

Indigent Defense Coordinator Guide



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Introduction

Congratulations on becoming an Indigent Defense Coordinator (IDC)! This is an important position that ensures that the constitutional rights of all persons arrested in your county are protected. You serve as a link between the court, defendants, and attorneys.

This document is a general guide for indigent defense coordinators. Practices vary from county to county. Refer to your indigent defense plan and talk to local stakeholders to learn the process in your county.

We will cover basic duties, additional duties, juvenile processes, helpful technology, grant information, and model forms. Any time you see a statute in bold font or in the footnotes, you will be able to find it in our Fair Defense Laws Publication.¹

“The Courts’ Designee,” Where Your Power Comes From

In several parts of the Fair Defense Act, the “courts’ designee” is given the power to act on behalf of the court. The power to appoint counsel comes from **Section 26.04** of the Code of Criminal Procedure. With great power, comes great responsibility, like determining indigence and abiding by timelines. Other basic duties of being an IDC include selecting attorneys in a fair, neutral, and nondiscriminatory manner; notifying attorneys and defendants of appointments; dealing with waivers of counsel; maintaining records; and acting as a liaison between judges, sheriff’s office, pretrial services, and clerks. You are not to be confused with court administrators, secretaries, or court docket managers.

Why We You

- You are dedicated to improving the appointment process and documenting that a county is complying with the Fair Defense Act.
- You reduce time judges must devote to indigent defense activities.
- You can enhance processes for fair, neutral and nondiscriminatory appointment practices.

¹ The most recent Fair Defense Laws can be found here: <http://www.tidc.texas.gov/improvement/publications/>.

Key Players and Terms

Fair Defense Act

In 1963, the United States Supreme Court held in *Gideon v. Wainwright* that a criminal defendant charged with a felony has the right to be represented by counsel, even if he or she cannot afford an attorney.² Since then, this right has been expanded to juvenile delinquency proceedings,³ misdemeanors that result in a defendant's loss of liberty,⁴ and other areas. In 2001, the 77th Texas Legislature passed Senate Bill 7 to reform indigent defense practices through a group of amendments collectively known as the "Fair Defense Act" (FDA). The law provides structure and guidance to local officials carrying out constitutional responsibilities to ensure that all criminal defendants have access to counsel.

Texas Indigent Defense Commission (Us)

Along with funding and improving public defense, the Texas Indigent Defense Commission (TIDC) monitors county compliance with the FDA through policy monitoring reviews.⁵  TIDC's policy monitoring looks at a county's compliance with six core requirements of the FDA:

1. Conduct Prompt and Accurate **Article 15.17** Proceedings
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 Nondiscriminatory Attorney Selection Process
6. Report Data Required by Statute
7. IDCs play a pivotal role, ensuring counties comply with the FDA.

Indigent Defense Plans

Every two years, each county is required to submit an indigent defense (ID) plan.⁶ The plans describe counties' policies and procedures for magistration, indigence determination, attorney qualifications, appointment of counsel, attorney fee schedules, and more. In addition to this guide, your county's indigent defense plan is essential reading for IDCs.

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ *In re Gault*, 387 U.S. 1 (1967).

⁴ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁵ TEX. GOV'T CODE § 79.037(a)-(b).

⁶ TEX. CODE CRIM. PROC. art. 26.04(a) (2016).

Magistrations Hearings

The accused must be brought before a magistrate no later than 48 hours after arrest.⁷ At these hearings, the magistrate must determine whether there is probable cause to detain the defendant; set bail; warn the accused of their constitutional rights; and inform the accused of the right to appointed counsel, if the person cannot afford counsel, and of the procedures for requesting appointment of counsel. These are also known as **Article 15.17** hearings.

A defendant's Sixth Amendment right to counsel begins or "attaches" when he or she is brought in front of a magistrate and informed of the charges against him or her.⁸ Persons can request counsel before, during, or after these hearings.

Appointing Authorities

The person with the authority to appoint counsel is designated in your county's indigent defense plan. Under state law, the appointing authority can be:

- Magistrate Judges
- County Court Judges
- District Court Judges
- A designee, including **you!**⁹

Appointed Counsel: Who will it be?

