently is with the first contact for bonded clients. When a client retains an attorney, there is no question as to the identity of the client or how the attorney may contact the client. The attorney will likely meet the client at his/her office and the client will make himself/herself available for the meeting. To compare this scenario with clients having appointed attorneys, the survey asked attorneys to list any challenges faced in meeting with appointed clients who are on bond. The top concern was incorrect client contact information. Other concerns involved scheduling issues such as clients not making themselves available to meet and lack of client transportation. If attorneys can easily meet in advance of a hearing with bonded retained clients but cannot easily meet with bonded appointed clients, one would expect that outcomes may be better for retained clients because the attorneys would be better prepared for their cases.

A perhaps surprising example of how clients with appointed and retained counsel are treated similarly involves the number of billable hours required to dispose cases. According to the survey, the median number of billable hours required to dispose retained cases was four to five hours in misdemeanor cases, eight to nine hours in felony cases, and four to five hours in juvenile cases. Again according to the survey, the median number of billable hours required to dispose appointed cases was four to five hours in misdemeanor cases, eight to nine hours in felony cases, and four to five hours in juvenile cases. The reported number of hours required to dispose appointed cases is very similar to those found in the attorney fee voucher review listed earlier in the report.

Commendation 24: Fort Bend County's local indigent defense practices provide for appointed counsel to perform a similar amount of work as retained counsel.

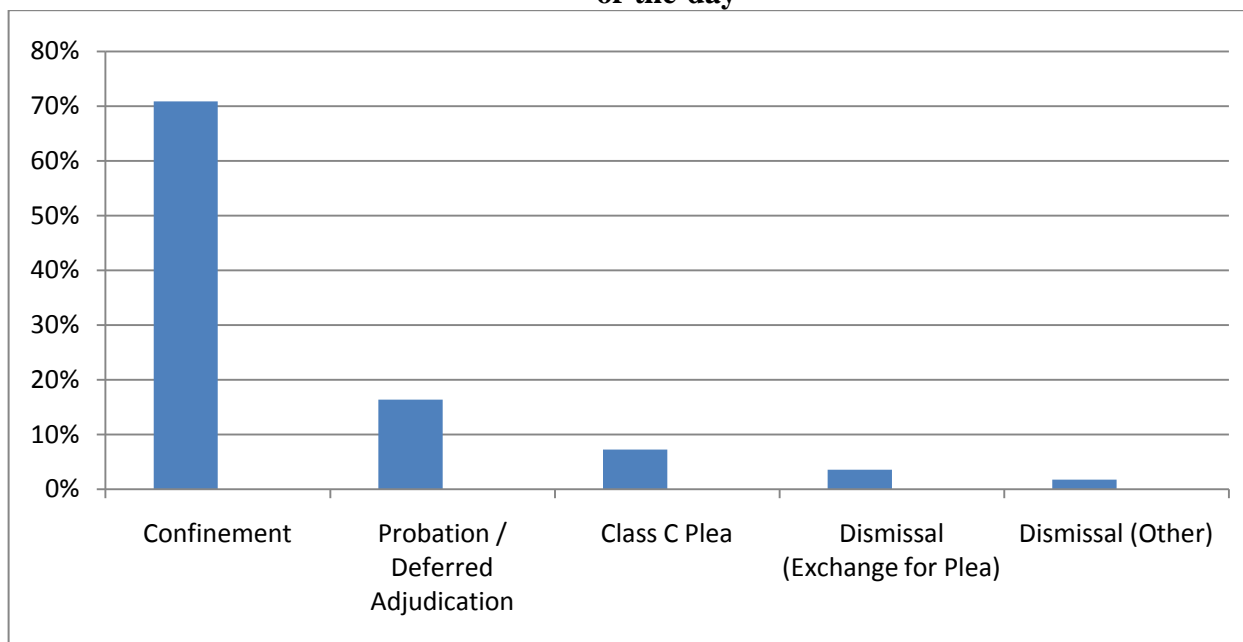
In summary, although the comparison of outcomes for appointed and retained clients is quite disparate, the outcomes may not necessarily be the result of attorneys putting forth greater effort for retained clients and lesser effort for appointed clients in every case. Rather, clients who are appointed counsel may have factors present that work to the detriment of their case dispositions. For example, clients unable to make bond are very likely to receive appointed counsel, are unlikely to receive a dismissal not made in exchange for a plea in another case, and are unlikely candidates for probationary-type sentences. Indigent clients who make bond are less likely to meet with their attorney well in advance of a hearing, so the appointed attorney may not be as prepared for a hearing as with retained clients. The appointed attorney may end up putting in the same hours for the appointed case as the retained case, but the time spent on the case may be performed in a less productive capacity for appointed cases than for retained cases.

Additional Factors for Consideration

Impact of the Attorney-of-the-Day on Misdemeanor Case Outcomes

As part of the review of case files and court observations, the monitor noticed that the attorney-of-the-day may have a large impact on misdemeanor case outcomes. The attorney-of-the-day may provide legal advice to many defendants, but there is generally no record of this representation unless the defendant's case is disposed by the attorney-of-the-day. These dispositions are typically pleas to terms of confinement. Of the 265 misdemeanor cases reviewed by the monitor that appeared to have been represented by appointed counsel, 55 had a record that the disposition occurred with the attorney-of-the-day. The majority of these cases resulted in a plea for a term of confinement. See the following graph for an illustration of case dispositions with the attorney-of-the-day.

Figure 13: Analysis of Dispositions for Misdemeanor Defendants Represented by the Attorney-of-the-day



Most of the defendants represented by the attorney-of-the-day probably wanted to take a plea to quickly dispose their cases. However, the fact that a defendant wants to take a plea does not mean that the outcome is the most just outcome. For example in one case examined by monitor, a defendant was charged with possession of a dangerous drug. The defendant could not make bond and pled to time served of 21 days with the assistance of the attorney-of-the-day. The defendant later obtained a dismissal when the defendant provided the prosecutor with a valid prescription for the drug. The defendant obtained justice in this case, but the prosecutor provided the means to the justice rather than the defense attorney. If the defense attorney had acted on behalf of the defendant and provided the prosecutor with the prescription, the defendant would not have had to plead guilty to the crime. Because the attorney-of-the-day only acts for the defendant while the specific docket is in session, no outside work is done on behalf of the defendant.

Improving Defendant Outcomes with the Mental Health Public Defender

County officials, court officials, and members of the local bar came together to create a system to provide a means for persons with mental health disorders to receive better case outcomes. Without some kind of special help, mental health defendants are likely to continually re-offend, often for low-level offenses, and will serve long periods of time in confinement for these low-level offenses. Neither the County nor the defendants benefit from this arrangement. The various stakeholders agreed that a mental health public defender's office could be utilized to dampen the cycle of recidivism.⁷⁸

It is reasonable to speculate that mentally ill defendants are not good candidates for probation. Mentally ill defendants may be very likely to miss meetings with probation officers, fail drug tests, and commit offenses during the probationary term. To encourage alternative disposition for defendants with specialized needs, the mental health public defender office acts as a form of assurance that the defendant may meet the terms of probation. With this insurance in place, the defendant is much more likely to be offered some kind of probationary alternative to traditional sentencing.

⁷⁸ The Task Force is currently funding a study to examine the impact of the Fort Bend County Mental Health Public Defender's Office.

The Fort Bend County Mental Health Public Defender Office was established in 2010 with a grant from the Task Force on Indigent Defense. The office employs two attorneys, two social workers, two case workers, and an administrative assistant. The attorneys handle the legal issues of clients. The social workers do a mental health assessment of the client and handle family issues. The case workers have the most contact with the client and ensure that clients meet the terms of probation. They ensure that clients attend all required meetings and make transportation arrangements for clients. This structure is different than a traditional defense team. Rather than only focusing on contesting charges or obtaining a better plea deal, the mental health defense team acts to create a stable living environment for the defendant while also ensuring that the defendant follows a treatment plan.

The mental health public defender is appointed to defendants after a jail screening indicates the defendant requires mental health services. The public defender receives notice of the appointment, as well as the mental health diagnosis packet performed at the jail. Usually jail staff complete these packets by the time of magistration, but sometimes the packets are created later. If a packet is not completed by the time of magistration, the mental health public defender is not likely to be appointed to the case. Instead the case will go on a regular court docket with a non-specialized attorney assigned to represent the defendant.

The principle concerns of the public defender are that defendants have a place to live and that they regularly take their medication. If defendants are eligible for supplemental social security income (SSI), they can usually obtain housing. As a result, a top strategic point for defense attorneys is that if probation is revoked, the client be released within 30 days so as to maintain the benefits. The County contracts with a regional mental health provider (Texana MHMR) to oversee issues relating to the defendants' medications needs. If clients stop taking medication, they are very likely to re-offend, so case workers must continually ensure that clients have obtained and are taking their medication.

According to both the mental health prosecutor and the mental health public defender, attorneys could benefit in general from training in how to handle mental health cases.⁷⁹ If a mental health diagnosis is not made by the time of magistration and a mental health defendant is assigned to a regular docket with a non-specialized assigned attorney, that attorney may be unprepared to work with the client. The mental health defender additionally noted that prosecutors not familiar with mental health issues are likely to overcharge in cases where the defendant has a long history of low-level criminal offenses. Conversely, the mental health prosecutor noted that defense attorneys not familiar with mental health issues often expect to receive a plea deal from the prosecutor rather than to develop a treatment plan to provide to the prosecutor. As an outside observer, the monitor believes that both the public defender and the prosecutor have valid points. Unless both defense attorneys and prosecutors go outside of their normal roles and focus and the needs and future options for the mentally ill client, the defendant will continue the pattern of past behavior at a great cost to himself/herself and to the County.

In addition to the Mental Health Public Defender Office, the County also has special felony and misdemeanor mental health dockets. The mental health defender may represent up to half of the defendants on a given docket. The mental health dockets bring together prosecutors and defense attorneys that are familiar with the needs of mental health defendants and put them in a court setting where a defendant's treatment status is regularly updated. Defendants do not show up to a docket to negotiate a plea. Instead, they agree to be part of an alternative sentencing program where charges can be dismissed with successful completion. This setup means that attorneys spend much more time with clients than in traditional cases. This setup also means that attorneys cannot manage the same caseloads that occur in traditional cases, as noted in the previous discussion of caseloads.

⁷⁹ In 2008 the Task Force funded a mental health defender training program for Harris County. The program was stored on compact disc and is available upon request to interested persons.

Commendation 25: Fort Bend County's use of a mental health public defender's office provides a useful method for improving outcomes of clients with special needs.

Suggestions for the County to Improve the Efficiency and Effectiveness of Its Indigent Defense System

Study the Impacts of Adding an Additional Statutory County Court

The stakeholders who were interviewed generally felt that another statutory county court is needed. Over a quarter of the misdemeanor cases that the monitor examined were still open at the time of the case file review in April 2011. These cases were filed during FY2010 (October 2009 – September 2010). The County's population has been growing at a very fast rate, and continued population increases could delay case dispositions further.

In 2008, OCA released a report on court caseloads titled, *Measuring Judicial Workload in Texas, 2007*, (available at <http://www.courts.state.tx.us/oca/jnas/pdf/WeightedCaseloadStudy.pdf>). The report made an assessment of the expected number of judicial officers required in jurisdictions across Texas. The County may want to review this report and may want to make an assessment as to whether judicial workloads have changed since the study was released.

Consider Standardizing the Process for Making In-Court Requests for Counsel

The process for making in-court requests for counsel is not identical across all courts. In some courts, the attorney-of-the-day tells the defendant of the right to counsel and the procedures for requesting counsel. In other courts, the court takes the role of notifying defendants of the right to counsel and the procedures for requesting counsel. A standardized process across all courts could more clearly inform defendants of the proper method for making in-court requests for counsel.

Consider Printing the Process for Requesting Counsel on the Back of a Summons

A relatively large number of misdemeanor defendants are notified of their case through a summons. For these defendants, their first chance to request counsel will be the initial appearance. If these defendants are informed of the right to counsel and the procedures for requesting counsel prior to the initial docket, they might be more likely to come to the initial docket with an idea of whether they will request counsel or whether they can afford to hire counsel.

Review the Mental Health Defender Staffing Levels

The monitor interviewed the mental health public defender office. The public defender noted that the County is trying to expand its mental health initiatives and that office staff regularly attend many meetings. The chief public defender felt that if the office wants to continue to be a mental health informational resource to the county while increasing its caseloads, the office needs to add another attorney.

Mental health cases are very time consuming, as many clients are released on probation linked to a treatment plan. In a traditional non-mental health case, the attorney's representation ends once the probationary sentence has been approved by the presiding judge. In mental health cases, attorneys and clients attend many status update dockets where the defendant's treatment plan is continually evaluated. An individual client may require the attorney's presence at these meetings for a year after the probation has been assessed.

Review the Direct Electronic Filing in Criminal Cases Study

The Task Force commissioned a study published by the Public Policy Research Institute at Texas A&M University, 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>), that 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.

Consider Adopting a Self-Assessment Program

Fort Bend 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 that 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 F for more details.

Conclusion

Task Force staff set out to determine the effectiveness of Fort Bend County's indigent defense processes and to determine whether the local processes were in compliance with the Fair Defense Act. For our assessment, we obtained both qualitative and quantitative data, including official records, docket observations, interviews, and a criminal defense bar survey. This varied data was used to make findings and recommendations to the County.

This program assessment discussed our findings and recommendations. Fort Bend County has some very strong aspects to its indigent defense program including judges who care deeply about how criminal justice processes function, a collaborative criminal defense bar, a fair method of appointing counsel when requests pass through the indigent defense coordinator, and a fair method of payment where pay is based upon the time and complexity of a case rather than upon a flat fee. Fort Bend County also has a number of opportunities to improve its indigent defense system so that it better comports with the Fair Defense Act. We have included several methods to help the County implement needed improvements. The Task Force is available as a resource for the County as it makes changes to its indigent defense processes.

We thank Fort Bend County officials and staff for their cooperation with this review. Fort Bend County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to Task Force findings.

Appendix A – Letter Requesting Fort Bend County Assessment



The Legislature State of Texas

December 16, 2010

Jim Bethke
Task Force on Indigent Defense
205 West 14th Street, Suite 700
Austin, Texas 78701

Mr. Bethke:

Recently your agency conducted a program assessment of the Bexar County indigent defense system. We were impressed with the thoroughness of your report and the important media coverage that informed the public about your findings. It appears that your report also has caught the attention of local elected officials in Bexar County and has prodded them to further examine the system to see how it may be improved. Congratulations on your good work.

Considering the positive outcomes from your program assessment of Bexar County, we thought that a similar assessment of Ft. Bend County's indigent defense system could bring similar benefits to the county, which we represent. Some issues within the county's indigent defense system have come to our attention, including: problems with court-appointed attorneys contacting their clients; docket management issues related to numerous delays and trial resets; lengthy delays in appointing counsel if counsel is not requested at the initial magistrate hearing; and felony and misdemeanor appointment rates that are below the statewide average.

We request that you conduct a thorough program assessment, similar to an internal audit, to look into the previously mentioned issues and to determine if Ft. Bend County is complying with the key requirements of the Fair Defense Act of 2001. In particular, we would like you to determine:

1. Are persons charged with criminal offenses adequately informed of the right to counsel?
2. Are indigent defendants adequately assisted in obtaining counsel in a timely manner?
3. Is indigence being determined according to the standards in the county's indigent defense plan?
4. Is counsel being appointed in a fair, neutral, and non-discriminatory manner?
5. Has the judiciary established and enforced minimum attorney qualifications?
6. How many experts and investigators are being approved in appointed counsel cases?
7. Are court-appointed attorneys appropriately paid?
8. Is the workload of court-appointed attorneys controlled or monitored to assure quality representation?

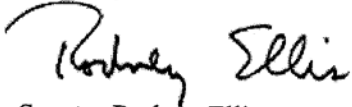
9. Are court-appointed attorneys supervised or systematically reviewed for quality and efficiency as measured by nationally or locally adopted standards?
10. How well is the recently established Mental Health Public Defender operating, and are there any ways in which its operations could be improved or expanded?

In your final report, please address the ways in which the County could improve the efficiency and effectiveness of its indigent defense system, including establishing a public defender office.

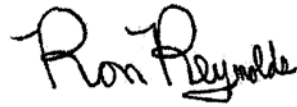
After completing your program assessment, please provide our offices, the Commissioners Court, and the local Board of Judges with a copy of the final report.

Please feel free to contact Scott Ehlers in Senator Rodney Ellis' office if you need further assistance in conducting this program assessment.

Sincerely,



Senator Rodney Ellis



Representative Ron Reynolds

Appendix B – Adult Indigent Defense Plan

Fort Bend District and County Courts Plan

Preamble

1/22/2011

**FIRST AMENDED
FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR
THE APPOINTMENT OF COUNSEL
TO INDIGENT DEFENDANTS
IN THE DISTRICT AND COUNTY COURTS OF FORT BEND
COUNTY, TEXAS, PURSUANT TO ART. 26.05, ET SEQ., TEXAS
RULES OF CRIMINAL PROCEDURE**

(Amended 1-12-2011)

PREAMBLE

This "**FIRST AMENDED FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS IN THE DISTRICT AND COUNTY COURTS OF FORT BEND COUNTY, TEXAS, PURSUANT TO ART. 26.05, ET SEQ., TEXAS RULES OF CRIMINAL PROCEDURE**", hereinafter referred to as the "**Plan**", shall take the place of that certain "**FORT BEND COUNTY PLAN AND INTERIM LOCAL RULES FOR MAGISTRATE HEARINGS AND APPOINTMENT OF ATTORNEYS FOR INDIGENT DEFENDANTS**" (adopted December 12, 2001, by the Fort Bend Council of Judges) and the "**FIRST SUPPLEMENT TO FORT BEND COUNTY PLAN AND INTERIM LOCAL RULES FOR MAGISTRATE HEARINGS AND APPOINTMENT OF ATTORNEYS FOR INDIGENT DEFENDANTS**" (adopted August 15, 2002, by the Fort Bend County Council of Judges), which previous Plan and Supplement have heretofore governed the appointment and payment of counsel for indigent adult defendants in felony and misdemeanor cases. This Plan, when adopted, shall apply to magistrate and probable cause hearings and to the setting of bonds and is adopted in order to comply with the provisions and requirements of Art 26.05, et seq., Texas Code of Criminal Procedure. In the event that the Task Force on Indigent Defense provides for requirements not contemplated by this Plan, this Plan shall be amended at the first opportunity. If there is any conflict between this Plan and any local rule that addresses the matters included herein, this Plan and the Texas Code of Criminal Procedure shall apply.

Prompt Magistration

2/7/2011

I.

PROMPT MAGISTRATION

A. At the time of the magistrate and probable cause hearings, the arresting officer for each arrestee shall have filed, at the time of booking into the jail, a printed (by computer or email) and concise probable cause affidavit with such additional information (offense report, etc.) as necessary for the magistrate to make the appropriate judgment. "Arrestee" is defined herein as a person who is arrested with or without an indictment or information having been filed, and may sometimes be referred to herein as "Defendant". No one shall be booked into jail without a filed "Probable Cause Affidavit". Affidavits for a warrant for arrest must be faxed or delivered to the jail upon arrest from the arresting agency. If not authorized to appoint counsel, the magistrate shall, without unnecessary delay but in no event longer than 24 hours after an arrestee's arrest, transmit, or cause to be transmitted, to the proper appointing magistrate or appointing authority an arrestee's request for counsel [Art. 15.17(a), CCP].

1. A Magistrate conducting magistrate and probable cause hearings, as provided for in these rules, shall be a Judge, Associate Judge or an assigned Judge designated by the appropriate Local Administrative Judge of Fort Bend County in order to ensure consistent compliance with all local rules and the Texas Code of Criminal Procedure.

B. The morning after arrest, at a time established by the magistrate, every felony and misdemeanor arrestee shall be brought to the magistrate jail courtroom, or other designated courtroom or place, for a magistrate to hold a probable cause hearing, to set bail and to determine the need for court appointed counsel. During the weekends, the magistrate shall hold magistrate and probable cause hearings at 11:00 am, or at some other time as determined by the magistrate, and the magistrate will timely advise the jail of such time and place in advance of the hearing(s). The jail shall have each arrestee and the necessary files and papers ready for review by the Magistrate at the jail courtroom, or other designated place, prior to the magistrate's arrival.

C. At the magistrate probable cause hearing for the arrestee, the magistrate judge shall make a written record of and comply with the provisions of this Plan and the requirements of the Texas Code of Criminal Procedure, including:

- 1.** Following the requirements of Art. 15.17 Texas Code of Criminal Procedure;
- 2.** Informing the arrestee of the right to appointment of counsel, if the arrestee is indigent;
- 3.** Making a written record of the magistrate warnings;
- 4.** Informing the arrestee of the right to an attorney;
- 5.** Inquiring of the arrestee as to whether or not the arrestee is requesting court appointed counsel;
- 6.** Providing arrestee with an affidavit of indigency and reasonable assistance in completing any necessary forms; and
- 7.** If required, making a referral of the arrestee to an appropriate local mental health or mental retardation authority, as required by Art. 16.22 (a) Texas Code of Criminal Procedure.

The Magistrate shall use the "**Magistrate Warning**" form attached to this plan as "**Addendum H**". The making of a record is satisfied by the use of the written form approved by the Council of Judges of Fort Bend County.

D. At such probable cause hearings, each arrestee shall be provided an opportunity to request court appointed counsel. If the arrestee is claiming indigency, the arrestee shall complete and file a sworn affidavit of indigency with the magistrate, as set out herein as **“Addendum E”**.

E. The magistrate will send all requests for appointment of counsel by an indigent in felony cases, and in cases which both felony and misdemeanor charges are pending, to the Judge or Associate Judge responsible for arraignments. The magistrate will send all requests for appointment of attorney by an indigent in Misdemeanor cases to the appropriate Judge, or Associate Judge, for the County Courts at Law who will then assign such requests to the Ancillary County Court at Law Judge for such week.

- 1.** Such District Judge and the assigned Ancillary County Court at Law Judge, (or if the Ancillary County Court at Law Judge is not available or has not been assigned, the Administrative County Court at Law Judge), or the Court Services Coordinator, as the case may be, shall appoint attorneys from the approved, graduated list of attorneys not later than one (1) working days after receipt of such request for appointment of counsel. Appointments shall be on a rotating basis, except as otherwise provided by law. If an indigent person is arrested pursuant to indictment, the appointment will be made within one (1) working day after receipt of the request by the judge in whose court the case is filed.
- 2.** Any indigent arrestee charged with Capital Murder shall have attorney(s) appointed only from the approved Second Administrative Region list of attorneys qualified to try Capital Cases. Preference in the appointment shall be given to those qualified attorneys who have practiced in Fort Bend County, have knowledge of Fort Bend County local rules and who comply with the requirements of paragraphs **VIII and IX of addendum “A”** attached hereto.
- 3.** Notice of appointment of counsel in all cases will be emailed to the appointed attorney and a telephone call shall be made by the Court Services Coordinator to the appointed attorney informing such attorney of the appointment. It is required that all attorneys on the approved Appointed Counsel for Indigent Defendants’ list maintain a valid email address for that attorney and provide such email address and current contact information to the Court Services Coordinator so that notification of appointments can be facilitated.

Indigence Determination Standards

1/22/2011

II. INDIGENCY DETERMINATION STANDARDS

The financial standards set forth below shall be used in determining whether an arrestee or defendant is considered indigent.