There are four main ways in which counsel is provided in Texas:

- **Public Defender:** Full-time, salaried attorneys are appointed, supervised, and paid by an office that includes investigators and support staff.
- **Managed Assigned Counsel:** Private attorneys are appointed, supported, and paid by a defense management organization on a rotating, case-by-case basis
- **Assigned Counsel:** Private attorneys are appointed and paid by the court on a rotating, case-by-case basis.
- **Contract:** Private attorneys contract with a county for a volume of cases.



Meet Up: Smaller counties like Kleberg and Kenedy gather stakeholders at least once a year to talk about indigent defense processes and how to improve them. At the meeting, IDCs share data and anecdotes with judges, justices of the peace, and others involved in the indigent defense process.

⁷ TEX. CODE CRIM. PROC. art. 15.17(a) (2016).

⁸ *Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 210 (2008).

⁹ TIDC grants require ID Coordinators to have appointing authority. Please see Grants Section below.



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Basic Duties

Reviewing Requests and Appointing Counsel

Once “adversarial judicial proceedings” have begun and a defendant requests counsel, you must appoint counsel within...

- Three working days, if your county has population of **less** than 250,000.¹⁰
- One working day, if your county has population of 250,000 or **more**.¹¹

The timeline requirements are the same whether they request at

- Magistration
- First appearance
- Or in between the two above, when they have bonded out.

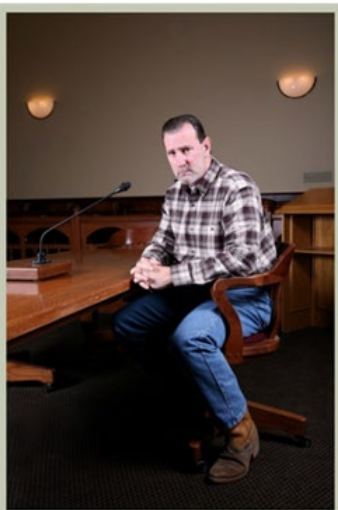
⚠ WARNING! ⚠

Don't wait until first appearance to appoint counsel. Don't skip appointing counsel, just because a defendant has bonded out. One or three working days from the request are the magic numbers!

Magistration = Initiation of Adversarial Judicial Proceedings

Where the Rule Comes From

Gillespie County refused to appoint Walter Rothgery an attorney until after indictment. He sued the county for violating his 6th Amendment right to counsel. A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, is the initiation of adversary judicial proceedings that triggers attachment of the Sixth Amendment right to counsel.¹²



The law also allows for counsel to be appointment if “the interests of justice require representation.”¹³ Examples of this could include...

- Appointing counsel to defendants whose income may be above the ID plan guidelines, but who cannot afford an attorney for their case. For example, if you are accused of murder, you probably cannot afford an attorney, even though you would not qualify under any local plan.
- Appointing counsel to defendants who would be disqualified for incomplete affidavits because they cannot complete the affidavit due to mental illness or disability.

¹⁰ TEX. CODE CRIM. PROC. art. 1.051(c-1) (2016).

¹¹ TEX. CODE CRIM. PROC. art. 1.051(c-1) (2016).