A. A person is considered indigent if their net household income does not exceed 125% of the federal poverty guideline for Annual Household Income (adjusted by number of persons in the household) as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Those Poverty Guidelines may change from year to year and shall be calculated by the Court Services Coordinator for each calendar year to be used during that calendar year.

B. The Pretrial Services Department of Fort Bend County CSCD shall interview each arrestee prior to the magistrate hearing and shall provide to the magistrate the following information:

1. Financial information regarding the arrestee's available income from all sources, including but not limited to, spouse and contributions from family members;
2. Arrestee's expenses, including but not limited to, living expenses, child support and alimony obligations, child care, medical expenses and transportation expenses;
3. Assets including, but not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposit, equity in real estate, personal property, and trust accounts;
4. Information on whether or not the arrestee is conversant in English, and if not, the language spoken by the arrestee; and, whether or not the arrestee is deaf. The Pretrial Services Department shall, upon learning that an arrestee is deaf or unable to communicate in English, arrange for a qualified interpreter to be present when the arrestee is taken before the magistrate; and
5. Information on whether or not there is reason to believe that the arrestee, if committed to the custody of the Fort Bend County Sheriff, has a mental illness, or is a person with mental retardation. The Sheriff shall notify the Pretrial Services Department not later than 72 hours after receiving evidence, whether by an oral statement or otherwise, that may establish reasonable cause to believe that an arrestee has a mental illness, or is a person with mental retardation. Such information shall be provided to the Magistrate in accordance with the provisions of Art. 16.22, Texas Code of Criminal Procedure.

Minimum Attorney Qualifications

1/22/2011

III.

MINIMUM ATTORNEY QUALIFICATIONS FOR INDIGENT APPOINTMENT

To be approved for inclusion on the list of attorneys qualified for appointment under this Plan for criminal cases in Fort Bend County, an attorney must complete the “**Application for Criminal and Juvenile Appointments in Fort Bend County**”, attached hereto as “**Addendum C**”, and be in compliance with the following requirements:

A. Complete a minimum of six (6) hours of continuing legal education pertaining to criminal law during each 12 month reporting period. The reporting period will begin on January 1, 2010, and on the same day of each year thereafter.

1. Required continuing legal education may be satisfied by completing activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or
2. By providing evidence of current certification (in good standing) of the attorney’s certification in criminal law by the Texas Board of Legal Specialization.
3. Continuing legal education activity completed within a one-year period immediately preceding the adoption of this Plan may be used to meet the educational requirements for 2011.
4. Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period’s requirement. The carryover provision applies to one year only.

B. To be included on the appointment list, each attorney must annually submit an affidavit, attached hereto as “**Addendum G**”, to the Fort Bend County Court Services Coordinator, or designee, detailing the continuing legal education activities in criminal law which have been completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in criminal law using said addendum.

Prompt Appointment of Counsel

1/22/2011

IV.

PROMPT APPOINTMENT OF COUNSEL

- A.** Counsel for indigent arrestees shall be appointed as soon as possible, but not later than the end of the first working day after the date on which the appointing judge, or person(s) designated by the judges to appoint counsel, receives an eligible defendant's request for counsel. [Article 1.051(c), CCP]
- B.** If an indigent defendant is released from custody prior to the appointment of counsel under the procedure contained in this Plan, appointment of counsel is not required until the defendant's first court appearance, or when adversarial judicial proceedings are initiated, whichever comes first. [Article 1.051(j), CCP]
- C.** The judge may not direct or encourage the arrestee to communicate with the attorney representing the State until the court advises the arrestee of the right to counsel and the procedure for requesting appointed counsel, and until the defendant has been given a reasonable opportunity to request appointed counsel, unless the arrestee has signed a valid, written waiver of the arrestee's right to counsel, as hereinafter provided in "**Addendum E**", attached hereto. [Art. 1.051(f-2), CCP]

Attorney Selection Process

1/22/2011

V.

ATTORNEY SELECTION PROCESS

All appointed counsel for criminal arrestees in Fort Bend County, in the District and County Courts at Law, in both felony and misdemeanor cases, shall be selected pursuant to the requirements of the Texas Code of Criminal Procedure, Art. 26.05, et seq., and this Plan, using a system of rotation from a list of approved counsel. The list of approved counsel, attorney qualifications, and/or any additional changes to this Plan may be updated and/or revised from time to time as necessary.

- A.** Applications by attorneys who desire to be removed from consideration for appointment to represent indigent defendants shall be made on a "Request for Exclusion From Indigent Appointments, Fort Bend District and County Courts at Law", attached hereto as "**Addendum D**".
- B. Graduated Lists:** The District and County Court at Law Judges trying criminal cases, or a committee established by same, shall approve a graduated list or lists of attorneys for appointment in felony and misdemeanor cases. Such list or lists shall be filed with the District and County Clerks. The lists of attorneys shall be reviewed at least annually by the Judges, or the committee appointed by same. Additional counsel shall be added to the various graduated lists only after approval by the appropriate judges, District or County Court at Law, as the case may be.
- C. Felony Appointments:** In order to qualify as a court appointed attorney to represent indigent defendants in the District Courts, an attorney must meet the requirements set forth in "**Addendum A**" attached hereto and made a part hereof by reference.

D. Misdemeanor Appointments: In order to qualify as a court appointed attorney to represent indigent defendants in the County Courts at Law, an attorney must meet the requirements set forth in “**Addendum B**”, attached hereto and made a part hereof by reference.

E. Continuing Responsibilities: An attorney who is appointed to represent an indigent defendant, regardless of the degree of offense, is expected to represent that defendant through all pretrial, post trial and appellate levels. In the event an appointed attorney desires to withdraw from representing an indigent defendant through the appellate process, such attorney shall promptly, upon completion of post trial matters, move to withdraw with good and satisfactory cause cited and bring such motion to the immediate attention of the judge.

F. Adoption of Fee Schedules: Attorneys appointed by the Court to represent indigents shall receive such reasonable compensation as established by Order of the Board of District Judges of Fort Bend County and by Order of the Board of County Court at Law Judges of Fort Bend County. The fee schedules adopted by formal action of each of such Board of Judges shall comply with Art. 26.05(c) Texas Code of Criminal Procedure, and any other applicable law, and shall be sent to the Commissioners Court of Fort Bend County, Texas, as required by statute. Such fee schedules are attached hereto as “**Addendum B**” and “**Addendum F**”.

G. Reasonable and Necessary Expenses: The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses shall be as provided by Art. 26.05(d) Texas Code of Criminal Procedure and only upon written motion and prior approval of the trial Judge. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses without prior written approval, as provided by Art. 26.052(h) Texas Code of Criminal Procedure, shall be paid pursuant to said statute. A complete and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement.

IV. STANDARDS AND RESPONSIBILITIES FOR ATTORNEYS

A. An attorney appointed to represent indigents shall make every reasonable effort to contact the defendant not later than the end of the first working day after appointment and to interview the defendant as soon afterwards as practicable.

B. An attorney who appears on the approved list of attorneys qualified to receive appointments to represent indigents must maintain a place of business with a phone which is answered during regular business hours and from 8:00 am to 6:00 pm on the weekends and holidays. Such attorney shall make arrangements so that the attorney may be promptly located and notified of appointment or hearing settings. Attorneys on the approved list must maintain an Email address which shall be operational 24 hours a day, seven days a week. These numbers and Email addresses shall be included on the Application for Criminal and Juvenile Appointments in Fort Bend County and shall be the official contact information utilized by the Court to inform counsel of appointment or court hearings. Any change in this contact information must be given in writing to the Administrative Court Services Coordinator for Fort Bend County.

C. Attorneys appearing on the approved list shall comply with all laws, rules, procedure and ethical provisions for providing reasonable assistance of counsel to their client.

D. Attorneys appearing on the approved list shall maintain the highest standard of ethical conduct and always be completely candid with the Court.

E. A judge may replace an appointed attorney if the appointed attorney does not make an effort to contact the defendant by the end of the first working day, and/or does not interview the defendant as soon as possible, and/or for any other suitable reason, as determined by the judge. The court may sanction an attorney for violation of these standards.

F. A majority of the Judges trying Criminal cases or Juvenile cases, whichever is applicable, may remove an attorney from the approved list(s) of appointed counsel if the attorney intentionally or repeatedly does not fulfill the duties required by law, violates local rules, fails to provide reasonable assistance of counsel, or fails to comply with the requirements for continued inclusion on the approved list(s).

Fee and Expense Payment Process

2/7/2011

VII.

FEE AND EXPENSE PAYMENT PROCESS

A. Payment for Appointed Counsel in Criminal cases shall be in accordance with a schedule of fees adopted by the judges pursuant to Art. 26.05(b), Texas Code of Criminal Procedure, copies of which are attached hereto as “**Addendum B**” and “**Addendum F**”. No payment shall be made until an attorney fee voucher is submitted to and approved for payment by the trial judge pursuant to Art. 26.05(c), Texas Code of Criminal Procedure. The schedules may be modified from time to time by the appropriate Board of Judges.

B. If a 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, pursuant to Art. 26.05(c), Texas Code of Criminal Procedure.

C. Reasonable and Necessary Expenses

1. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses **with** prior Court approval shall be as provided by Art. 26.05(d) and Art. 26.052(f) and (g) Texas Code of Criminal Procedure and only upon written motion and prior approval of the trial judge. A complete and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement by appointed counsel, including a certification by said counsel that the expenses were duly rendered by the said claimant.

2. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses **without** prior written approval, as provided by Art. 26.05(d) Texas Code of Criminal Procedure, shall be paid pursuant to said statute, and Art. 26.052(h) Texas Code of Criminal Procedure. A complete and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement by appointed counsel, including a certification by said counsel that the expenses were duly rendered by the said claimant.

3. A request for advance payment of investigative and expert expenses may be made by appointed counsel **Ex Parte**. Appointed counsel may file with the trial judge a pretrial, ex parte, and confidential request for advance payment of investigative and expert expenses. The request for such expenses must state, as applicable:

- a. The type of investigation to be conducted or the type of expert to be retained;
- b. The 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 or each expert.

The judge shall grant such **Ex Parte** request for advance payment of expenses, in whole or in part, if the request is reasonable. If the judge denies in whole or in part the request for expenses, the judge 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.

4. Unreasonable or unnecessary expenses will not be approved.

DISTRICT COURT: _____

CAUSE NUMBER(S) / LIST ALL: _____ **DEFENDANT:** _____

ATTORNEY'S FEE / EXPENSE CLAIM AND CERTIFICATION - FAIR DEFENSE ACT

FEE SCHEDULE ADOPTED UNDER ARTICLES 26.05, 38.30, 38.31 C.C.P., AS AMENDED (REVISED 12-19-02)

INSTRUCTIONS:

1. Itemize time spent in Court and note if time was spent for Docket Call.
2. Allocate time separately (if multiple indigent clients) for all fees claimed.
3. Bill time in .25 hour (fifteen minute) increments and carefully calculate totals.
4. Itemize (legibly) all time expended, whether in or out of Court.
5. ALWAYS note on this form whether or not the defendant has been ordered to repay attorney's fees, or place "\$ 0" in the blank provided below.

* * *

THE COURT MAY APPROVE ADDITIONAL EXPENDITURES UPON GOOD CAUSE SHOWN AND RESERVES THE DISCRETION TO DEVIATE UPWARD OR DOWNWARD IN AWARDING AN ATTORNEY FEE (WHETHER BY THE HOUR OR BY THE TOTAL AWARDED FEE) DEPENDING ON THE TIME AND LABOR REQUIRED, THE COMPLEXITY OF THE CASE, AND THE EXPERIENCE AND ABILITY OF THE APPOINTED COUNSEL.

FEE SCHEDULE:

- | | |
|--|--------------------|
| 1. FELONY CASE-DISPOSITION | \$ 100 - 200/ Hour |
| 2. MAXIMUM FOR OUT-OF-COURT TIME | \$ 1500 |
| 3. FELONY APPEAL | \$ 100 - 150/ Hour |
| 4. CAPITAL MURDER (DEATH PENALTY) | |
| a. FIRST CHAIR | \$ 35,000 |
| b. SECOND CHAIR | \$ 15,000 |
| 5. EACH DOCKET CALL (W/O DISPOSITION) | \$ 50 |
| 6. TRANSLATOR/INTERPRETER - NOT TO EXCEED HOURLY RATE FOR APPOINTED COUNSEL IN FELONY CASE | * |
| 7. EXPERT AND/OR INVESTIGATIVE FEES SHALL BE PAID PURSUANT TO ART. 26.052(f)(g)(h) | * |

ATTORNEY INFORMATION

NAME - PRINT OR TYPE	
MAILING ADDRESS	
BAR CARD NUMBER	AMOUNT DEFENDANT ORDERED TO REPAY ? \$
ATTORNEY CONTACTS WITH DEFENDANT (#)	IN PERSON ? BY TELEPHONE ?

APPOINTED COUNSEL HOURLY WORKSHEET

DATE	DOCKET CALL? (✓)	BRIEF DESCRIPTION OF WORK PERFORMED FOR THIS DEFENDANT ON ALL CASES APPOINTED (OR ATTACH A FULLY ITEMIZED STATEMENT OF WORK PERFORMED, SUBJECT TO THE PENALTY PROVISIONS HEREIN)	HOURS (BY 25)
TOTAL - THIS PAGE ONLY			
GRAND TOTAL - THIS PAGE AND ALL SUBSEQUENT PAGES (IF ANY)			

CERTIFICATION BY ATTORNEY

On the date submitted, the undersigned Attorney at Law, under penalty of perjury states, to wit: that the attorney has competently represented the named defendant and has fully performed the services claimed above, and on all attached Subsequent Hourly Worksheets and/or itemized billing statements which are all incorporated herein by reference, that the attorney has not received and will not receive any money or valuable thing for representing said defendant, unless such payment is disclosed in writing to the Judge before whom this application is pending, and that no other request for payment for the described services rendered has been paid.

DATE SUBMITTED: _____ ATTORNEY AT LAW _____

ORDER

The Court finds that the total sum of \$ _____ is a reasonable and necessary attorney's fee and **ORDERS** it paid; **OR**

The Court **REJECTS** said claim for the following reason(s): _____

Entered this the _____ day of _____, 20____ JUDGE PRESIDING _____

ORIGINAL / CLERK'S FILE - WHITE

PAGE _____ OF _____

AUDITOR'S COPY - YELLOW

ATTORNEY'S FEE / EXPENSE CLAIM AND CERTIFICATION

COURT: _____ CAUSE NO. _____

FEE SCHEDULE ADOPTED UNDER ARTICLES 26.05, 38.30, 38.31 C.C.P., AS AMENDED (REVISED: 12-01-2001)

INSTRUCTIONS:

- 1 Show only one defendant and type of case per claim
- 2 Complete entire form, either printed in ink or typed
- 3 Submit paid bills for investigators/Experts with this form
- 4 Forward completed form to the Judge for approval

COUNTY COURT AT LAW

DEFENDANT: _____

DATE SUBMITTED: _____, 20____

PURSUANT TO THE APPROVED ATTORNEY QUALIFICATION LEVELS, COMPENSATION IS REQUESTED FOR:			
APPOINTED TRIAL COUNSEL - COUNTY COURT AT LAW		APPOINTED APPELLATE COUNSEL - COUNTY COURT AT LAW	
	✓	THE COURT WILL CONSIDER THE FOLLOWING HOURLY FEE RANGE:	THE COURT WILL CONSIDER THE FOLLOWING HOURLY FEE RANGE: ✓
LEVEL 1		\$ 65 - 150	\$ 25 - 50
LEVEL 2		65 - 125	THE COURT MAY APPROVE ADDITIONAL EXPENDITURES UPON GOOD CAUSE SHOWN AND RESERVES THE DISCRETION TO DEVIATE UPWARD OR DOWNWARD IN AWARDING A FEE DEPENDING UPON THE TIME AND LABOR REQUIRED, THE COMPLEXITY OF THE CASE, AND THE EXPERIENCE AND ABILITY OF THE APPOINTED COUNSEL.
LEVEL 3		65 - 125	
LEVEL 4		65 - 125	

ATTORNEY PERSONAL INFORMATION

NAME:	BAR CARD NUMBER:
-------	------------------

MAILING ADDRESS:	SOCIAL SECURITY NUMBER:
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APPOINTED COUNSEL HOURLY WORKSHEET

INSTRUCTIONS: List Date and denote Time in tenths of an hour in appropriate category
 APPEALS: List hours in "Out-Of-Court" column and identify appellate work performed under "Brief Description of Services"

DATE	GENERAL (BRIEF) DESCRIPTION OF SERVICES PERFORMED ON THE DATE FOR WHICH PAYMENT IS REQUESTED	HOURS IN COURT			HOURS OUT-OF-COURT
		COURT APPEARANCE NO TESTIMONY	PRE-TRIAL HEARING WITH TESTIMONY	TRIAL WITH TESTIMONY	
TOTAL FROM ALL SUBSEQUENT PAGES (IF ANY)					
GRAND TOTAL (THIS PAGE AND ALL SUBSEQUENT PAGES, IF ANY)					
PUNISHMENT ASSESSED:		AMT. DEFENDANT ORDERED TO REPAY: \$			

I, the undersigned Attorney at Law, swear or affirm to the Court and to the County Auditor that they may rely upon the information contained in this APPOINTED COUNSEL HOURLY WORKSHEET (whether one or more pages) to make payment to me according to the fee schedule adopted by the Board of Judges pursuant to Article 26.05 C.C.P. I further swear or affirm that I have not received nor will I receive any other money or valuable thing for representing the accused in this case, except as otherwise specifically disclosed to the Court in writing.

SWORN TO AND SUBSCRIBED before me on this the _____ day of _____, 20____

 ATTORNEY AT LAW (SIGNATURE)

 DEPUTY COUNTY CLERK (SIGNATURE)

The Court finds that the sum of \$ _____ is a reasonable and necessary Attorney's Fee/Expense Claim for performing the above stated services and **ORDERS** that same be paid from the General Fund of Fort Bend County, Texas. **OR**

The Court **REJECTS** said claim for the following reasons: _____

SIGNED this the _____ day of _____, 20____

 JUDGE PRESIDING

Appendix C – Juvenile Indigent Defense Plan

Fort Bend Juvenile Board Plan

Preamble

2/1/2011

Pursuant to Senate Bill 7, 77Th Legislative 2001, the Judges of the Juvenile Board of Fort Bend County, Texas hereby adopt a plan for the appointment of counsel for indigent cases in juvenile matters, with the following goals:

1. The plan must state financial standards and procedures to be utilized by all the courts in the county for determining who is indigent.
2. The plan must ensure that appointments are allocated among qualified attorneys in a manner that ' is fair, neutral, nondiscriminatory and impartial.
3. The plan must: ensure that attorneys who are appointed meet a countywide set of written, objective qualification standards approved by the judges. There should be a separate set of qualification standards for misdemeanor and felony courts. There may be additional qualification tiers tailored to the seriousness of the case.
4. The plan should set fair and reasonable fees for the payment of attorneys, as well, as related expenses of the attorney.

Prompt Detention Hearings

2/1/2011

- 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 Section 52.025, Family Code, or another disposition authorized by Section 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 Section 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

2/1/2011

Financial Report on Parents Ability to Hire an Attorney to represent a Juvenile Respondent and the Juvenile is not Represented by Counsel, form is attached in the forms section.

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.

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

2/18/2011

Offensive Level	Lawyer Qualifications	Suggested Hourly Rate
CINS And Indeterminate Where TYC not possible	Practice for 1 year, or 1 misdemeanor or felony jury trial to verdict (first chair); or 1 civil jury trial to verdict; and Experience in gathering and using disposition/mitigation evidence; and 1 Evidentiary Hearing (Misdemeanor or Felony) An average 15 hours of CLE pertaining to criminal, juvenile, or family law, evidence, trial skills or ethics; and	75-100

	Attend Fort Bend County Juvenile Seminar where available	
Intermediate TYC Possible	Practice for 2 years; or 2 Misdemeanor Jury Trials (1 as first chair); or 1 Felony Jury Trial (first chair); or 1 Misdemeanor Jury Trial and 1 civil jury trial to verdict; and Experience in gathering and using disposition/mitigation evidence; and 1 Evidentiary Hearing (Misdemeanor or Felony) Experience in Motions Practice; and See CLE from above Attend Fort Bend County Juvenile Seminar where available	75-125
Determinate	Practice 3 years; and 4 Felony Jury Trials to verdict (3 as first chair); and Experience in using and cross-examining expert witnesses; and Experience in gathering and using disposition/mitigation evidence; and Experience in using investigators; and Experience in Motions Practice; and See CLE from above Attend Fort Bend County Juvenile Seminar where available	125-150
Certification	Practice 3 years; and 4 Felony Jury Trials to verdict (3 as first chair); and 1 Competency Hearing or experience dealing with psychological or psychiatric testimony Experience in using and cross-examining expert witnesses; and Experience in gathering and using disposition/mitigation evidence; and Experience in using investigators; and Experience in Motions Practice; and See CLE from above Attend Fort Bend County Juvenile Seminar where available	125-150

Appointment in Juvenile Cases. An attorney who meets the requirements of this rule may be appointed to represent an indigent juvenile detained for or accused of engaging in delinquent conduct or conduct indicating a need for supervision, if the attorney is otherwise eligible to be appointed under the Appointment of Counsel Plan. Attorneys must be approved by a majority of the Juvenile Board or presiding juvenile judges to be placed on or removed from the appointment list. [Sec. 51.102(a), FC & Art. 26.04, CCP]

An attorney may be appointed under this rule only if the attorney:

- (1) Completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12 month reporting period. The first reporting period will begin on April 27, 2003, and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an

accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or

(2) Is currently certified in juvenile law by the Texas Board of Legal Specialization.

Reporting Period.

(a) Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year.

(b) Continuing legal education activity completed during any reporting period in excess of the minimum six hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

(c) To be included on the appointment list, each attorney must annually submit an affidavit to the county detailing the juvenile continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in juvenile law.

Emergency Appointment.

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in juvenile law.

Prompt Appointment of Counsel

2/1/2011

a. Indigencey

A uniform application on the financial status of the child's parents shall be created and used by the judge presiding at the proceeding to determine if a child's parents are financially able to retain adequate counsel.

b. Detained . .

If the child is detained and found indigent, the court shall immediately appoint an attorney for the child, but in, no case more than three working days after the child is detained.

c. Child not in custody

If the child is released at the initial detention hearing, or was released by intake, or referred to the juvenile court without being in custody, then when and if a petition is filed, a child declared indigent shall be 'appointed an attorney not later than 5 working days after the petition is served on the child.

d. Modification of Probation

If a child declared indigent is already on probation and a Motion to Modify is filed that seeks commitment to Texas Youth Commission, a secured facility boot camp, residential placement, or any placement outside the home requires the prompt appointment of counsel.

e. Appointment of Attorney at Initial Detention Hearing

A child should be represented by counsel at the initial detention hearing.

Fort Bend County Supplemental Plan for appointment of Counsel

A majority of the Juvenile Board having approved it, this Supplemental Plan is added to and is now a part of the Plan for Appointment of Counsel as follows:

Investigative and Expert Witnesses. Counsel appointed in a noncapital case shall be reimbursed for reasonable and necessary expenses, including expenses for investigative and for mental health and other experts. Expenses incurred with and without prior court approval should be reimbursed according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

Procedure With Prior Court Approval:

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, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) 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
- (3) an itemized list of anticipated expenses for each investigation or each expert.

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:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

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 the reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure

Attorney Selection Process

2/1/2011

The Court shall appoint an attorney from the public appointment lists adopted by the Juvenile Board using a system of rotation based on the qualifications of the attorney and level of the offense. The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorney's name appears on the list, unless the court makes a finding of a good cause on the record for appointing an attorney out of order. 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. If an indigent is otherwise

qualified as bi-lingual or communicates in sign language or braille, the court may appoint the next qualified attorney without regard to their position on the rotation list.

Fee and Expense Payment Process

2/1/2011

- 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 60th 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.

2. Investigation Fees/Out of Pocket Expenses

Attorneys representing indigent children should be reimbursed for out of pocket expenses and provided with appropriate funds to retain investigators.

Appendix D – 2011 Federal Poverty Guidelines

2011 HHS Poverty Guidelines⁸⁰			
Persons in Family	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$10,890	\$13,600	\$12,540
2	14,710	18,380	16,930
3	18,530	23,160	21,320
4	22,350	27,940	25,710
5	26,170	32,720	30,100
6	29,990	37,500	34,490
7	33,810	42,280	38,880
8	37,630	47,060	43,270
For each additional person, add	3,820	4,780	4,390

⁸⁰ 2011 Federal Poverty Guidelines are available at <http://aspe.hhs.gov/poverty/11poverty.shtml>.

Appendix E - FY2010 Summary Appointed Counsel Case and Payment Data

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
GILBERT, STEVEN J	52	37	15	0.51	7	3	\$112,634
BRYANT, KEN	45	32	14	0.45	8	0	\$102,058
BATCHAN, JOHN W JR	45	32	2	0.39		0	\$42,525
CARTER & MORALES LLP	21	43	21	0.35	31	8	\$89,369
CROWLEY, JAMES SIDNEY	50			0.33			\$44,570
FADEN, CARY M	43	8	2	0.32		0	\$67,250
NJOKU, MICHAEL N	26	21	15	0.30	9	4	\$49,850
ASHFORD, ERIC	30	22	9	0.30	1	0	\$37,080
PERZ, IRA F	39	15		0.30			\$41,950
TERRY, T K	18	15	25	0.28	22	2	\$37,983
TU, PAUL	19	25	18	0.28	9	2	\$65,600
DIAZ, MICHAEL C	36	6	2	0.27		1	\$62,653
NEWMAN, LAWRENCE T	21	49		0.26			\$32,035
WEBB, JEFFREY ODE	26	23	3	0.25	1	0	\$35,500
DISHER, DAVID ALAN	28	20		0.24			\$53,315
STEELE, CORINNA		80	7	0.24	38	3	\$44,728
HECKER, DON A	24	22	2	0.23		0	\$48,825
CORTES, EDUARDO	32	2		0.22			\$15,575
PEREZ-JARAMILLO, MAGGIE	5	29	22	0.22	30	1	\$40,278
ARNOLD, KEVIN DARNELL	23	18		0.20			\$27,675
BOOKER, KEYSHA L	21	20		0.19			\$22,345
SEDITA, PATRICIA FORTNEY	23	12		0.18			\$22,310
FRALEY, FRANK J	21	13	2	0.18		0	\$16,073
HALL, KEVIN M	19	22		0.18			\$29,538
VENZA, JOHN L JR	22	14		0.18			\$27,463
DESAI, RIDDHI	27			0.18			\$17,645
STEVENS, JAMES A	15	26	2	0.18	26	0	\$38,025

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
WOOD, HARRIS S JR	21	14		0.18			\$13,113
MCDONALD, SHAWN M	15	13	7	0.17		0	\$25,440
ZUNIGA, CARTER, MORALES, MCCAL	5	29	12	0.17	13	1	\$33,928
CEASER, KENDRIC	19	15		0.16			\$37,195
EPO, JAMES F	22	7		0.16	6		\$22,685
MALONEY & PARKS, LLP	22	6		0.16			\$14,900
ROLL, ROXIE	24	0	0	0.16	7	5	\$37,728
STORNELLO, ROSARIO	13	29		0.16			\$18,960
SANTOS ROBERT L	16	20		0.16			\$21,605
SALCEDA, ALBERTO G		16	23	0.16	28	0	\$23,678
M FOX CURL & ASSOCIATES, PC	15	17		0.14			\$19,595
COX, LEE D	13	10	5	0.14	12	0	\$35,350
MANSKE & MANSKE	20	1		0.14			\$35,578
ALCOCER, MANUELA		29	12	0.13	19	0	\$39,495
MARTINEZ, STEVEN SCOTT	2	29	9	0.13	8	2	\$23,823
LUDWIG, CHRIS J	18	3		0.13			\$11,803
LOVE, PAUL	13	15		0.12			\$22,875
RACER, MARK W	11	18		0.12			\$18,200
ELLIOTT, MICHAEL W	15	6		0.12	4		\$21,488
MC DANIEL, CAROLYN		24	11	0.12	14	0	\$52,290
FOSTER LAW FIRM	1	25	9	0.11		3	\$35,485
ADAMS, GLENDON BRYAN	15	3		0.11			\$16,215
MONK, STEVEN D		1	21	0.11		1	\$13,070
THOMAS, LARRY E	10	8	4	0.11	4	0	\$12,645
FORLANO, FREDERICK			21	0.11		0	\$11,800
BANKSTON, DONALD W	15			0.10			\$20,000

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
BURNETT, SHEILA		14	13	0.10	15	2	\$33,400
MARTIN, MELISSA	13	5		0.10			\$9,750
TAYLOR-FELTON, TANGERLIA	10	11		0.09			\$10,213
GRECO & ASSOCIATES	11	8		0.09			\$25,108
PONS, JAMES F	14			0.09			\$5,800
STICKLER, TOMMY J	13	1		0.09			\$30,975
DUCOTE, JEREMY BRET	12	3		0.09			\$8,400
THE QUILL LAW FIRM, PC		10	12	0.09		1	\$11,600
NASSIF, MICHAEL	10	7		0.08	11		\$31,288
TSIOROS, GREGORY	10	7		0.08			\$7,838
WISNER, VICTOR	10	6		0.08			\$7,675
ARZU, FRANCES		11	10	0.08	5	2	\$12,975
JONES BENNETT LLP	8	9		0.08			\$5,150
ROBERTS, JENNIE	11	1		0.08			\$7,263
HAMM, LANCE CRAIG	6	14		0.08			\$15,050
FRANCO, EDUARDO		5	12	0.07	9	4	\$14,375
SMITH, JAMES DENNIS	9	3		0.07			\$9,050
WATSON, TEANA V PLLC	2	12	4	0.06	3	1	\$11,425
HUGHES, DALLAS CRAIG	9	1		0.06			\$7,825
MC MEANS, JEFFREY A		15	5	0.06		0	\$6,038
KAFI LAW		14	5	0.06		0	\$15,620
MCCLURE, DAVID B	9			0.06			\$8,173
SCHAEFER, NINA		0	12	0.06	3	1	\$5,200
BECERRA, JAMES CHRISTIAN		7	8	0.06	3	0	\$7,025
MALDONADO, A E		19	2	0.06	3	0	\$10,635
TORRES, ROSS		23		0.06	6		\$10,440
GONZALEZ, RALPH	8	1		0.06	1		\$5,513

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
DOGGETT, STEPHEN A	6	2	2	0.06		0	\$17,145
BOOZER, JAMILA Y	8			0.05			\$5,000
SMITH, KEISHA	8			0.05			\$6,388
MOTON, GERALD C	6	5		0.05			\$5,710
CRENSHAW, DAMON A		21		0.05	1		\$11,312
LAW OFFICE OF MICHAEL PALMER	5	7		0.05			\$3,235
PHOENIX, JOYCE		14	3	0.05	5	0	\$9,865
SALAHIAN, SHAWN		4	8	0.05		0	\$7,800
MIDDLETON, TRACY		18	1	0.05	4	2	\$11,770
JONES, TONI S	6	3		0.05			\$6,600
WILLIAMS, RODNEY O'NEIL		9	5	0.05		0	\$10,275
BURNETT, JAMES J	7			0.05			\$4,350
SEPOLIO, CORY DON	4	8		0.05			\$7,665
ZAND, JAMIE		14	2	0.05	4	0	\$21,722
DICK, CHAD		2	8	0.05	3	0	\$10,400
MALINOFF, WILLIAM		3	7	0.04		0	\$5,415
DUCKETT, TONY K		15	1	0.04	3	0	\$5,435
ADROGUE, MATIAS	6			0.04			\$2,400
JACKSON, CALVIN C	6			0.04			\$6,338
MCCANN, PATRICK F	6			0.04			\$10,515
PRADIA, TROY	6			0.04			\$2,150
SHAW, RUBY		4	6	0.04	5	0	\$10,325
KING, ETHENIA F	4	5		0.04			\$7,740
MIDDLETON, BRIAN	5	2	0	0.04	3	1	\$5,395
LOVE, SHANNON LEIGH		7	4	0.04	3	0	\$6,088
DENNIS, KATHRYN		15		0.04	1		\$10,465
DOGGETT, KASEY		15		0.04	1		\$6,605

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
THREADGILL, J MICHAEL		13	1	0.04	1	0	\$5,425
SMITH, DERICK R	4	4	0	0.04	2	1	\$7,315
LEE, JONATHAN		14		0.04			\$5,500
COX, JONATHAN H	5			0.03			\$2,500
NWANGUMA, GRACE		5	4	0.03		1	\$6,275
ZAND, DEAN PATRICK		13		0.03	3		\$10,825
COHEN, RONALD M.			6	0.03		0	\$3,325
CARTER, WILVIN J	4	1		0.03	1		\$3,025
VILLA, CLAUDIA ROXANNA		7	2	0.03	2	0	\$5,575
MARTIN-HART, ERMA		11		0.03			\$4,520
GARCIA, JUAN EDUARDO	4			0.03			\$2,250
MCGILL, LATOSHA		10		0.03			\$2,925
WINTERSGILL, DWIGHT DAVID		10		0.03			\$4,575
ADAMS, DIANA	3	1		0.02			\$1,050
KING GRANT & ASSOCIATES	3	1		0.02			\$3,650
LE, TOT KIM		9		0.02			\$3,555
ROE, CARMEN	3	1		0.02			\$12,450
ALDRIDGE & ASSOCIATES	3			0.02			\$1,750
GONZALEZ, LISA MARIE		6	1	0.02	5	1	\$5,350
JONES, RAYMOND JR	3			0.02			\$3,464
KURT S HOPKE	3			0.02			\$750
LONGORIA, STEPHEN			4	0.02		0	\$2,288
NNAKA, KENNETH		8		0.02			\$2,975
POPOFF, SIMEON		8		0.02			\$5,900
KIATTA, DAVID W	1	5		0.02			\$3,500
CRUICKSHANK, JOHN E JR		5	1	0.02		0	\$4,475
FISHER, DENA		7		0.02			\$1,250

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
GUNTER, RONALD CHRISTOPHER		7		0.02	1		\$4,425
LUSK, NANCY E		5	1	0.02	3	0	\$2,580
WRIGHT, ANDREW		7		0.02			\$3,525
CHAMPAGNE, DEBRA		6		0.02	1		\$2,525
COHEN AND RAYMOND			3	0.02		0	\$2,175
MEITZEN, WILLIAM A		6		0.02			\$4,300
PEREZ, JAMES L		6		0.02			\$2,150
LOPEZ, LINDSAY R	1	3		0.01			\$1,775
DRUMHELLER, BARBARA	2			0.01			\$6,800
BOJE, LARRY		3	1	0.01		0	\$755
DESHAZO, SANDY		1	2	0.01		0	\$5,775
FRANKS, ROBERT D		5	0	0.01	5	1	\$6,715
GREENWALT, SUSAN		5		0.01			\$2,515
VADIE, MIKE		5		0.01			\$1,550
BLADES, AARON D		4		0.01			\$1,650
HENDERSON, ARCHIE		4		0.01			\$1,575
REHAN ALMOHAMMAD PC		4		0.01			\$1,600
SPARROW, IKAHA M		4		0.01			\$2,075
STEVENS, SYNGMAN R JR		4		0.01	1		\$1,700
TUTHILL, ROBERT H		4		0.01			\$5,765
DAVE, RADHIKA		3		0.01			\$1,600
TABAK, ADAM		3		0.01			\$1,475
HOKE, DANNY L	1			0.01			\$638
NGWOLO & BANKS PLLC	1			0.01			\$2,450
PUBCHARA, SILVIA V	1			0.01			\$150
SMITH, PHEOBE S	1			0.01			\$1,000
VICTOR, VICTOR	1			0.01			\$3,250
ADAIR, ROGER N			1	0.01		0	\$66

Attorney	Felony Cases Paid	Misd Cases Paid (not counting atty of the day)	Total Juvenile Cases Paid (not counting atty of the day)	Total Attorneys Required Under NAC Standards	# of Additional misdemeanor atty-of-the-day payments	# of Additional Juvenile atty of the day Payments	Total Payments
ANTALAN, MICHAEL		2		0.01			\$1,025
DUPONT, T B TODD		2		0.01			\$1,600
GADSON, CHAREKA M		2		0.01			\$850
GARDNER, SAMUEL		2		0.01			\$900
LANDERS, JONATHAN		2		0.01			\$1,025
MCCLURE, DAVID B		2		0.01			\$800
MCDUGAL, LARRY P			1	0.01		0	\$150
TRAN LAW OFFICE, P C		2		0.01			\$875
WHEELER, ANDRE' ANTELLE		2		0.01			\$525
BASILIO, NICOLETTE V		1		0.00			\$350
CONTRERAS, ANGELA		1		0.00			\$375
DARBY, MATT		1		0.00			\$425
DAVIS III, NEAL		1		0.00			\$1,500
HACKETT, FRED		1		0.00			\$125
OAKS, ANGELA		1		0.00			\$412
SANTORINI, BIANCA I		1		0.00			\$450
STEPHENS, JOE		1		0.00			\$600
WING, BETH ANGELA		1		0.00			\$1,400
GUERRERO, SONYA		0		0.00	19		\$7,575
HUNTER, DAVID		0		0.00	7		\$3,350
MCCALLA, JAMES W		0		0.00	1		\$1,425
PIZZITOLA, JOHN A		0		0.00	4		\$1,425

Appendix F-- 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, 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.

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.

Appendix G: Summary of Case Disposition Sample Data

Part 1: Dispositions Based on Type of Crime

Felony - 1st and 2nd Degree		Total Cases	Percent of Violent Sample			Total Cases	Percent of Property Sample
Violent Crime		63		Property Crime		33	
Case Still Active		30		Case Still Active		9	
Pled to Confinement		16	48.5%	Pled to Confinement		8	33.3%
Under 1 year	2			Under 1 year	1		
1 - 5 years	5			1 - 5 years	3		
5 years 1 day to 10 years	5			5 years 1 day to 10 years	3		
Over 10 years	4			Over 10 years	1		
Pled to Probation		1	3.0%	Pled to Probation		3	12.5%
On probation up to 2 years	1			On probation up to 2 years	0		
On probation for 2 years 1 day to 5 years	0			On probation for 2 years 1 day to 5 years	1		
On probation for over 5 years	0			On probation for over 5 years	2		
Pled to Deferred Adjudication		8	24.2%	Pled to Deferred Adjudication		10	41.7%
On def'd up to 2 years	4			On def'd up to 2 years	4		
On def'd for 2 years 1 day to 5 years	0			On def'd for 2 years 1 day to 5 years	5		
On def'd for over 5 years	4			On def'd for over 5 years	1		
Dismissal – in exchange for plea		3	9.1%	Dismissal – in exchange for plea		2	8.3%
Dismissal - other		4	12.1%	Dismissal - other		1	4.2%
Acquittal		1	3.0%	Acquittal		0	0.0%

Felony - 1st and 2 nd Degree		Total Cases	Percent of Drug Sample		Total Cases	Percent of Other Sample
Drug Crime		12		Other Crime	6	
Case Still Active		5		Case Still Active	2	
Pled to Confinement		2	28.6%	Pled to Confinement	2	50.0%
Under 1 year		1		Under 1 year	0	
1 - 5 years		1		1 - 5 years	1	
5 years 1 day to 10 years		0		5 years 1 day to 10 years	1	
Over 10 years		0		Over 10 years	0	
Pled to Probation		1	14.3%	Pled to Probation	1	25.0%
On probation up to 2 years		0		On probation up to 2 years	0	
On probation for 2 years 1 day to 5 years		1		On probation for 2 years 1 day to 5 years	0	
On probation for over 5 years		0		On probation for over 5 years	1	
Pled to Deferred Adjudication		3	42.9%	Pled to Deferred Adjudication	0	0.0%
On def'd up to 2 years		0		On def'd up to 2 years		
On def'd for 2 years 1 day to 5 years		2		On def'd for 2 years 1 day to 5 years		
On def'd for over 5 years		1		On def'd for over 5 years		
Dismissal – in exchange for plea		0	0.0%	Dismissal – in exchange for plea	0	0.0%
Dismissal - other		1	14.3%	Dismissal - other	1	25.0%

Felony – 3d and State Jail Felony		Total Cases	Percent of Violent Sample			Total Cases	Percent of Property Sample
Violent Crime		27		Property Crime		78	
Case Still Active		7		Case Still Active		20	
Pled to Confinement		6	30.0%	Pled to Confinement		33	56.9%
6 months or under	4			6 months or under	22		
6 mos 1 day to 1 year	0			6 mos 1 day to 1 year	8		
1 year 1 day to 2 years	0			1 year 1 day to 2 years	3		
2 years 1 day to 10 years	2			2 years 1 day to 10 years	0		
Pled to Probation		4	20.0%	Pled to Probation		2	3.4%
On probation up to 2 years	1			On probation up to 2 years	2		
On probation for 2 years 1 day to 5 years	2			On probation for 2 years 1 day to 5 years	0		
On probation for over 5 years	1			On probation for over 5 years	0		
Pled to Deferred Adjudication		8	40.0%	Pled to Deferred Adjudication		16	27.6%
On def'd up to 2 years	4			On def'd up to 2 years	4		
On def'd for 2 years 1 day to 5 years	4			On def'd for 2 years 1 day to 5 years	11		
On def'd for over 5 years	0			On def'd for over 5 years	1		
Dismissal – in exchange for plea		1	5.0%	Dismissal – in exchange for plea		2	3.4%
Dismissal - other		1	5.0%	Dismissal - other		5	8.6%

Felony – 3d and State Jail Felony		Total Cases	Percent of Drug Sample			Total Cases	Percent of Driving Sample
Drug Crime		50		Driving Crime		13	
Case Still Active		11		Case Still Active		0	
Pled to Confinement		16	41.0%	Pled to Confinement		6	46.2%
6 months or under	10			6 months or under	2		
6 mos 1 day to 1 year	2			6 mos 1 day to 1 year	2		
1 year 1 day to 2 years	4			1 year 1 day to 2 years	1		
2 years 1 day to 10 years	0			2 years 1 day to 10 years	1		
Pled to Probation		0	0.0%	Pled to Probation		6	46.2%
On probation up to 2 years				On probation up to 2 years	0		
On probation for 2 years 1 day to 5 years				On probation for 2 years 1 day to 5 years	3		
On probation for over 5 years				On probation for over 5 years	3		
Pled to Deferred Adjudication		11	28.2%	Pled to Deferred Adjudication		0	0.0%
On def'd up to 2 years	6			On def'd up to 2 years			
On def'd for 2 years 1 day to 5 years	4			On def'd for 2 years 1 day to 5 years			
On def'd for over 5 years	1			On def'd for over 5 years			
Dismissal – in exchange for plea		5	12.8%	Dismissal – in exchange for plea		0	0.0%
Dismissal - other		7	17.9%	Dismissal - other		1	7.7%

Felony – 3d and State Jail Felony		Total Cases	Percent of Other Sample
Other Crime		44	
Case Still Active		10	
Pled to Confinement		13	38.2%
6 months or under		5	
6 mos 1 day to 1 year		3	
1 year 1 day to 2 years		3	
2 years 1 day to 10 years		2	
Pled to Probation		5	14.7%
On probation up to 2 years		0	
On probation for 2 years 1 day to 5 years		4	
On probation for over 5 years		1	
Pled to Deferred Adjudication		4	11.8%
On def'd up to 2 years		3	
On def'd for 2 years 1 day to 5 years		1	
On def'd for over 5 years		0	
Dismissal – in exchange for plea		8	23.5%
Dismissal - other		4	11.8%

Class A Misdemeanor		Total Cases	Percent of Violent Sample	Property Crime		Total Cases	Percent of Property Sample
Violent Crime		58		Property Crime		38	
Case Still Active		27		Case Still Active		12	
Pled to Confinement		16	51.6%	Pled to Confinement		7	26.9%
1 – 15 days	2			1 – 15 days	2		
16 – 30 days	5			16 – 30 days	0		
31 – 90 days	2			31 – 90 days	3		
91 – 180 days	5			91 – 180 days	1		
181 – 365 days	2			181 – 365 days	1		
Pled to Probation		1	3.2%	Pled to Probation		3	11.5%
On probation up to 6 months	0			On probation up to 6 months	0		
On probation for 6 months 1 day to 1 year	0			On probation for 6 months 1 day to 1 year	3		
On probation for over 1 year	1			On probation for over 1 year	0		
Pled to Deferred Adjudication		5	16.1%	Pled to Deferred Adjudication		5	19.2%
On def'd up to 6 months	1			On def'd up to 6 months	1		
On def'd for 6 months 1 day to 1 year	3			On def'd for 6 months 1 day to 1 year	3		
On def'd for over 1 year	1			On def'd for over 1 year	1		
Dismissal – in exchange for plea		5	16.1%	Dismissal – in exchange for plea		8	30.8%
Dismissal - other		2	6.5%	Dismissal - other		3	11.5%
Pled to Class C Offense		1	3.2%	Pled to Class C Offense		0	0.0%
Acquittal		1	3.2%	Acquittal		0	0.0%

Class A Misdemeanor		Total Cases	Percent of Drug Sample		Total Cases	Percent of Other Sample
Drug Crime		38		Other Crime	59	
Case Still Active		10		Case Still Active	18	
Pled to Confinement		8	28.6%	Pled to Confinement	13	31.7%
1 – 15 days	4			1 – 15 days	3	
16 – 30 days	3			16 – 30 days	6	
31 – 90 days	1			31 – 90 days	3	
91 – 180 days	0			91 – 180 days	1	
181 – 365 days	0			181 – 365 days	0	
Pled to Probation		2	7.1%	Pled to Probation	2	4.9%
On probation up to 6 months	1			On probation up to 6 months	0	
On probation for 6 months 1 day to 1 year	1			On probation for 6 months 1 day to 1 year	1	
On probation for over 1 year	0			On probation for over 1 year	1	
Pled to Deferred Adjudication		9	32.1%	Pled to Deferred Adjudication	12	29.3%
On def'd up to 6 months	4			On def'd up to 6 months	2	
On def'd for 6 months 1 day to 1 year	3			On def'd for 6 months 1 day to 1 year	9	
On def'd for over 1 year	2			On def'd for over 1 year	1	
Dismissal – in exchange for plea		4	14.3%	Dismissal – in exchange for plea	10	24.4%
Dismissal - other		5	17.9%	Dismissal - other	3	7.3%
Pled to Class C Offense		0	0.0%	Pled to Class C Offense	1	2.4%
Acquittal		0	0.0%	Acquittal	0	0.0%

Class A Misdemeanor		Total Cases	Percent of Driving Sample
Driving Crime		18	
Case Still Active		7	
Pled to Confinement		7	63.6%
1 – 15 days		3	
16 – 30 days		1	
31 – 90 days		3	
91 – 180 days		0	
181 – 365 days		0	
Pled to Probation		4	36.4%
On probation up to 6 months		0	
On probation for 6 months 1 day to 1 year		3	
On probation for over 1 year		1	
Pled to Deferred Adjudication		0	0.0%
On def'd up to 6 months			
On def'd for 6 months 1 day to 1 year			
On def'd for over 1 year			
Dismissal – in exchange for plea		0	0.0%
Dismissal - other		0	0.0%
Pled to Class C Offense		0	0.0%
Acquittal		0	0.0%

Class B Misdemeanor	Total Cases	Percent of Other Sample		Total Cases	Percent of Property Sample
Other Crime	27		Property Crime	115	
Case Still Active	6		Case Still Active	33	
Pled to Confinement	12	57.1%	Pled to Confinement	23	28.0%
1 – 15 days	3		1 – 15 days	8	
16 – 30 days	5		16 – 30 days	6	
31 – 90 days	4		31 – 90 days	7	
91 – 180 days	0		91 – 180 days	2	
Pled to Probation	0	0.0%	Pled to Probation	2	2.4%
On probation up to 6 months			On probation up to 6 months	0	
On probation for 6 months 1 day to 1 year			On probation for 6 months 1 day to 1 year	2	
On probation for over 1 year			On probation for over 1 year	0	
Pled to Deferred Adjudication	1	4.8%	Pled to Deferred Adjudication	24	29.3%
On def'd up to 6 months	1		On def'd up to 6 months	15	
On def'd for 6 months 1 day to 1 year	0		On def'd for 6 months 1 day to 1 year	9	
On def'd for over 1 year	0		On def'd for over 1 year	0	
Dismissal – in exchange for plea	4	19.0%	Dismissal – in exchange for plea	8	9.8%
Dismissal - other	2	9.5%	Dismissal - other	19	23.2%
Pled to Class C Offense	2	9.5%	Pled to Class C Offense	6	7.3%
Acquittal	0	0.0%	Acquittal	0	0.0%

Class B Misdemeanor		Total Cases	Percent of Drug Sample			Total Cases	Percent of Driving Sample
Drug Crime		102		Driving Crime		117	
Case Still Active		16		Case Still Active		32	
Pled to Confinement		38	44.2%	Pled to Confinement		41	48.2%
1 – 15 days	24			1 – 15 days	25		
16 – 30 days	11			16 – 30 days	10		
31 – 90 days	3			31 – 90 days	6		
91 – 180 days	0			91 – 180 days	0		
Pled to Probation		0	0.0%	Pled to Probation		14	16.5%
On probation up to 6 months				On probation up to 6 months	0		
On probation for 6 months 1 day to 1 year				On probation for 6 months 1 day to 1 year	12		
On probation for over 1 year				On probation for over 1 year	2		
Pled to Deferred Adjudication		24	27.9%	Pled to Deferred Adjudication		3	3.5%
On def'd up to 6 months	19			On def'd up to 6 months	1		
On def'd for 6 months 1 day to 1 year	5			On def'd for 6 months 1 day to 1 year	1		
On def'd for over 1 year	0			On def'd for over 1 year	1		
Dismissal – in exchange for plea		11	12.8%	Dismissal – in exchange for plea		2	2.4%
Dismissal - other		9	10.5%	Dismissal - other		7	8.2%
Pled to Class C Offense		4	4.7%	Pled to Class C Offense		16	18.8%
Acquittal		0	0.0%	Acquittal		2	2.4%

Part 2: Dispositions Based on Bonding Status

Felony - 1st and 2nd Degree		Total Cases	Percent of Detained Sample			Total Cases	Percent of Bonded Sample
Detained		48		Bonded		64	
Case Still Active		16		Case Still Active		30	
Pled to Confinement		23	71.9%	Pled to Confinement		5	14.7%
Under 1 year	2			Under 1 year	1		
1 - 5 years	9			1 - 5 years	2		
5 years 1 day to 10 years	7			5 years 1 day to 10 years	2		
Over 10 years	5			Over 10 years	0		
Pled to Probation		3	9.4%	Pled to Probation		3	8.8%
On probation up to 2 years	0			On probation up to 2 years	1		
On probation for 2 years 1 day to 5 years	2			On probation for 2 years 1 day to 5 years	0		
On probation for over 5 years	1			On probation for over 5 years	2		
Pled to Deferred Adjudication		4	12.5%	Pled to Deferred Adjudication		16	47.1%
On def'd up to 2 years	1			On def'd up to 2 years	7		
On def'd for 2 years 1 day to 5 years	2			On def'd for 2 years 1 day to 5 years	4		
On def'd for over 5 years	1			On def'd for over 5 years	5		
Dismissal – in exchange for plea		1	3.1%	Dismissal – in exchange for plea		4	11.8%
Dismissal - other		0	0.0%	Dismissal - other		6	17.6%
Acquittal		1	3.1%	Acquittal		0	0.0%

Felony – 3d and State Jail Felony		Total Cases	Percent of Detained Sample			Total Cases	Percent of Bonded Sample
Detained		58		Bonded		138	
Case Still Active		9		Case Still Active		38	
Pled to Confinement		34	69.4%	Pled to Confinement		31	31.0%
	6 months or under	15			6 months or under	25	
	6 mos 1 day to 1 year	10			6 mos 1 day to 1 year	2	
	1 year 1 day to 2 years	4			1 year 1 day to 2 years	4	
	2 years 1 day to 10 years	5			2 years 1 day to 10 years	0	
Pled to Probation		2	4.1%	Pled to Probation		13	13.0%
	On probation up to 2 years	0			On probation up to 2 years	3	
	On probation for 2 years 1 day to 5 years	1			On probation for 2 years 1 day to 5 years	6	
	On probation for over 5 years	1			On probation for over 5 years	4	
Pled to Deferred Adjudication		6	12.2%	Pled to Deferred Adjudication		32	32.0%
	On def'd up to 2 years	2			On def'd up to 2 years	15	
	On def'd for 2 years 1 day to 5 years	4			On def'd for 2 years 1 day to 5 years	15	
	On def'd for over 5 years	0			On def'd for over 5 years	2	
Dismissal – in exchange for plea		4	8.2%	Dismissal – in exchange for plea		11	11.0%
Dismissal - other		3	6.1%	Dismissal - other		13	13.0%

Class A Misdemeanor		Total Cases	Percent of Detained Sample			Total Cases	Percent of Bonded Sample
Detained		35		Bonded		156	
Case Still Active		1		Case Still Active		59	
Pled to Confinement		24	70.6%	Pled to Confinement		26	26.8%
1 – 15 days	3			1 – 15 days	10		
16 – 30 days	8			16 – 30 days	7		
31 – 90 days	7			31 – 90 days	5		
91 – 180 days	4			91 – 180 days	3		
181 – 365 days	2			181 – 365 days	1		
Pled to Probation		2	5.9%	Pled to Probation		10	10.3%
On probation up to 6 months	0			On probation up to 6 months	1		
On probation for 6 months 1 day to 1 year	2			On probation for 6 months 1 day to 1 year	6		
On probation for over 1 year	0			On probation for over 1 year	3		
Pled to Deferred Adjudication		1	2.9%	Pled to Deferred Adjudication		28	28.9%
On def'd up to 6 months	0			On def'd up to 6 months	8		
On def'd for 6 months 1 day to 1 year	0			On def'd for 6 months 1 day to 1 year	16		
On def'd for over 1 year	1			On def'd for over 1 year	4		
Dismissal – in exchange for plea		5	14.7%	Dismissal – in exchange for plea		16	16.5%
Dismissal - other		1	2.9%	Dismissal - other		15	15.5%
Pled to Class C Offense		0	0.0%	Pled to Class C Offense		2	2.1%
Acquittal		1	2.9%	Acquittal		0	0.0%

Class B Misdemeanor		Total Cases	Percent of Detained Sample			Total Cases	Percent of Bonded Sample
Detained		43		Bonded		275	
Case Still Active		0		Case Still Active		65	
Pled to Confinement		37	86.0%	Pled to Confinement		75	35.7%
1 – 15 days	10			1 – 15 days	48		
16 – 30 days	15			16 – 30 days	17		
31 – 90 days	11			31 – 90 days	9		
91 – 180 days	1			91 – 180 days	1		
Pled to Probation		0	0.0%	Pled to Probation		16	7.6%
On probation up to 6 months				On probation up to 6 months	0		
On probation for 6 months 1 day to 1 year				On probation for 6 months 1 day to 1 year	14		
On probation for over 1 year				On probation for over 1 year	2		
Pled to Deferred Adjudication		1	2.3%	Pled to Deferred Adjudication		48	22.9%
On def'd up to 6 months	0			On def'd up to 6 months	35		
On def'd for 6 months 1 day to 1 year	1			On def'd for 6 months 1 day to 1 year	12		
On def'd for over 1 year	0			On def'd for over 1 year	1		
Dismissal – in exchange for plea		5	11.6%	Dismissal – in exchange for plea		17	8.1%
Dismissal - other		0	0.0%	Dismissal - other		27	12.9%
Pled to Class C Offense		0	0.0%	Pled to Class C Offense		25	11.9%
Acquittal		0	0.0%	Acquittal		2	1.0%

Part 3: Dispositions Based on Type of Counsel

Felony - 1st and 2nd Degree		Total Cases	Percent of Appointed Sample			Total Cases	Percent of Retained Sample
Appointed		48		Retained		46	
Case Still Active		18		Case Still Active		17	
Pled to Confinement		20	66.7%	Pled to Confinement		6	20.7%
Under 1 year	3			Under 1 year	0		
1 - 5 years	6			1 - 5 years	3		
5 years 1 day to 10 years	8			5 years 1 day to 10 years	1		
Over 10 years	3			Over 10 years	2		
Pled to Probation		2	6.7%	Pled to Probation		3	10.3%
On probation up to 2 years	0			On probation up to 2 years	1		
On probation for 2 years 1 day to 5 years	1			On probation for 2 years 1 day to 5 years	0		
On probation for over 5 years	1			On probation for over 5 years	2		
Pled to Deferred Adjudication		6	20.0%	Pled to Deferred Adjudication		13	44.8%
On def'd up to 2 years	1			On def'd up to 2 years	6		
On def'd for 2 years 1 day to 5 years	3			On def'd for 2 years 1 day to 5 years	4		
On def'd for over 5 years	2			On def'd for over 5 years	3		
Dismissal – in exchange for plea		0	0.0%	Dismissal – in exchange for plea		5	17.2%
Dismissal - other		2	6.7%	Dismissal - other		2	6.9%
Acquittal		0	0.0%	Acquittal		0	0.0%

Felony – 3d and State Jail Felony		Total Cases	Percent of Appointed Sample			Total Cases	Percent of Retained Sample
Appointed		122		Retained		78	
Case Still Active		20		Case Still Active		22	
Pled to Confinement		55	53.9%	Pled to Confinement		17	30.4%
6 months or under		27		6 months or under		14	
6 mos 1 day to 1 year		15		6 mos 1 day to 1 year		0	
1 year 1 day to 2 years		9		1 year 1 day to 2 years		3	
2 years 1 day to 10 years		4		2 years 1 day to 10 years		0	
Pled to Probation		9	8.8%	Pled to Probation		8	14.3%
On probation up to 2 years		2		On probation up to 2 years		1	
On probation for 2 years 1 day to 5 years		5		On probation for 2 years 1 day to 5 years		4	
On probation for over 5 years		2		On probation for over 5 years		3	
Pled to Deferred Adjudication		19	18.6%	Pled to Deferred Adjudication		19	33.9%
On def'd up to 2 years		7		On def'd up to 2 years		9	
On def'd for 2 years 1 day to 5 years		12		On def'd for 2 years 1 day to 5 years		8	
On def'd for over 5 years		0		On def'd for over 5 years		2	
Dismissal – in exchange for plea		9	8.8%	Dismissal – in exchange for plea		6	10.7%
Dismissal - other		10	9.8%	Dismissal - other		6	10.7%

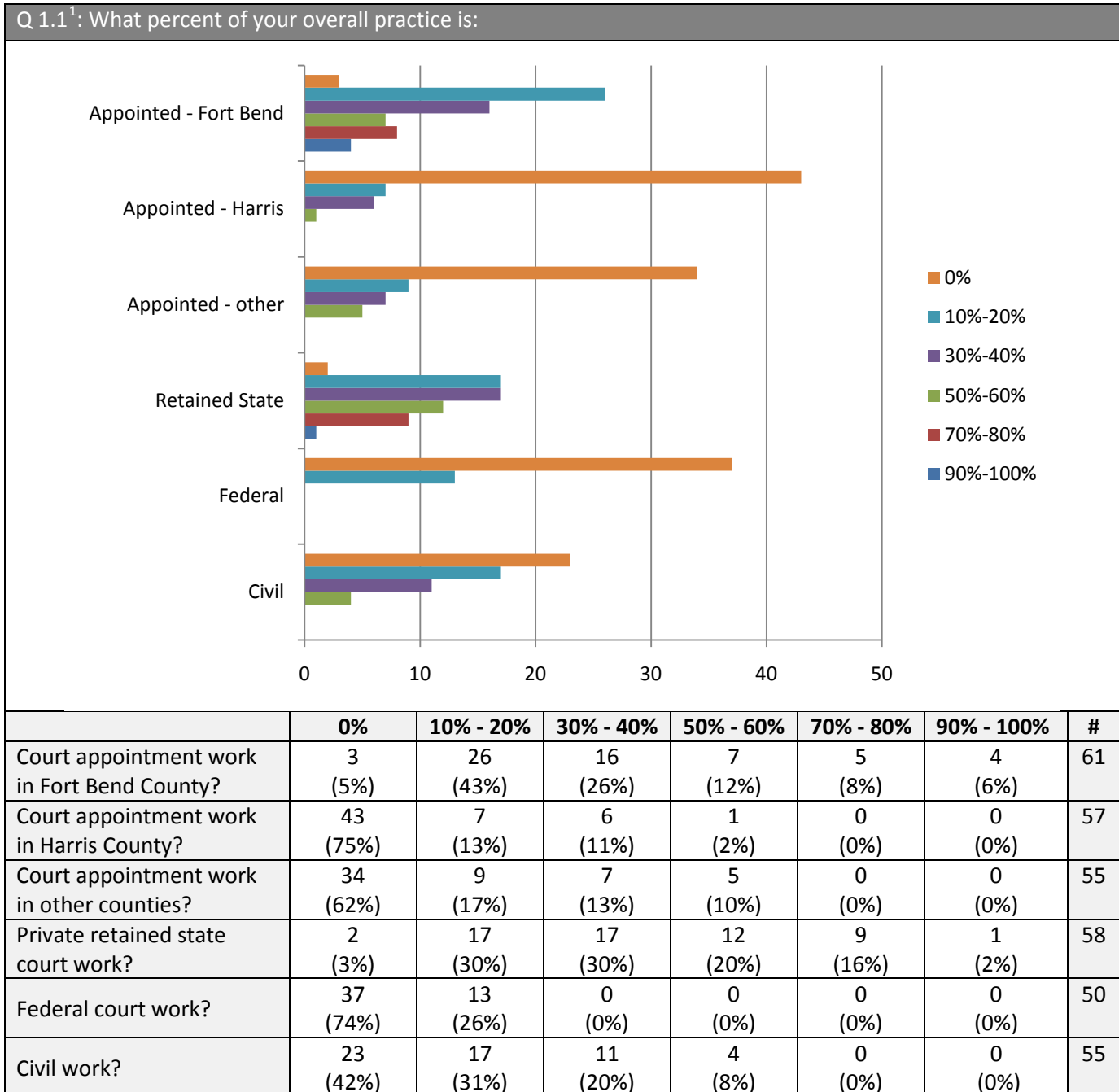
Class A Misdemeanor		Total Cases	Percent of Appointed Sample			Total Cases	Percent of Retained Sample
Appointed		107		Retained		80	
Case Still Active		23		Case Still Active		30	
Pled to Confinement		38	45.2%	Pled to Confinement		11	22.0%
1 – 15 days	6			1 – 15 days	6		
16 – 30 days	11			16 – 30 days	4		
31 – 90 days	12			31 – 90 days	0		
91 – 180 days	6			91 – 180 days	1		
181 – 365 days	3			181 – 365 days	0		
Pled to Probation		7	8.3%	Pled to Probation		5	10.0%
On probation up to 6 months	1			On probation up to 6 months	0		
On probation for 6 months 1 day to 1 year	5			On probation for 6 months 1 day to 1 year	3		
On probation for over 1 year	1			On probation for over 1 year	2		
Pled to Deferred Adjudication		17	20.2%	Pled to Deferred Adjudication		14	28.0%
On def'd up to 6 months	5			On def'd up to 6 months	3		
On def'd for 6 months 1 day to 1 year	9			On def'd for 6 months 1 day to 1 year	9		
On def'd for over 1 year	3			On def'd for over 1 year	2		
Dismissal – in exchange for plea		15	17.9%	Dismissal – in exchange for plea		9	18.0%
Dismissal - other		6	7.1%	Dismissal - other		9	18.0%
Pled to Class C Offense		1	1.2%	Pled to Class C Offense		1	2.0%
Acquittal		0	2.9%	Acquittal		1	2.0%

Class B Misdemeanor		Total Cases	Percent of Appointed Sample			Total Cases	Percent of Retained Sample
Appointed		152		Retained		155	
Case Still Active		20		Case Still Active		38	
Pled to Confinement		80	60.6%	Pled to Confinement		30	25.6%
1 – 15 days	37			1 – 15 days	21		
16 – 30 days	24			16 – 30 days	7		
31 – 90 days	18			31 – 90 days	2		
91 – 180 days	1			91 – 180 days	0		
Pled to Probation		4	3.0%	Pled to Probation		12	10.3%
On probation up to 6 months	1			On probation up to 6 months	0		
On probation for 6 months 1 day to 1 year	3			On probation for 6 months 1 day to 1 year	10		
On probation for over 1 year	0			On probation for over 1 year	2		
Pled to Deferred Adjudication		23	17.4%	Pled to Deferred Adjudication		29	24.8%
On def'd up to 6 months	15			On def'd up to 6 months	21		
On def'd for 6 months 1 day to 1 year	8			On def'd for 6 months 1 day to 1 year	7		
On def'd for over 1 year	0			On def'd for over 1 year	1		
Dismissal – in exchange for plea		13	9.8%	Dismissal – in exchange for plea		11	9.4%
Dismissal - other		6	4.5%	Dismissal - other		15	12.8%
Pled to Class C Offense		6	4.5%	Pled to Class C Offense		18	15.4%
Acquittal		0	0.0%	Acquittal		2	1.7%

Appendix H – Fort Bend County Criminal Defense Bar Survey

Fort Bend Survey Findings

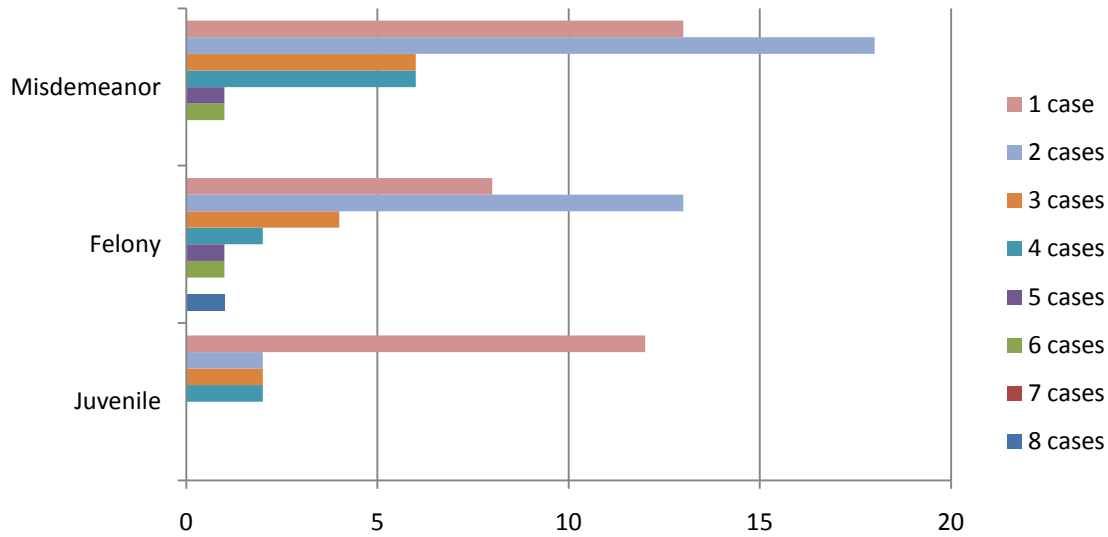
As part of the indigent defense assessment conducted in Fort Bend County, members of the defense bar were asked to complete a survey regarding their practice and opinions of the indigent defense system. Emails were sent to the members of the Fort Bend County Criminal Defense Lawyers’ Association, as well as to all attorneys on the appointment wheels in the county. The survey was available to take online from March 7 through March 16. In all, 64 people responded to the survey. Their responses are recorded below.



Q 1.2: Counties other than Fort Bend and Harris where attorneys take appointments:

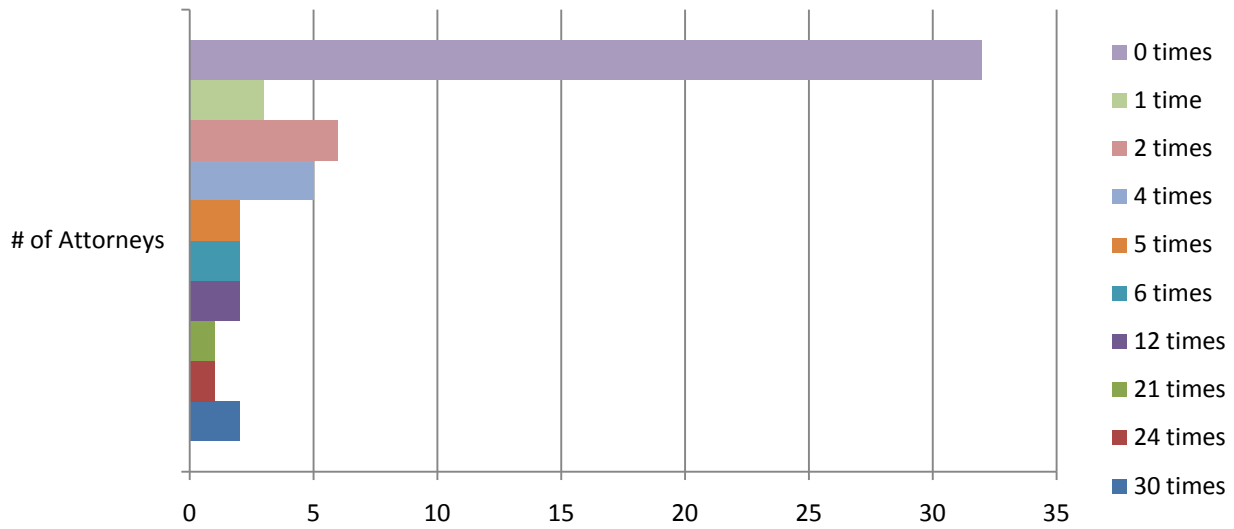
Austin	1	Lavaca	1
Brazoria	10	Matagorda	3
Chambers	2	Polk	1
DeWitt	1	San Jacinto	1
Galveston	12	Trinity	1
Guadalupe	1	Wharton	1
Jackson	1	# of Attorneys	22

Q 2.1:² How many criminal court cases are you typically appointed to in Fort Bend County each month? Answer for each type of case you accept.



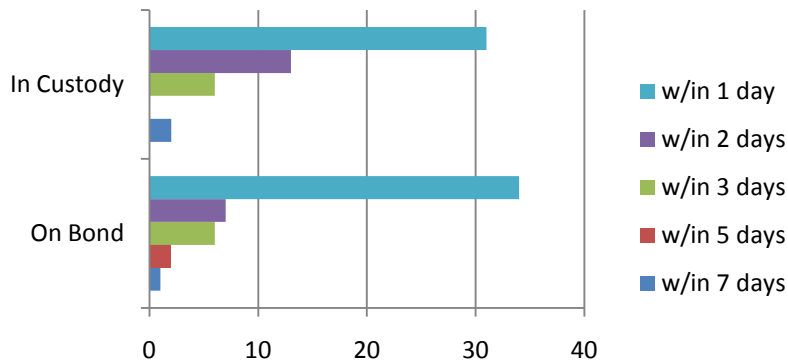
	1 case	2 cases	3 cases	4 cases	5 cases	6 cases	7 cases	8 cases	# Responses
Misdemeanor	13 (29%)	18 (40%)	6 (13%)	6 (13%)	1 (2%)	1 (2%)	0 (0%)	0 (0%)	45
Felony	8 (27%)	13 (43%)	4 (13%)	2 (7%)	1 (3%)	1 (3%)	0 (0%)	1 (3%)	30
Juvenile	12 (67%)	2 (11%)	2 (11%)	2 (11%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	18

Q 2.2:³ Do you ever serve as attorney of the day in Fort Bend County? If so, how often do you serve in this role (per year)?



Times per Year	0 times	1 time	2 times	4 times	5 times	6 times	12 times	21 times	24 times	30 times	# Responses
# of Attorneys	32	3	6	5	2	2	2	1	1	2	56

Q 2.3:⁴ How soon after appointment do you contact an appointed client:



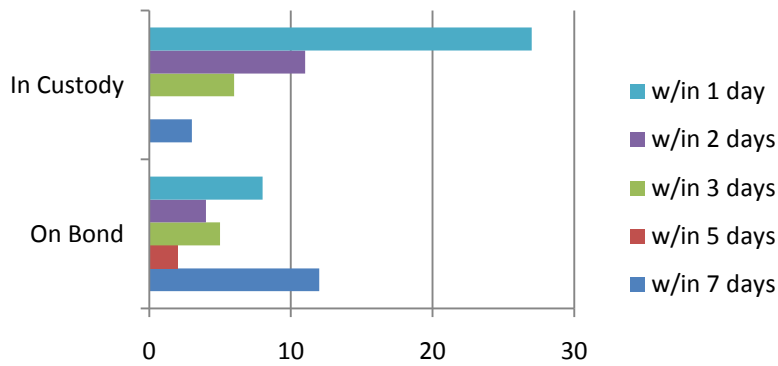
	1 day	2 days	3 days	4 days	5 days	6 days	7 days	# Responses
In Custody	31	13	6	0	0	0	2	52
On Bond	34	7	6	0	2	0	1	50

Additional text responses:

On Bond:

- "Depends when I can find them."
- "At their earliest convenience."

Q 2.4: How soon after appointment do you meet with an appointed client:



	1 day	2 days	3 days	4 days	5 days	6 days	7 days	# Responses
In Custody	27	11	6	0	0	0	3	48
On Bond	8	4	5	0	2	0	12	48

Additional text responses:

In Custody:

- "When something changes."

On Bond:

- "Prior to first court appearance."
- "At next crt [sic] setting."
- "Depends on client's schedule."
- "Depends."
- "Varies."
- "Depends on client."
- "At their convenience."
- "Before or on next Court satting [sic]."
- "When something changes."
- "On court date unless they want to come to my office before court."
- "Depends, court or office after call."
- "Usually not until 1st court appearance so it could be a month."
- "Whenever they respond."

Q 2.5: Typically, where is the first meeting with an appointed client held:

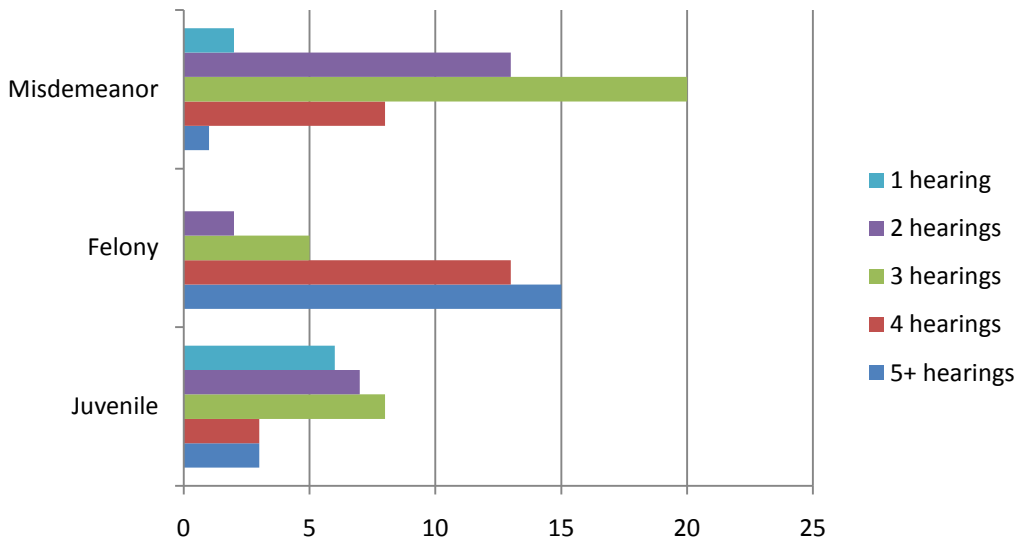
	On Bond
Office	23
Office or courthouse	10
Courthouse	9
By phone	2
Office or by phone	2
Courthouse or coffee shop	1
Office, library, client's home	1
Library or office	1
Total responses	49

Q 2.6a: ⁵ List any challenges you face meeting with appointed clients in Fort Bend County who are Jailed .																
	41 responses	7 thrown out	35 statements	5 categories												
<table border="1"> <caption>Challenges for Jailed Clients</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>None</td> <td>60%</td> </tr> <tr> <td>Scheduling Issues</td> <td>17%</td> </tr> <tr> <td>Inefficient Process</td> <td>8%</td> </tr> <tr> <td>Privacy Concerns</td> <td>6%</td> </tr> <tr> <td>Other</td> <td>9%</td> </tr> </tbody> </table>					Category	Percentage	None	60%	Scheduling Issues	17%	Inefficient Process	8%	Privacy Concerns	6%	Other	9%
Category	Percentage															
None	60%															
Scheduling Issues	17%															
Inefficient Process	8%															
Privacy Concerns	6%															
Other	9%															
None: 21 statements (60%)	<ul style="list-style-type: none"> • “None. Jailed clients are very accessible.” • “Jail is accommodating.” • “Our detention staff go out of their way to accommodate us.” 															
Scheduling issues: 6 statements (17%)	<ul style="list-style-type: none"> • “Inconvenience if not normal business hours.” • “Jail schedule.” • “My schedule.” 															
Inefficient Process: 3 statements (8%)	<ul style="list-style-type: none"> • “The procedure in FBC requires attorneys to wait in line for visitation with [the] general public which discourages visits.” • “Long waits to see clients in jail.” • “Sometimes jail is slow regarding producing client.” 															
Privacy Concerns: 2 statements (6%)	<ul style="list-style-type: none"> • “...[V]isitation room is too restrictive and no privacy, room not sound proof.” • “Privacy.” 															
Other: 3 statements (9%)	<ul style="list-style-type: none"> • “Having to travel to the jail.” • “The phone system in the in[-]person visit sometimes does not work. Sometimes it is better to yell through the document slot.” • “Knowing if they are in jail or not.” 															

Q 2.6b: List any challenges you face meeting with appointed clients in Fort Bend County who are On Bond ?																		
	46 responses	8 thrown out	45 statements	6 categories														
<table border="1"> <caption>Challenges for On Bond Clients</caption> <thead> <tr> <th>Category</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Incorrect Contact Info</td> <td>42%</td> </tr> <tr> <td>None</td> <td>18%</td> </tr> <tr> <td>Scheduling</td> <td>16%</td> </tr> <tr> <td>Unresponsive Client</td> <td>11%</td> </tr> <tr> <td>Transportation</td> <td>9%</td> </tr> <tr> <td>Other</td> <td>4%</td> </tr> </tbody> </table>					Category	Percentage	Incorrect Contact Info	42%	None	18%	Scheduling	16%	Unresponsive Client	11%	Transportation	9%	Other	4%
Category	Percentage																	
Incorrect Contact Info	42%																	
None	18%																	
Scheduling	16%																	
Unresponsive Client	11%																	
Transportation	9%																	
Other	4%																	
Incorrect Contact Information: 19 statements (42%)	<ul style="list-style-type: none"> • “Contact info for clients (phone number, address) is sometimes incorrect.” • “Bad or incorrect contact information.” • “Sometimes hard to get in touch with contact info given by them.” 																	
None: 8 statements (18%)	<ul style="list-style-type: none"> • All eight were one-word “None” responses. 																	
Scheduling issues: 7 statements (16%)	<ul style="list-style-type: none"> • “Getting them to show up if not a court date.” • “Having the Clients [sic] make themselves available.” • “Their not willing to meet during business hours.” 																	
Unresponsive Clients: 5 statements (11%)	<ul style="list-style-type: none"> • “...[L]ack of response from the client.” • “Failure to return my phone calls.” • “They don’t usually respond to phone calls or letters.” 																	

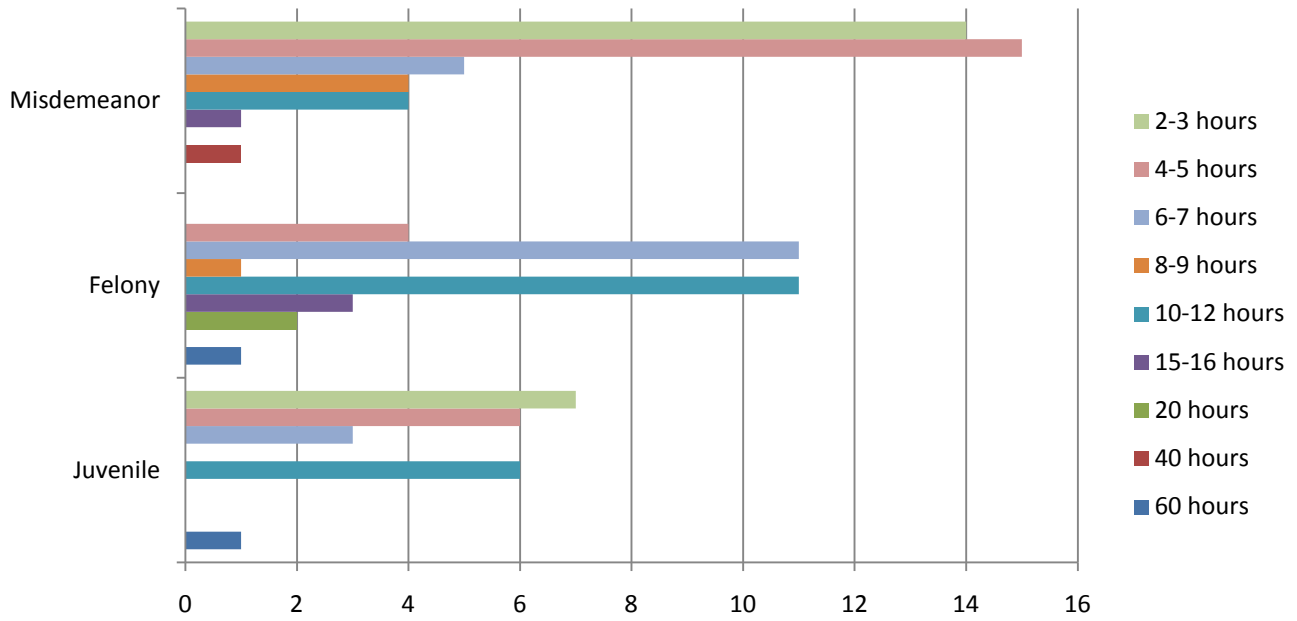
Transportation Issues: 4 statements (9%)	<ul style="list-style-type: none"> • “No public transportation in Fort Bend, clients often have to depend on a ride.” • “Clients may not have reliable transportation.” • “Limited or No Transportation [sic] to meet at office.”
Other: 2 statements (4%)	<ul style="list-style-type: none"> • “Knowing if they are in custody or on bond...” • “They bond out before they get our contact information. So, they don’t believe who I am.”

Q 2.7:⁶ How many hearings does it typically take to dispose court-appointed cases in Fort Bend County? Answer for each type of case you accept.



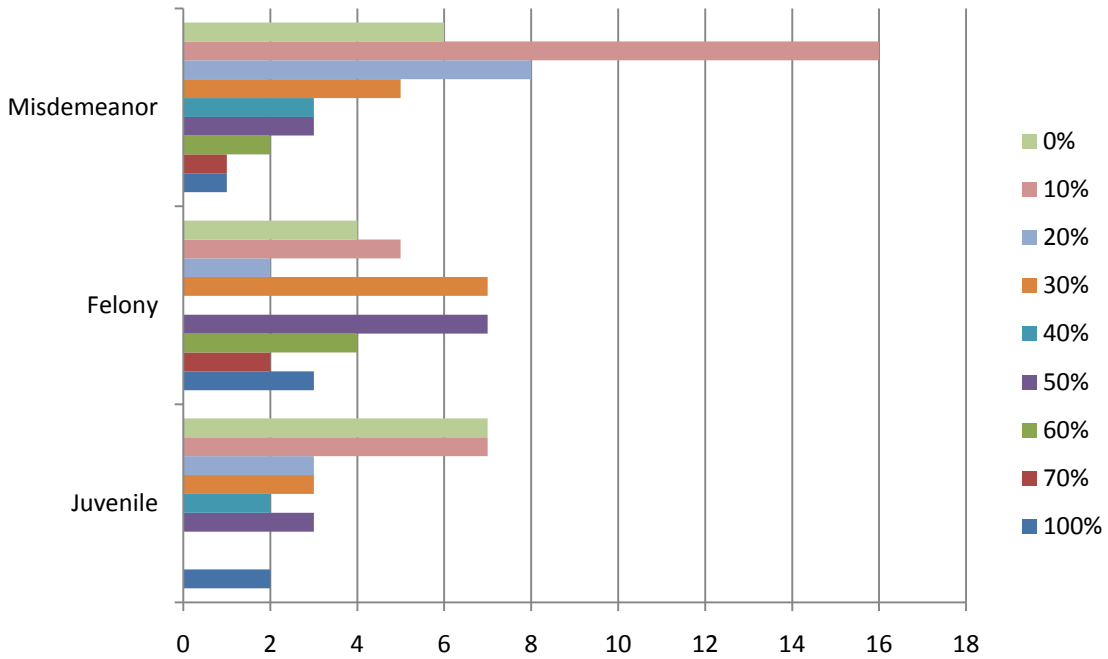
	1 hearing	2 hearings	3 hearings	4 hearings	5+ hearings	# Responses
Misdemeanor	2 (5%)	13 (30%)	20 (46%)	8 (18%)	1 (2.3%)	44
Felony	0 (0%)	2 (6%)	5 (14%)	13 (37%)	15 (43%)	35
Juvenile	6 (22%)	7 (26%)	8 (30%)	3 (11%)	3 (11%)	27

Q 2.8:⁷ How many billable hours does it typically take to dispose a court-appointed case in Fort Bend County? Answer for each type of case you accept.



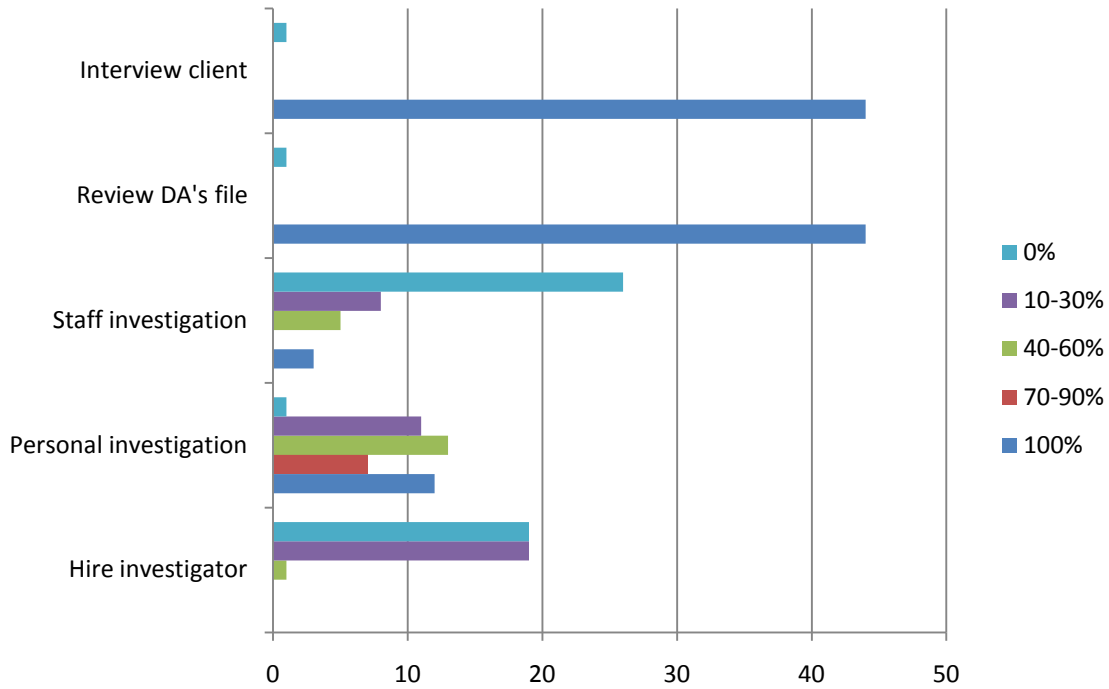
	2-3 hrs	4-5hrs	6-7hrs	8-9 hrs	10-12 hrs	15-16 hrs	20 hrs	40 hrs	60 hrs	Responses
Misdemeanor	14 (31%)	15 (34%)	5 (11%)	4 (9%)	4 (9%)	1 (2%)	0 (0%)	1 (2%)	0 (0%)	44
Felony	0 (0%)	4 (12%)	11 (33%)	1 (3%)	11 (33%)	3 (9%)	2 (6%)	0 (0%)	1 (3%)	33
Juvenile	7 (31%)	6 (26%)	3 (13%)	0 (0%)	6 (26%)	0 (0%)	0 (0%)	0 (0%)	1 (4%)	23

Q 2.9⁸: In what percent of court-appointed cases in Fort Bend County do you typically file pre-trial motions? Answer for each type of case you accept.



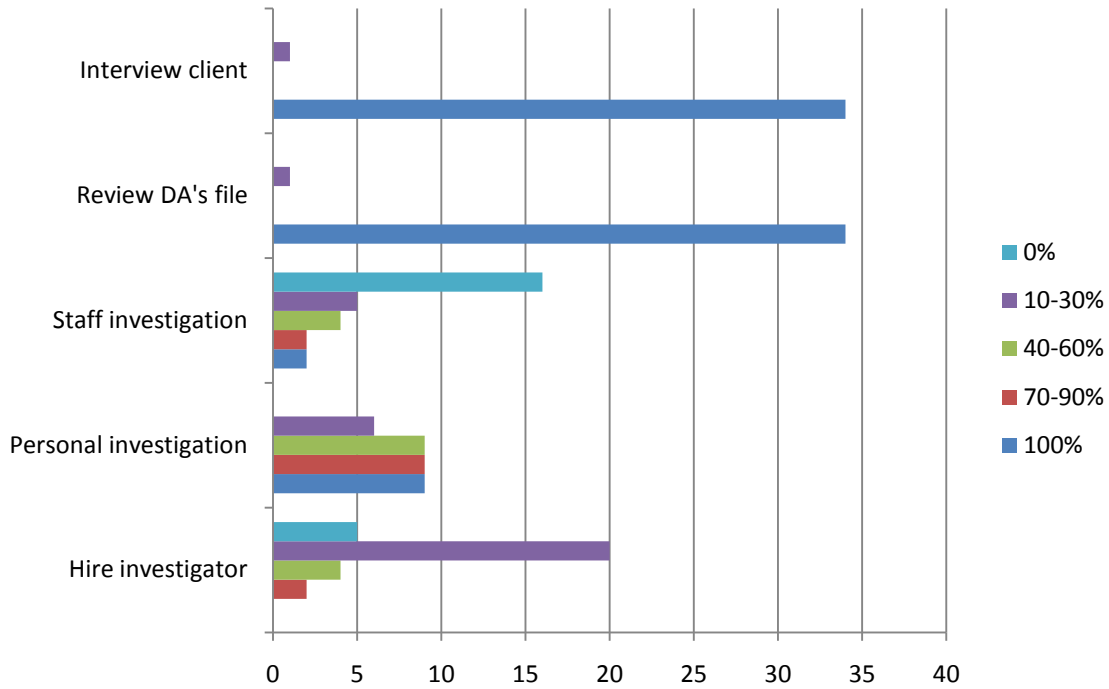
	0% of cases	10% of cases	20% of cases	30% of cases	40% of cases	50% of cases	60% of cases	70% of cases	100% of cases	#
Misdemeanor	6 (13%)	16 (40%)	8 (18%)	5 (11%)	3 (7%)	3 (7%)	2 (4%)	1 (2%)	1 (2%)	45
Felony	4 (11%)	5 (14%)	2 (5%)	7 (19%)	0 (0%)	7 (19%)	4 (11%)	2 (5%)	3 (8%)	37
Juvenile	7 (26%)	7 (26%)	3 (11%)	3 (11%)	2 (7%)	3 (11%)	0 (0%)	0 (0%)	2 (2%)	27

Q 2.10a:⁹ Only considering appointed cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Misdemeanor**



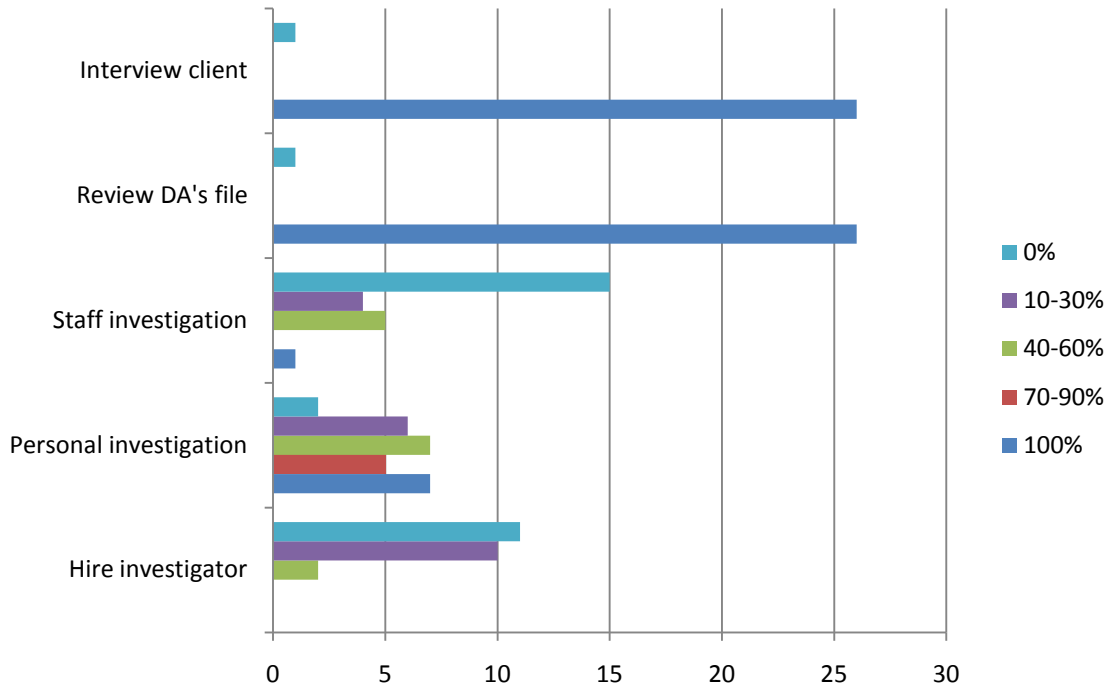
	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	1 (2%)	0 (0%)	0 (0%)	0 (0%)	44 (98%)	45
Review of the facts in the District Attorney's file	1 (2%)	0 (0%)	0 (0%)	0 (0%)	44 (98%)	45
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	26 (62%)	8 (19%)	5 (12%)	0 (0%)	3 (7%)	42
Personal investigation into facts of case (speak to witnesses, view crime scene)	1 (2%)	11 (25%)	13 (30%)	7 (16%)	12 (27%)	44
Hire investigator	19 (49%)	19 (49%)	1 (3%)	0 (0%)	0 (0%)	39

Q 2.10b: Only considering appointed cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Felony**



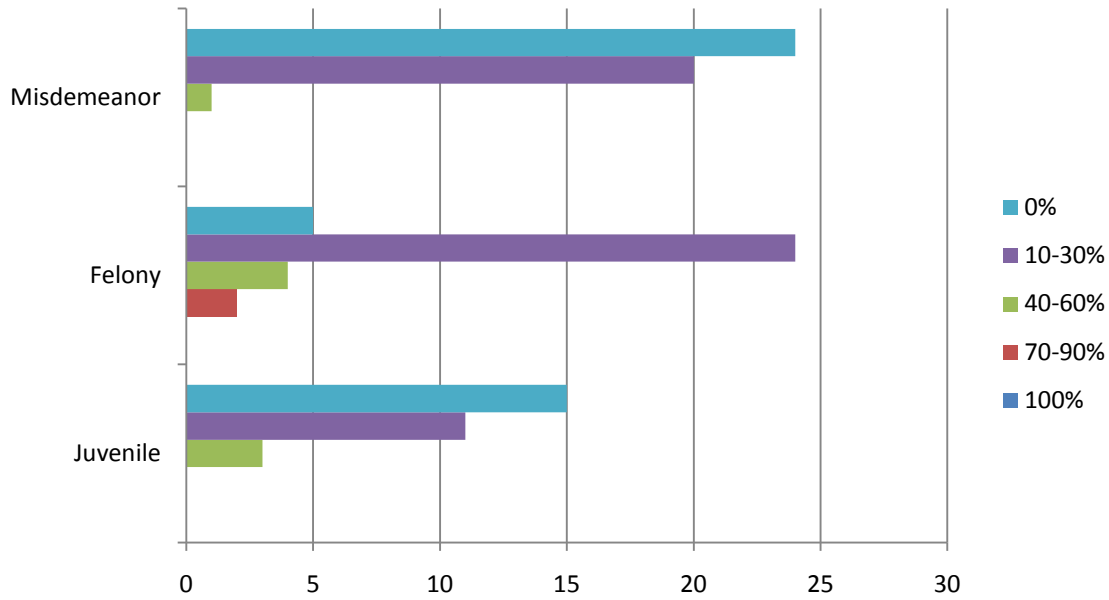
	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	0 (0%)	1 (3%)	0 (0%)	0 (0%)	34 (97%)	35
Review of the facts in the District Attorney's file	0 (0%)	1 (3%)	0 (0%)	0 (0%)	34 (97%)	35
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	16 (50%)	5 (16%)	7 (22%)	2 (6%)	2 (6%)	32
Personal investigation into facts of case (speak to witnesses, view crime scene)	0 (0%)	6 (18%)	9 (27%)	9 (27%)	9 (27%)	33
Hire investigator	5 (15%)	20 (65%)	4 (13%)	2 (6%)	0 (0%)	31

Q 2.10c: Only considering appointed cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Juvenile**



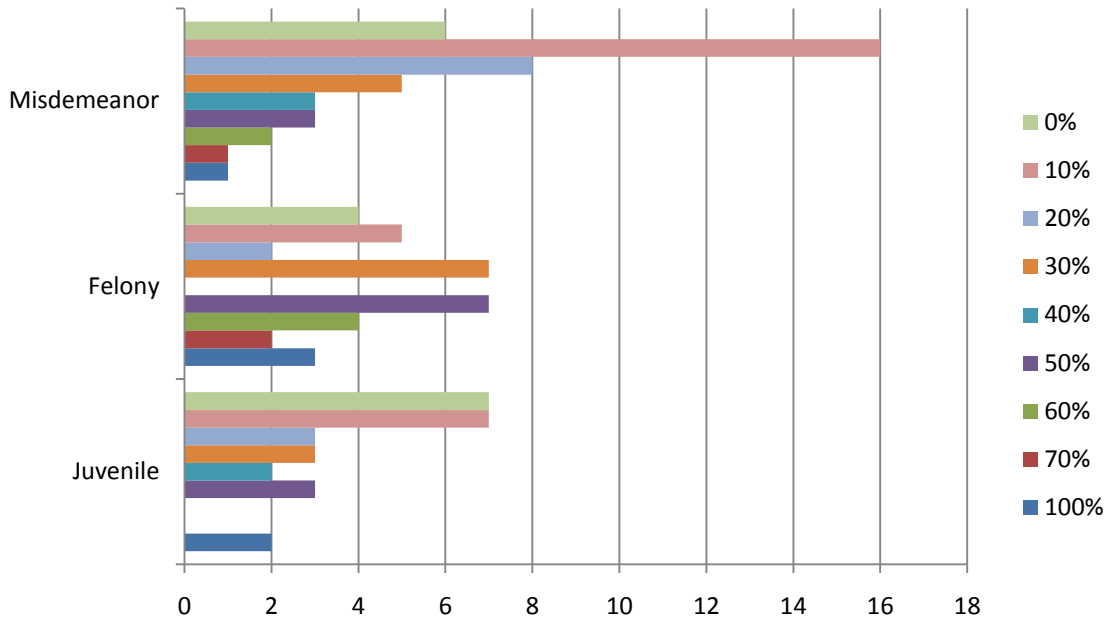
	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	1 (4%)	0 (0%)	0 (0%)	0 (0%)	26 (96%)	27
Review of the facts in the District Attorney's file	1 (4%)	0 (0%)	0 (0%)	0 (0%)	26 (96%)	27
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	15 (60%)	4 (16%)	5 (20%)	0 (0%)	1 (4%)	25
Personal investigation into facts of case (speak to witnesses, view crime scene)	2 (7%)	6 (22%)	7 (26%)	5 (19%)	7 (26%)	27
Hire investigator	11 (48%)	10 (43%)	2 (9%)	0 (0%)	0 (0%)	23

Q 2.11: Only considering appointed cases in Fort Bend County, in what percent of cases do you request an expert witness? Answer for each type of case you accept.



	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	# Responses
Misdemeanor	24 (53%)	20 (44%)	1 (2%)	0 (0%)	0 (0%)	45
Felony	5 (14%)	24 (69%)	4 (11%)	2 (6%)	0 (0%)	35
Juvenile	15 (52%)	11 (38%)	3 (10%)	0 (0%)	0 (0%)	29

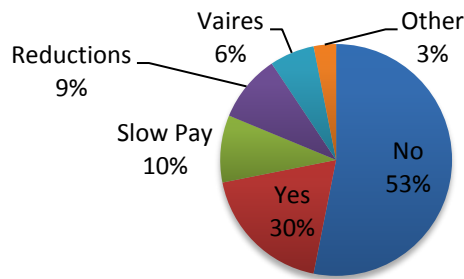
Q 2.12¹⁰: In what percent of court-appointed cases in Fort Bend County do you typically file pre-trial motions? Answer for each type of case you accept.



	0%	10%	20%	30%	40%	50%	60%	70%	100%	#
Misdemeanor	6 (13%)	16 (36%)	8 (18%)	5 (11%)	3 (7%)	3 (7%)	2 (4%)	1 (2%)	1 (2%)	45
Felony	4 (11%)	5 (14%)	2 (5%)	7 (19%)	0 (0%)	7 (19%)	4 (11%)	2 (5%)	3 (6%)	37
Juvenile	7 (26%)	7 (26%)	3 (11%)	3 (11%)	2 (7%)	3 (11%)	0 (0%)	0 (0%)	2 (4%)	27

Q 2.13: Is it difficult to obtain reimbursement for either investigation services or expert witness services if the case does not proceed to trial? Please explain.

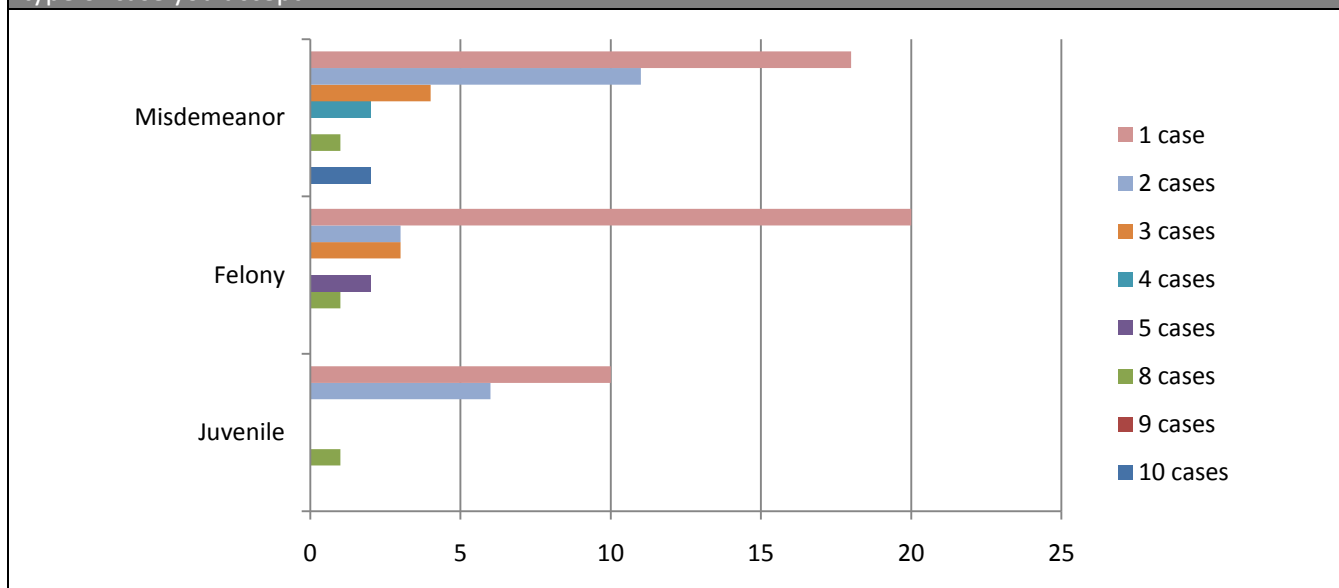
38 responses 7 thrown out 31 statements 6 categories



No: 17 statements (53%)	<ul style="list-style-type: none"> • “No – Don’t keep track of percentage of experts or investigators but I do get them with an Ake motion when I need one.” • “Has not been a problem for me.” • “I’ve not yet encountered these issues for cases appointed to me.”
Yes: 6 statements (30%)	<ul style="list-style-type: none"> • “The judges in FBC county will rarely approve expert witness services and/or 2nd chair legal support on serious cases unless it is a death penalty case.” • “Yes. Judges do not like to pay, even if matter goes to trial.” • “Courts are not receptive, so it is not generally considered a viable tool.”

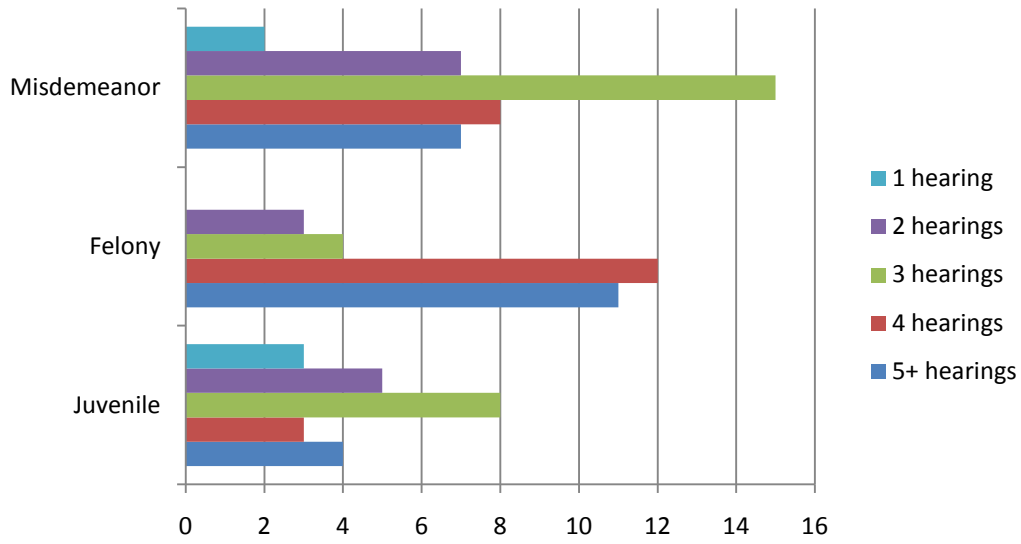
Slow Payment: 3 statements (10%)	<ul style="list-style-type: none"> • “Typically not, but it is difficult to getting paid in Fort Bend County because of the auditor’s office.” • “Only in the time delay. I have not had a request for payment declined but they do take many months to get paid.” • “...[S]ome are very slow to pay.”
Payment Reductions: 3 statements (9%)	<ul style="list-style-type: none"> • “I have had the district court judges also reduce the bills of investigators....” • “Judges sometimes feel that cases that do not proceed to trial should not be paid at the same rate as cases that go to trial.” • “Yes, I have had experts promised reasonable compensation only to have it reduced.”
Varies by Judge: 2 statements (6%)	<ul style="list-style-type: none"> • “If reasonable judge will approve.” • “It depends upon the Court’s view regarding the nature of the offense and complexity of facts, not necessarily on whether the case proceeds all the way to trial.” • “The process is fine.”
Other: 1 response (3%)	<ul style="list-style-type: none"> • “My problem is getting an expert of my choice.”

Q 3.1:¹¹ How many retained cases do you typically receive each month in Fort Bend County? Answer for each type of case you accept.



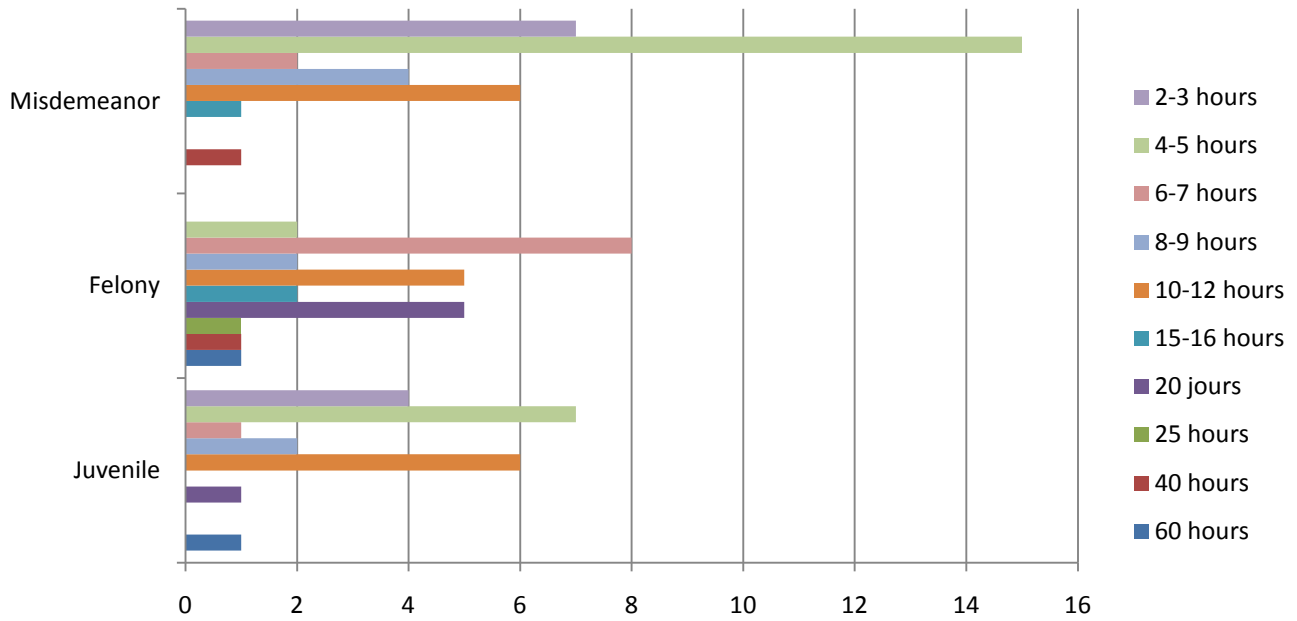
	1 case	2 cases	3 cases	4 cases	5 cases	8 cases	9 cases	10 cases	# Reponses
Misdemeanor	18 (47%)	11 (29%)	4 (11%)	2 (5%)	0 (0%)	1 (3%)	0 (0%)	2 (5%)	38
Felony	20 (69%)	3 (10%)	3 (10%)	0 (0%)	2 (7%)	1 (3%)	0 (0%)	0 (0%)	29
Juvenile	10 (59%)	6 (35%)	0 (0%)	0 (0%)	0 (0%)	1 (6%)	0 (0%)	0 (0%)	17

Q 3.2:¹² How many hearings does it typically take to dispose retained cases in Fort Bend County? Answer for each type of case you accept.



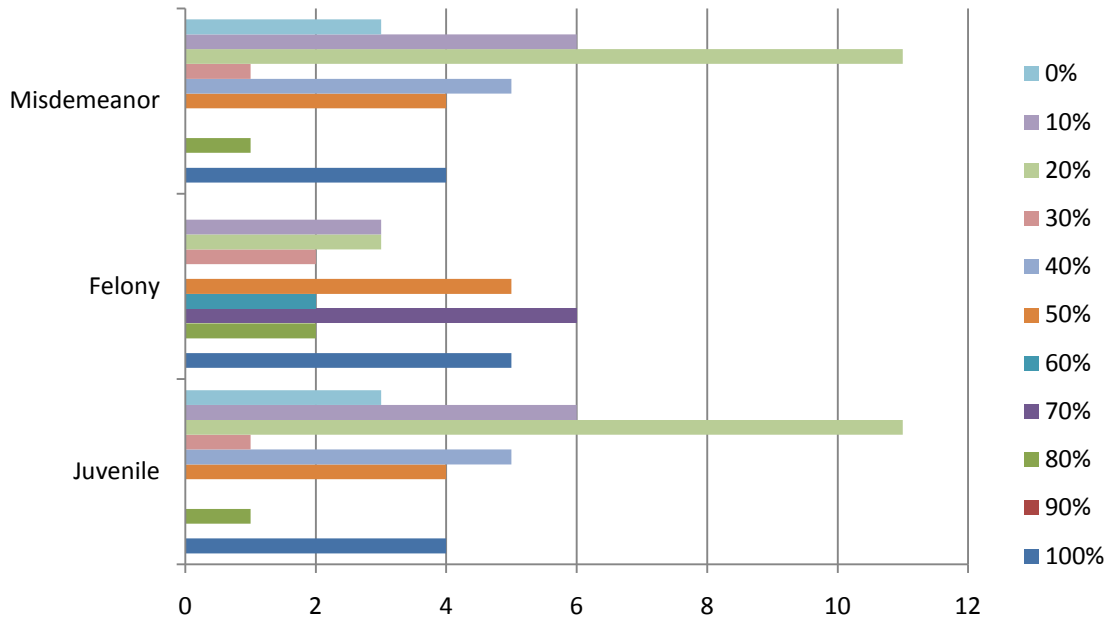
	1 hearing	2 hearings	3 hearings	4 hearings	5+ hearings	# Responses
Misdemeanor	2 (5%)	7 (18%)	15 (38%)	8 (21%)	7 (18%)	39
Felony	0 (0%)	3 (10%)	4 (13%)	12 (40%)	11 (37%)	30
Juvenile	3 (13%)	5 (22%)	8 (35%)	3 (13%)	4 (17%)	23

Q 3.3:¹³ How many billable hours does it typically take to dispose a retained case in Fort Bend County? Answer for each type of case you accept.



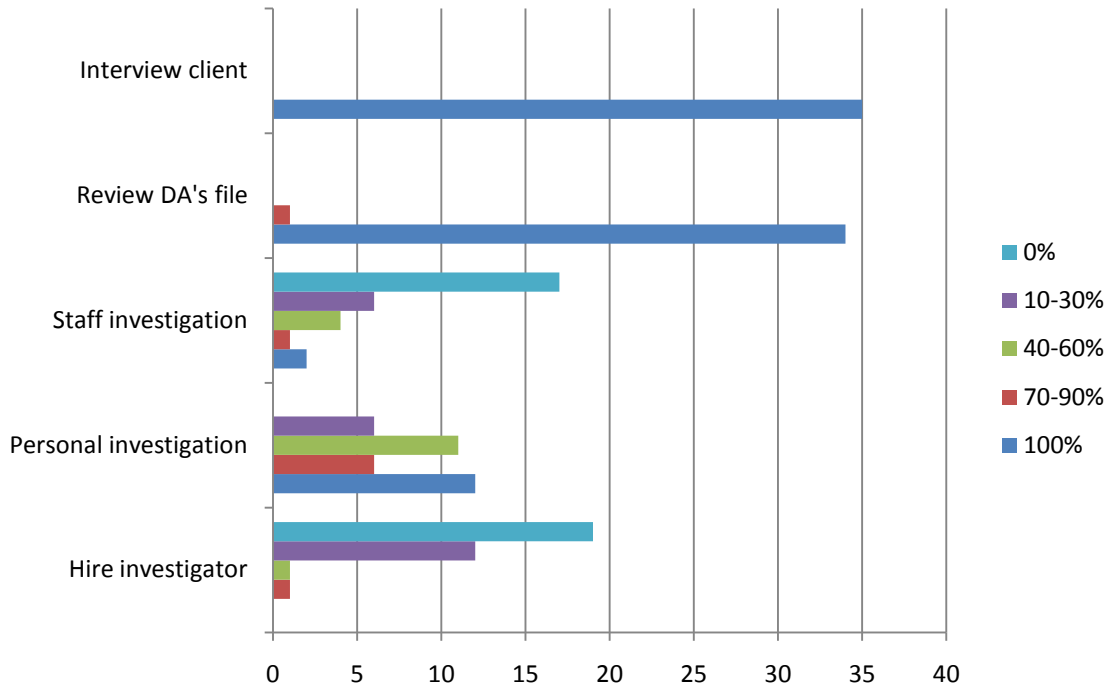
	2-3 hrs	4-5hrs	6-7hrs	8-9 hrs	10-12 hrs	15-16 hrs	20 hrs	25 hrs	40 hrs	60 hrs	#
Misdemeanor	7 (19%)	15 (41%)	2 (6%)	4 (11%)	6 (17%)	1 (3%)	0 (0%)	0 (0%)	1 (3%)	0 (0%)	36
Felony	0 (0%)	2 (7%)	8 (41%)	2 (7%)	5 (19%)	2 (7%)	5 (19%)	1 (4%)	1 (4%)	1 (4%)	27
Juvenile	4 (18%)	7 (32%)	1 (5%)	2 (10%)	6 (28%)	0 (0%)	1 (5%)	0 (0%)	0 (0%)	1 (5%)	23

Q 3.4¹⁴: In what percent of retained cases in Fort Bend County do you typically file pre-trial motions? Answer for each type of case you accept.



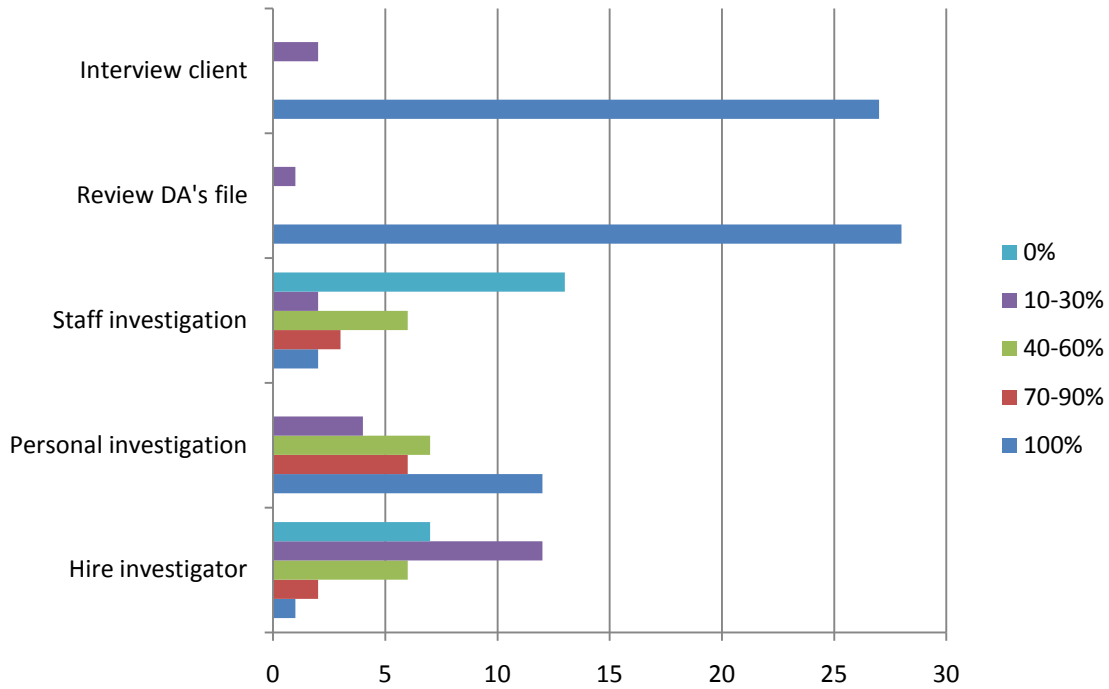
	0%	10%	20%	30%	40%	50%	60%	70%	80%	90%	100%	#
Misdemeanor	3 (8%)	6 (17%)	11 (31%)	1 (3%)	5 (14%)	4 (11%)	0 (0%)	0 (0%)	1 (3%)	0 (0%)	4 (11%)	36
Felony	0 (0%)	3 (11%)	3 (11%)	2 (7%)	0 (0%)	5 (18%)	2 (7%)	6 (21%)	2 (7%)	0 (0%)	5 (18%)	28
Juvenile	5 (23%)	4 (18%)	4 (18%)	2 (9%)	2 (9%)	3 (14%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (9%)	22

Q 3.5a:¹⁵ Only considering retained cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Misdemeanor**



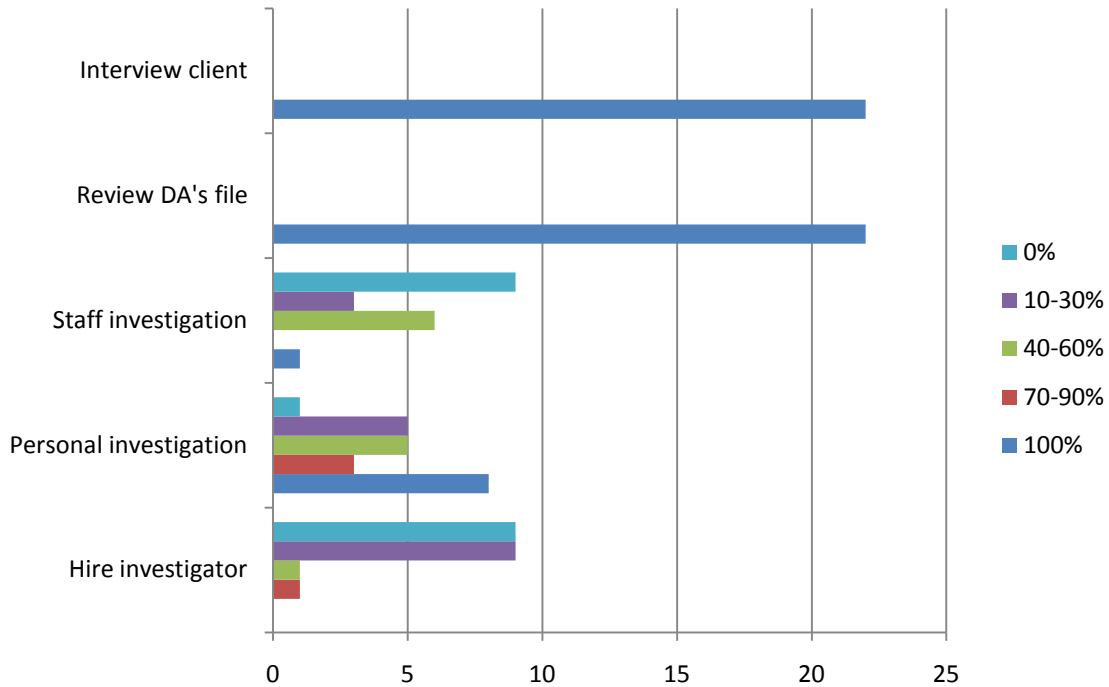
	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	0 (0%)	0 (0%)	0 (0%)	0 (0%)	35 (100%)	35
Review of the facts in the District Attorney's file	0 (0%)	0 (0%)	0 (0%)	1 (3%)	34 (97%)	35
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	17 (57%)	6 (20%)	4 (13%)	1 (3%)	2 (7%)	30
Personal investigation into facts of case (speak to witnesses, view crime scene)	0 (0%)	6 (17%)	11 (31%)	6 (17%)	12 (34%)	35
Hire investigator	19 (58%)	12 (36%)	1 (3%)	1 (3%)	0 (0%)	33

Q 3.5b: Only considering retained cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Felony**



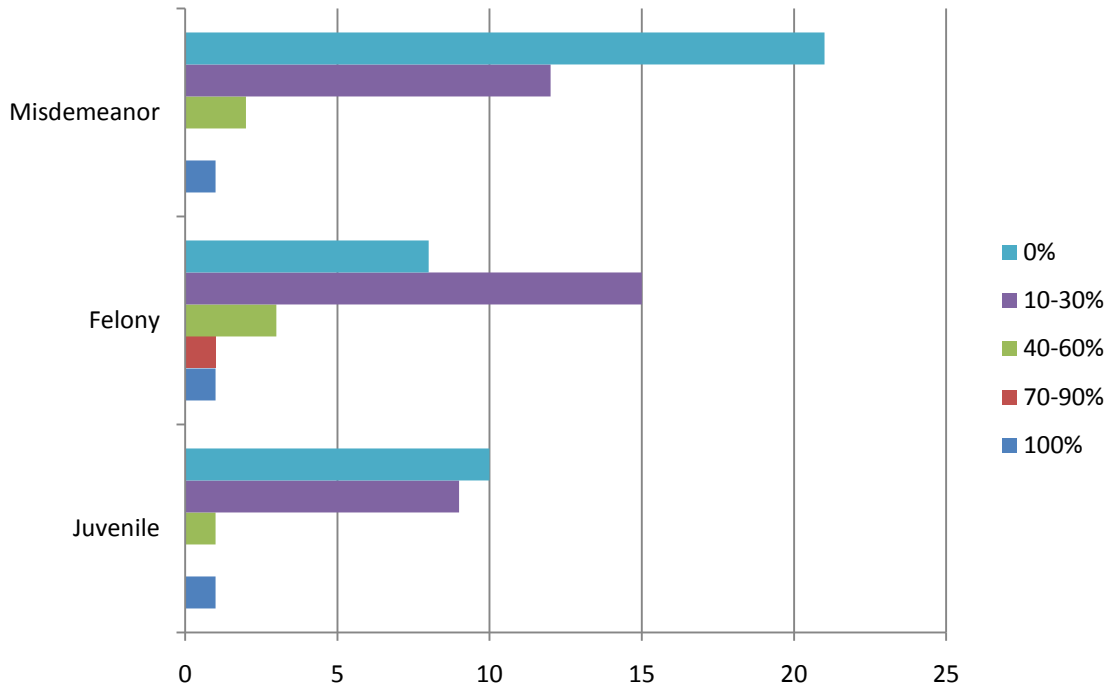
	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	0 (0%)	2 (7%)	0 (0%)	0 (0%)	27 (93%)	29
Review of the facts in the District Attorney's file	0 (0%)	1 (3%)	0 (0%)	0 (0%)	28 (97%)	29
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	13 (50%)	2 (8%)	6 (23%)	3 (12%)	2 (8%)	26
Personal investigation into facts of case (speak to witnesses, view crime scene)	0 (0%)	4 (14%)	7 (24%)	6 (21%)	12 (41%)	29
Hire investigator	7 (25%)	12 (43%)	6 (21%)	2 (7%)	1 (4%)	28

Q 3.5c: Only considering retained cases in Fort Bend County, in what percent of cases do you perform the following types of investigation in the facts of a case? **Juvenile**



	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	#
Interview with client	0 (0%)	0 (0%)	0 (0%)	0 (0%)	22 (100%)	22
Review of the facts in the District Attorney's file	0 (0%)	0 (0%)	0 (0%)	0 (0%)	22 (100%)	22
Staff employee performs investigation in the case facts (speaks to witnesses, views crime scene)	9 (47%)	3 (16%)	6 (32%)	0 (0%)	1 (5%)	19
Personal investigation into facts of case (speak to witnesses, view crime scene)	1 (5%)	5 (23%)	5 (23%)	3 (14%)	8 (36%)	22
Hire investigator	9 (45%)	9 (45%)	1 (5%)	1 (5%)	0 (0%)	20

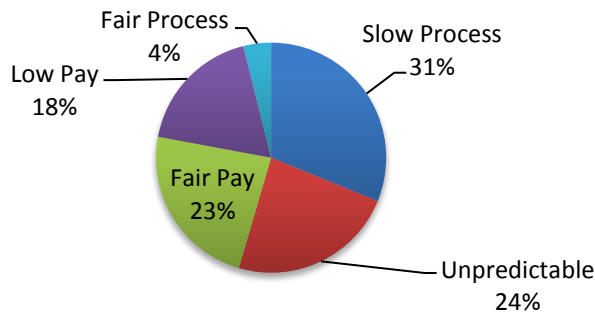
Q 3.6: Only considering retained cases in Fort Bend County, in what percent of cases do you request an expert witness? Answer for each type of case you accept.



	0% of cases	10%-30% of cases	40%-60% of cases	70%-90% of cases	100% of cases	# Responses
Misdemeanor	21 (58%)	12 (33%)	2 (6%)	0 (0%)	1 (3%)	36
Felony	8 (29%)	15 (54%)	3 (11%)	1 (4%)	1 (4%)	28
Juvenile	10 (48%)	9 (43%)	1 (5%)	0 (0%)	1 (5%)	21

Q 4.1: What is your opinion of Fort Bend County's payment rates and payment Process?

40 responses 2 thrown out 79 statements 5 categories



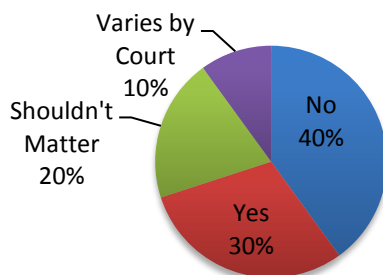
Slow Process: 24 statements (31%)

- "It takes too long to get paid at times and it is very difficult to know the status of payment for a particular file."
- "The process does take a long time and for the slower parts of our business cycle place a majority of us that are younger in a bind. Especially when we place all of our billing in a reasonable amount of time."
- "The payment process is slow, pass [sic] 30 days, sometimes 2 or more months."

<p>Unpredictable due to Court and Judicial Variance: 18 statements (24%)</p>	<ul style="list-style-type: none"> • “Depends on the judge. Some judges pay well but others don’t.” • “I do not believe that we are paid fairly by most courts. Many of the courts do not follow the hourly fee range listed on the expense claim voucher and will pay less than what is suggested per hour without an explanation as to the decrease.” • “Schedule is fair but the Judges’ use of discretion just varies so much it makes the system unfair. Several judges pay very poorly if you get a case dismissed, no-billed or you are subbed out. Why? You often work as hard, or harder, on these cases then [sic] you do on the cases that plead.”
<p>Fair Pay: 18 statements (23%)</p>	<ul style="list-style-type: none"> • “Rates are fair.” • “The pay rate is comparable to other counties.” • “No problem with the rate.”
<p>Low Pay: 14 statements (18%)</p>	<ul style="list-style-type: none"> • “The rates do not consider the long waiting times even to reset a case. There is a set rate for court appearance which does not pay for gas and time both.” • “The pay rate for court appointed cases is disrespectful to attorneys who accept them. It is true that we accept appointments to help indigent [sic] defendants. Though you don’t anticipate to get rich, you should be able to use it to pay your bills if nothing else.” • “IF [sic] I were living solely off of appointments, it would be difficult to survive.”
<p>Good/Fair Process: 3 statements (4%)</p>	<ul style="list-style-type: none"> • “Payment process works well.” • “It is fair and the process fairly quick...” • “The process is fine.”
<p>In addition, there were several interesting combinations that emphasize the largest complaint about the slow process. The first group was the “fair pay but slow process” group, occurring in 12 responses. The other group was defined by one respondent who stated that the process and pay were “slow and low.” That combination was found in 10 responses as described below.</p>	
<p>Fair Pay but Slow Process: 12 responses</p>	<ul style="list-style-type: none"> • “The fees are typically proportionate with the work. The payment process is a joke. It takes several weeks to get compensated once the voucher is turned in.” • “I believe the pay rates are adequate, but the payment process is extremely slow compared to other counties.” • “Good rates but slow pay.”
<p>Slow and Low: 10 statements</p>	<ul style="list-style-type: none"> • “Poor, payment rates are still too low and the process is completely broken, no oversight as to when a judge decides to sign a voucher and no oversight as to when the auditor will get it.” • “Rate is too low. I am anot [sic] adequately paid for my efforts. Payment proxess [sic] is too long.” • “They pay us very slowly it takes way to [sic] long. FTBC does not pay enough.”

Q 4.2: Does the fee structure offer incentives that encourage quality representation?

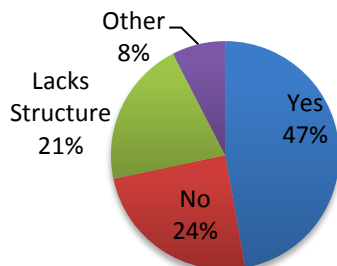
41 responses 3 thrown out 40 statements 4 categories



<p>No: 16 statements (40%)</p>	<ul style="list-style-type: none"> • “Not really since you never know what you are going to get pay [sic].” • “No. The structure itself has nothing to do with the quality of the representation, except at the 3g level. The 25 or so people on that list are very good, and worth the money. Others on lower levels may be overpaid.” • “No, the basic structure is designed for non trial attorneys to make some money, there are maybe 20 attorneys at the max that actually provide quality representation.”
<p>Yes: 12 statements (30%)</p>	<ul style="list-style-type: none"> • 10 statements were simply “yes.” • “Yes. I get paid by the hour. I do what it takes to represent my clients and get paid accordingly.” • “Yes so long as the state shares [sic] its file information.”
<p>It Doesn’t or Shouldn’t Matter: 8 statements (20%)</p>	<ul style="list-style-type: none"> • “The responsibility of representing my clients compels me to give them quality representation.” • “Fees have nothing to do with the quality of representation.” • “Quality representation is the norm regardless of pay.”
<p>Varies by Court: 4 statements (10%)</p>	<ul style="list-style-type: none"> • “Only in some courts.” • “In some courts, yes. One court has a practice I do not think encourages quality representation (plea at first setting and get paid more than if the case is reset, such as for investigation.” • “The 240th discourages quality representation. The 434th is fair and will pay an attorney fairly for quality work and the 268th and 400 do little to do anything but encourage a fast resolution of the case.”

Q 4.3: Do you think the process for being added to the appointment list is fair and effective?

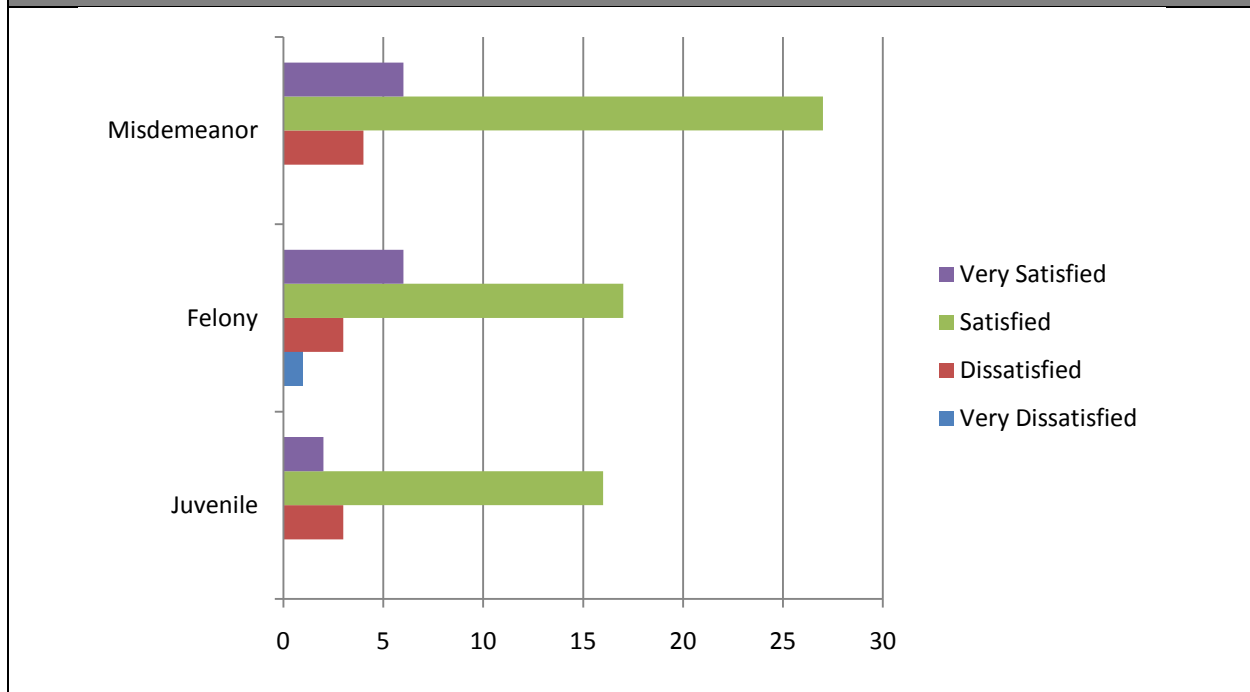
41 responses	2 thrown out	53 statements	4 categories
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<p>Yes: 25 statements (47%)</p>	<p>16 responses were simply “yes” or “fair” with no explanation or follow-up. Additional statements:</p> <ul style="list-style-type: none"> • “Reasonably so.” • “My process to be on the wheel was fine.” • “I feel the list is run fairly.”
<p>No: 13 statements (24%)</p>	<p>Within this category of statements, there were three subcategories. First, was the simple “no” group, 3 of which provided no explanation or follow-up. Additionally, attorney statements fell into the following subcategories:</p> <ul style="list-style-type: none"> • Too difficult/takes too long: 3 statements <ul style="list-style-type: none"> ○ “I think the central list should be opened up more to lawyers new to the criminal defense practice, at least for minor offenses.” ○ “Takes too long to be added to the list.” ○ “I think it could be better. Especially the delay in the process.” • Too easy: 4 statements <ul style="list-style-type: none"> ○ “I feel it is too fair.” ○ “It is more liberal in Fort Bend County than all the other surrounding counties.” ○ “It is too fair. It is possible for there to be too many attorneys on the list, which has a negative effect of [sic] representation.”

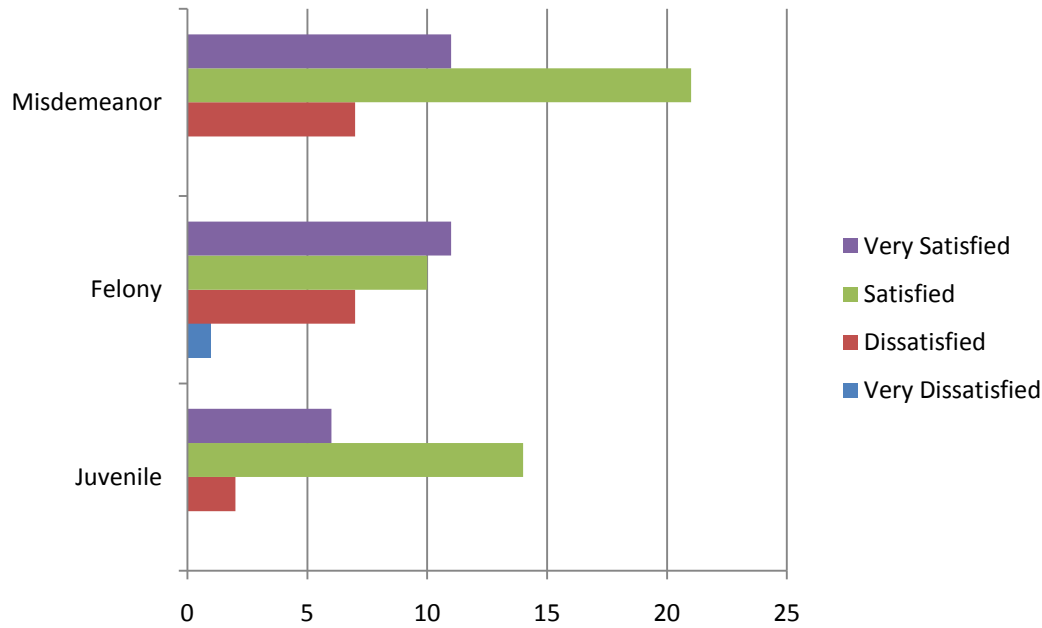
<p>Wheel Lacks Structure, Accountability, or Transparency: 11 statements (21%)</p>	<ul style="list-style-type: none"> • “The problem is that the criteria for receiving appointments in Fort Bend County is that the process lacks structure. Especially for the 3g list. It needs to be very structured. There are several attorneys who do not try cases. This is a disgrace to their client who may need or want to try the case.” • “I am only irritated that those who do not make it out to court for their clients are not removed from the list. Many attorneys go to many different counties and may be stretching themselves too thin. There should be better monitoring as to who those who obtain numerous resets for the attorney’s failure to appear.” • “No the appointment list qualifications is [sic] out of date, there needs to be an annual review of attorney [sic] to see who is actually trying cases and not just pleading people out. Fort Bend has very few actual trial attorneys.”
<p>Other: 4 statements (8%)</p>	<ul style="list-style-type: none"> • Two stated that they could only speak to their personal experience with the wheel. • One statement suggested that mentoring programs for young attorneys are needed. • One statement suggested the some judges are more open to appointing new attorneys than others.

Q 4.4:¹⁶ How satisfied are you with the indigence screening and appointment process in Fort Bend County?



	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	# Responses
Misdemeanor	6 (16%)	27 (73%)	4 (11%)	0 (0%)	37
Felony	8 (28%)	17 (59%)	3 (10%)	1 (3%)	29
Juvenile	2 (10%)	16 (76%)	3 (14%)	0 (0%)	21

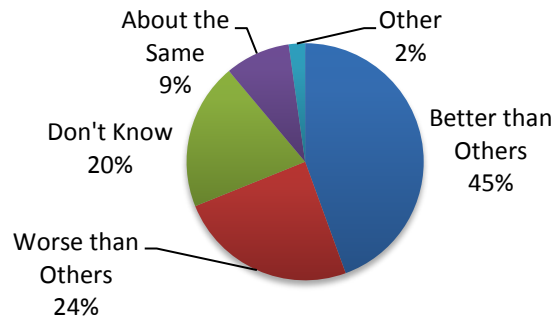
Q 4.5: Based on your perception, please rate your satisfaction with the quality of representation provided by attorneys on the appointment wheel.



	Very Satisfied	Satisfied	Dissatisfied	Very Dissatisfied	# Responses
Misdemeanor	11 (28%)	21 (54%)	7 (18%)	0 (0%)	39
Felony	11 (38%)	10 (34%)	7 (24%)	1 (3%)	29
Juvenile	6 (27%)	14 (64%)	2 (9%)	0 (0%)	22

Q 4.6: In your opinion, how does the indigent defense system in Fort Bend County compare to other counties in Texas? Please explain.

40 responses 3 thrown out 45 statements 5 categories



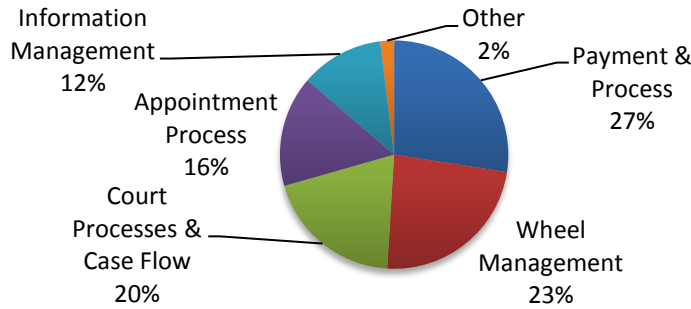
Better than Others: 20 statements (45%)

- “Fort Bend has one of the most equitable systems”
- “The attorneys in the indigent defense system from my experience give quality representation regardless of whether the case is retain [sic] or appointed.”
- “It’s fast in the appointment and the pay rate is higher. The caliber of lawyer is good.”

<p>Worse than Others: 11 statements (24%)</p>	<ul style="list-style-type: none"> • “Poorly because the lack of appropriate payment of attorneys and expert fees and for the lack of willingness to help the attorney’s [sic] keep up with their clients and their court dates.” • “The difficulty is in obtaining more efficient communication between the individual coordinator and justice administration – especially in misdemeanor cases where the defendant has made bond, but the case hasn’t yet been assigned to a particular court.” • “The rate of pay is fair, but because the amount of time it takes to get paid upon disposing of the case is so long, other counties are better.”
<p>Don’t know: 9 statements (20%)</p>	<ul style="list-style-type: none"> • “Not really aware of other counties.” • “I do not have information to compare.” • “I am unable to compare as I only seek appointments in Ft. Bend b/c that is my place of practice.”
<p>About the same: 4 statements (9%)</p>	<ul style="list-style-type: none"> • “It appears to be about the same as in other counties.” • “It is on the average not worse than any other county in Texas, but it could use some improvements.” • “Its [sic] about the same except for the fact that some counties have a different screening process.”
<p>Other: 1 statement (2%)</p>	<ul style="list-style-type: none"> • “We have not had any significant complaints of the quality of attorneys and no significant writs sustained against appointed lawyers in Fort Bend.”

Q 4.7: What suggestions do you have for improving the delivery of indigent defense services in Fort Bend County?

36 responses	4 thrown out	51 statements	6 super categories
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Payment & Processes: 14 statements (27%)

- **Increase pay**
 - "...[P]ay the attorney a decent wage for work performed."
 - "Greater pay would provide an incentive for more experience [sic] lawyers to devote more of their practice to indigent defense services."
 - "Higher fees would improve the quality of persons seeking appointments."
 - "Raise the minimum paid per hour to \$200/hr for felonies and \$150/hr for misdemeanors."
 - "...[P]ay should average \$150 per hour for Misdemeanor and Juvenile and \$250 for felony."
 - "Also, if it's a trial case that the state ends up dismissing or reducing, quite often one of the judge's [sic] not adequately compensate the appointed lawyer who prepared for and was ready to go forward at trial, but didn't have to."
 - "Pay a fair and reasonable rate for attys."
 - "Make the judges pay a minimum per hour fee of at least \$100 per hour."
- **Make payments timely**
 - "Timely payment of fees would boost the morale."
 - "Please pay us on time. It is very difficult to put in the time it takes to do a good job for your client, then have no reasonable idea of when you will get paid. It tends to be unfair to attorneys and their clients."
- **Better pay for investigators**
 - "Pay more for P.I. services."
- **Uniformity of pay**
 - "All judges need to pay fairly."
 - "In the very least, follow the hourly fee range listed on the attorney's fee/expense claim. In any other profession, it is typically uncommon to hire someone to do a job, negotiate a salary, and then pay less than the amount negotiated without any reason."
 - "...[S]ome uniformity among the judges as to compensation would help."

<p>Wheel Management: 12 statements (23%)</p>	<ul style="list-style-type: none"> ● Remove attorneys from wheel <ul style="list-style-type: none"> ○ “The judges have more authority to remove from the appointment wheel those out of county lawyers that do not appear in court to avoid the Judges having to reassign cases that person has been assigned to and chronically does not appear.” ○ “The primary complaint I hear from defendants is when the attorney fails to appear in court or communicate with the client. These attorneys should be removed from the list.” ○ “One big issue is out of county lawyers taking appointments in Fort Bend and not showing up for court. Second is out of county attorneys taking appointments and having no place to meet with clients. I believe that any attorney taking appointments must have an office in Fort Bend County.” ○ “...[A]s to felony work[,] if an attorney has not tried a felony case from voir dire to punishment in at a minimum of three years they should be removed from the list – period, most counties where I work already do this.” ○ “Weed out the no-show and incompetent lawyers out of the list ASAP.” ● Wheel requirements <ul style="list-style-type: none"> ○ “The requirements and process of placing attorneys on the appointment list should be a little more polished....” ○ “Make membership in the FBCCDLA a requirement, and attendance at 40 to 50% of the meetings mandatory. We have good CLE and talk about relevant fbc issues. Standards for new people on the list should be raised.” ○ “Needs to be completely reviewed as to qualifications....” ○ “More CLE regarding how to handle criminal cases for new lawyers on the appointment list.” ● Process of joining wheel <ul style="list-style-type: none"> ○ “That the screening process takes less time allowing more attorneys to be able to be on the appointment list.” ○ “Limit the number of attorneys available on the list.”
<p>Court Process and Case Flow: 10 statements (20%)</p>	<ul style="list-style-type: none"> ● Reduce time to filing <ul style="list-style-type: none"> ○ “Force the DA to file his cases sooner (Average filing age of cases in FBC is in excess of 90 days)....” ○ “Decide whether to accept charges right away.” ○ “Indigent services probably are not as effective as they could be because informations are routinely late in being filed....” ● Pre-indictment access to file <ul style="list-style-type: none"> ○ “To have the file accessible to a lawyer before the case is indicted in felony cases. One or two settings are wasted while the case is in the grand jury process and the cases are set in the Jane Long building on essentially a waste of time court date, where no DAs come and no files are available.” ○ “Allow the viewing of cases preindictment [sic].” ○ “Need to streamline grandjury [sic] process and allow us to view files pre-indictment. We’re wasting time and money with court settings where there is no indictment and no D.A. file to read.” ● Dockets <ul style="list-style-type: none"> ○ “Get into court quicker for felony cases.” ○ “Make all court dates in regular court and not at the Jane Long building.” ○ “Courts need to be flexible on resets.” ● Bonding procedures <ul style="list-style-type: none"> ○ “There needs to be a better system in place for indigent defendant’s [sic] to qualify and obtain a pre-trial bond. Many defendant’s [sic], especially those with misdemeanor offenses, have valid defenses to the crime their [sic] being charged with; however, most defendants wind up taking the plea being offered by the state b/c they will have spent enough time in jail and typically released up taking a guilty plea and a conviction vs. waiting for a speedy trial.” ○ “...[P]R bonds are slowing processed by the sheriff’s office, so attorneys are often playing ‘catchup’ [sic] to represent indigents more vigorously.”

<p>Appointment Process: 8 statements (16%)</p>	<ul style="list-style-type: none"> ● Screening for indigence <ul style="list-style-type: none"> ○ “Judges should appoint Defendants to cases based upon that Defendant’s ability to pay and not the ability of their family to pay or to get a bond.” ○ “Better screening criteria.” ○ “When a defendant makes bond remove the court appointed lawyer and make them hire an attorney.”¹⁷ ○ “Better screening to make sure that person is indigent especially for people out on bond.”¹⁸ ○ “Third, there are many who receive court appointed attorneys who do not qualify. They need to be better screened.” ○ “Stronger standards for court appointed bonded clients. Many make bond receive appointed lawyer and become problem cleints [sic]. They feel like court appointed lawyers are free to be stepped on attorneys.”¹⁹ ○ “Save this type of defense for those who are truly indigent. Judges seem to be in fear of being labeled or accused of something, and pass appointments out like candy.” ● Appointment wheel <ul style="list-style-type: none"> ○ “To randomize the selection process.”
<p>Information Management: 6 statements (12%)</p>	<ul style="list-style-type: none"> ● Computerized case tracking <ul style="list-style-type: none"> ○ “Force tracking of all cases on the computer system.” ● Communication with IDC <ul style="list-style-type: none"> ○ “I would prefer that receipt of the appointments do come at a reasonable hour sometimes.” ○ A suggestion I might propose is a sign-up system similar to Harris County felony cases, i.e., attorneys indicate what days they are available to take appointments and they are called from the Court or notified via email of appointment to individual cases.” ● Ability to know if client is in jail <ul style="list-style-type: none"> ○ “To have a system so that appointed lawyers know if a client is in jail. The new computer system is much better but still does not have that information.” ● Communication of court dates <ul style="list-style-type: none"> ○ “Would like to have more time notice on setting misd. cases. Often the case is set for jail hearing too quickly to reset other items on my docket.” ● Contact info for bonded clients <ul style="list-style-type: none"> ○ “Confirm address and phone numbers of inmates that make bond. Without that we have no way to contact them.”
<p>Other: 1 statement (2%)</p>	<ul style="list-style-type: none"> ● “A more extensive orientation program to the mechanics of the criminal defense practice would help from the beginning. Also, the mentor system should help.”

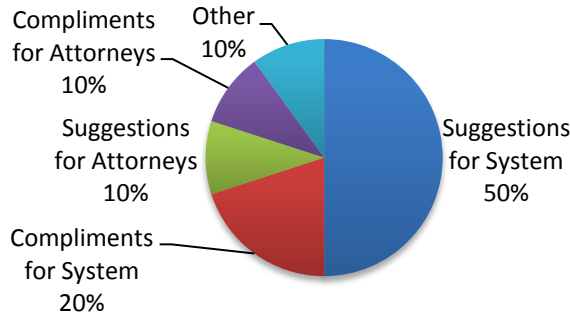
Q 4.8: Is there anything else you would like us to know?

28 responses

12 thrown out

20 statements

5 categories



Suggestions for the Indigent Defense System:
10 statements (%)

- “The lack of case and computer tracking for misdemeanor cases with companion felony cases and the lack of case and computer tracking for all misdemeanor and felony cases that have not been officially filed are costing citizens until un-necessary [sic] days in jail and needs to be remedied immediately but non-one[sic] in authority cares.”
- “The pay is low but tolerable since my practice is not too busy. Since the pay is low, I plan to leave indigent defense work once my practice gets busy. As a result, indigent defendants will lose the benefit of my experience, as is the case for most experienced lawyers.”
- “I just wish there was more rhyme and reason to the payment structure and receipt of payment. It is frustrating to think that someone values the important job you do at such a lower level, but some others see what you have done and pay you at a more reasonable rate. Then for that payment to come in very late after the work is done. Finally, the disparity at the access to experts and investigators that some of my colleagues [sic] receive compared to the District Attorney's Office. How are we, a majority of solo practitioners, compete with an office of staff, and investigators that are at their fingertips. I have limited experience on asking for this, but I still want to voice my dissatisfaction on the difficulty on the Defense side for these cases.”
- “I quit taking appointments because of the following 1. low pay and some judges being slow to pay. Judges also reducing the attorneys fee. 2. At the jail frequently they make lawyers wait in line to see clients along with the regular visitations and that can take over an hour at times. Personally I believe that the Sheriff does that just to mess with the attorneys.”
- “System needs more help keeping misuse of system by fee able to beat the truly indigent from what they. misuse by defendants of ease of getting free lawyer.”
- “There appears to be a communication problem between the clerk's office, the S.O., the courts and the D.A. office. It is difficult to assume that a motion filed will get to the right parties for the right reasons in the same place.”
- “There seems to be a lack of verification of data from defendants claiming indigency.”
- “Fort Bend has a serious lack of qualifications issues, payment for work is entirely [sic] too slow again there is no oversight as to the judges or the auditor, they get to it when they get to it.”
- “Raquel Levy is very fair in the way that she administers the wheel. For appointments that she does not control, such as juvenile and attorney of the day, the judges use their favorites over and over.”
- “Many of us are thankful for the opportunity to give feedback regarding pay. Frankly, if Fort Bend does not improve in the amount of time it takes to pay a voucher, it will begin to have an adverse impact on attorney's willingness to accept appointments.”

Compliments for the System: 4 statements (%)

- “By and large, I think the quality of representation in FBC courts is very good, the bench is fair, and the assignment system is as fair as it can be.”
- “I very much appreciate the opportunities Judge Beilstein [sic] has given me and other new criminal defense lawyers to learn the practice. He carefully appoints us to minor cases and gives us time to learn. ”
- “The system to me appears to work. Attorneys take our work seriously, regardless of whether appointed or retain.”
- “Too bad not all counties are as great to work in as Ft. Bend.”

<p>Suggestions for Attorneys: 2 statements (9%)</p>	<ul style="list-style-type: none"> • “Also, the difficulty for the younger attorneys in receiving cases/payments/experience. I do think that experienced attorneys for these cases are needed, but how are solo new attorneys going to survive now?” • “As a larger number of attorneys are added to the felony list, the attorneys that have made a commitment [sic] to Fort Bend County for years and years receive far fewer appointments, which makes it not worth while [sic] for them to do the appointments in Fort Bend County. The newer attorneys do not have the same commitment [sic], do not communicate with their clients or come to court. The larger the list becomes the quality of representation lowers.”
<p>Compliments for Attorneys: 2 statements (%)</p>	<ul style="list-style-type: none"> • “Fortunately, there are several more experienced lawyers who will answer questions and give help on cases. Even some of the assistant district attorneys will explain their procedures.” • “Attorney's in Fort Bend County are doing a great overall. Our defense bar is working hard to provide incentives in the SB7 plan for lawyers to improve. Also the second chair plans are an added bonus to overall positive learning. Our CLE's are great and our roundtable meetings and listserver and website all combine to make what Fort Bend County lawyers are doing is great. Many of our lawyers including me are TCDLA members and on that listserver and attend those seminars as well.”
<p>Other: 2 statements (2%)</p>	<ul style="list-style-type: none"> • “Indigents without documentation suffer because "everyone" knows their statuses before and during any representation on their behalf ever begins. Justice is not blind.” • “On a DWI appointment, the court should pay for the attorney to attend and represent the client at the Administrative License Revocation hearing.”

Endnotes

¹ In the original question, respondents were asked to report their practice levels in intervals of 10% (e.g., 0%, 10%, 20%, etc). For ease of reporting, levels have been collapsed. In the report “10% - 20%” includes the responses for 10% added to the responses for 20%. This procedure was repeated for all level intervals.

² This was an open field question that allowed respondents to enter any number. Levels were determined by respondents’ answers. Responses that indicated a range were rounded to take the top number of the range. This was done consistently for all range responses throughout the survey.

³ *Id.* at 2.

⁴ *Id.* at 2.

⁵ A coding methodology was used to analyze the responses to all open-text questions, and codes are reported in the pie chart and table below. The table includes exemplars of each code. The coding process is comprised of the following steps: 1) All responses to a particular question are read for content. 2) The content is divided into themes. 3) Responses are then coded according to the themes present in the responses. 4) A **statement** a response or portion of a response that contains one theme. 5) Each response or portion of a response that contains a theme is counted as **one statement**. Responses may contain more than one statement.

⁶ Respondents chose from a pre-determined set of responses.

⁷ *Id.* at 2.

⁸ Levels at which there were no responses were omitted from the scale.

⁹ *Id.* at 1.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 2.

¹² *Id.* at 6.

¹³ *Id.* at 2.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 6.

¹⁷ This is expressly prohibited by Article 26.04 (m) of the Code of Criminal Procedures: “(m) In determining whether a defendant is indigent, the court or the courts’ 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 listed in this subsection.”

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 17.

Appendix I -- Commendations and Recommendation from the Report

Commendations

Commendation 1: As mandated by Section 71.0351 of the Texas Government Code, the Fort Bend County Auditor's Office timely completed the annual indigent defense expenditure report and maintained relevant supporting data.

Commendation 2: All statutory provisions for the prompt magistration section of the adult indigent defense plan were included in the plan.

Commendation 3: Fort Bend County has solid processes for assisting arrestees with affidavits of indigence and for promptly transmitting requests to the appointing authority.

Commendation 4: All elements required for the prompt detention section of the juvenile indigent defense plan were included in the plan.

Commendation 5: All elements required for the indigence determination standards section of the adult indigent defense plan were included in the plan.

Commendation 6: All elements required for the indigence determination standards section of the juvenile indigent defense plan were included in the plan.

Commendation 7: All elements required for the minimum attorney qualifications section of the adult indigent defense plan were included in the plan.

Commendation 8: The utilization of multiple levels of appointment lists is a useful tool for matching cases with greater complexity with attorneys who can effectively handle those cases. The Fort Bend County judges are congratulated for their thoughtfulness in separating attorneys in this manner.

Commendation 9: All elements required for the minimum attorney qualifications section of the juvenile indigent defense plan were included in the plan.

Commendation 10: The utilization of multiple levels of appointment lists is a useful tool for matching cases with greater complexity with attorneys who can effectively handle those cases. The Fort Bend County judges are congratulated for their thoughtfulness in separating attorneys in this manner.

Commendation 11: All elements required for the prompt counsel appointment section of the adult indigent defense plan were included in the plan.

Commendation 12: The county and district clerks' utilization of online case records is a great benefit to the public and instills public confidence in the judicial function.

Commendation 13: All elements required for the prompt counsel appointment section of the juvenile indigent defense plan were included in the plan.

Commendation 14: All elements required for the attorney selection process section of the adult indigent defense plan were included in the plan.

Commendation 15: All elements required for the attorney selection process section of the juvenile indigent defense plan were included in the plan.

Commendation 16: The misdemeanor appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Commendation 17: The felony appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Commendation 18: The juvenile appointment distribution in Fort Bend County fell within the level that presumes appointments were made in a fair, neutral, and non-discriminatory manner.

Commendation 19: The appointment methods for criminal and juvenile cases appear to distribute appointments in such a manner that attorneys do not have excessive appointed caseloads.

Commendation 20: All elements required for the standard payment process section of the adult indigent defense plan were included in the plan.

Commendation 21: All elements required for the standard payment process section of the juvenile indigent defense plan were included in the plan.

Commendation 22: Fort Bend County's use of an hourly payment system encourages attorneys to perform the work necessary for an appointed case rather than a cursory amount of work to dispose a case.

Commendation 23: The vast majority of the vouchers reviewed in Fort Bend County met Article 26.05 requirements.

Commendation 24: Fort Bend County's local indigent defense practices provide for appointed counsel to perform a similar amount of work as retained counsel.

Commendation 25: Fort Bend County's use of a mental health public defender's office provides a useful method for improving outcomes of clients with special needs.

Recommendations

Recommendation 1: Fort Bend County must adjust its internal procedures so that the County may annually submit accurate totals of appeals cases paid, appellate expenditures, and misdemeanor cases paid. The Auditor's Office cannot make needed procedural changes without cooperation from the courts in providing the information.

Recommendation 2: Fort Bend County must ensure that magistrate warnings occur within 48 hours of the arrest.

Recommendation 3: As required by Section 54.01(b) of the Family Code, the juvenile court must inform the parent or guardian of the child's right to counsel and to appointed counsel if indigent.

Recommendation 4: 1) Indigence determinations must fall in line with *Abdnor v. State* and may only consider the income of persons legally bound to pay for the defendant's legal expenses.

2) Indigence determinations may not consider whether a defendant has posted bond, except to the extent that it reflects the defendant's financial circumstances.

Recommendation 5: The misdemeanor courts must provide a method of appointment so that all persons who require appointment of counsel have the ability to consult with their attorney sufficiently in private in advance of a proceeding. While a defendant may instead choose to plead to a case on the day of the appointment, the defendant must be provided counsel who will continue to represent the defendant if the defendant chooses not to plea to the case.

Recommendation 6: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan and with Article 26.04(b)(5).

Recommendation 7: The courts must make all appointments of counsel from an approved appointment list in accordance with the local indigent defense plan, with Article 26.04(b)(5) of the Code of Criminal Procedure, and with Section 51.102 of the Family Code.

Recommendation 8: Attorneys who are not eligible to receive appointments because of failure to meet Task Force requirements must be removed from the appointment list and may not receive appointments until Task Force requirements are met.

Recommendation 9: Fort Bend County must ensure that counsel is appointed to misdemeanor and felony defendants within one working day of request (plus 24 hours allowed to transfer the request to the appointing authority).

Recommendation 10: If an attorney is appointed for a detention hearing, the attorney must continue to represent the juvenile until one of the three conditions of Section 51.101 of the Family Code is met. Section 51.101 requires that if an attorney is appointed for a detention hearing that the attorney continues the representation until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

Recommendation 11: If the child is not represented by counsel at the detention hearing and there was a decision to detain the child, the court must appoint counsel or order the parent to retain counsel. Section 51.10(c) of the Family Code requires that if the child was not represented by counsel at the detention hearing and there was a decision to detain the child, the child is entitled to immediate representation by an attorney.

Recommendation 12: The juvenile courts must appoint counsel within five working days of the petition being served on the juvenile as required by Section 51.101(d) of the Family Code.

Recommendation 13: The indigent defense plan must describe Fort Bend County's use of the attorney-of-the-day system.

Recommendation 14: Attorney-of-the-day appointments must be consistent with Article 26.04(j)(2).