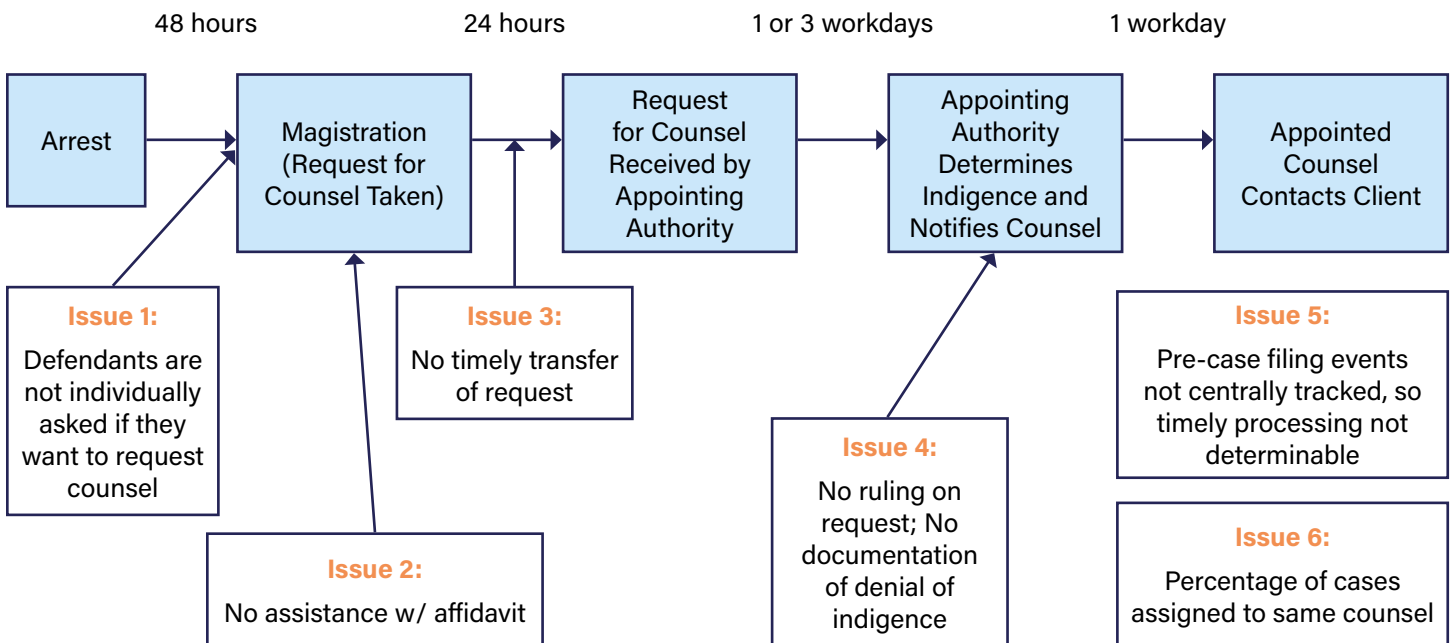
¹² *Rothgery v. Gillespie County*, 554 US 191 (2008).

¹³ TEX. CODE CRIM. PROC. art. 1.051(c-1) (2016).

Importance of Prompt Appointment of Counsel

- Early access to defense counsel is important for many reasons:
- Defendants may not understand their constitutional rights.
- If defendants are matched with counsel prior to the arraignment docket, the docket can be used to help resolve the case. Attorneys can help reduce bail or secure a personal bond. This may help defendants keep their jobs, pay rent, or avoid homelessness.
- Attorneys can ensure early investigation, client interview, witness interviews, evidence preservation, as well as early access to treatment and services.
- Early appointment can lead to better case outcomes and prevent wrongful convictions and collateral consequences.
- Early appointment can also benefit counties:
 - Reduced jail costs
 - Fewer failures to appear
 - Better case outcomes for defendants

When Issues Arise





Counsel must be appointed within one to three working days of the request, no matter when counsel is requested. Counties must also ensure that defendants can obtain the necessary forms and request counsel at any time after magistration or other initiation of adversary judicial proceedings.¹⁴

- Every month, **Travis County** sends out letters about how to request counsel to defendants without attorneys. The County has begun to send out text reminders as well to ensure it catches anyone who may need an attorney.
- When defendants without counsel call **Collin County** to request counsel, they receive an email to an electronic application that they can submit online.

Out-of-County Requests

County Issuing the Warrant

- **You must appoint counsel** within one or three working days in accordance with the guidelines set out above, regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not begun in your county.¹⁵
- The magistrate (or potentially the IDC) in the arresting county must transmit the necessary request forms to you within 24 hours if your county issued the warrant.¹⁶

Arresting County

- The magistrate must ask the defendant if they wish to request counsel. Your magistrate (or likely you) has 24 hours to transmit the necessary request forms to the county issuing the warrant.¹⁷
- If a defendant is in your county's jail on an out-of-county warrant, and that county has not picked up the defendant, and the defendant remains in jail, then **you must appoint counsel on day 11 or release** the defendant if counsel hasn't already been appointed by the other county.¹⁸
- If you end up appointing counsel, then you may seek reimbursement from the county issuing the warrant for the actual costs paid in appointing counsel.
- Counsel is only appointed for the purpose of representing the defendant in a habeas corpus proceeding (Chapter 11, Code of Criminal Procedure) or a bond reduction proceeding (Chapter 17, Code of Criminal Procedure).
- **Out-of-County Arrests Contacts:** Out-Of-County Arrest Contacts (tamu.edu): <https://tidc.tamu.edu/Positions/OutOfCountyArrestContacts.asp>.

¹⁴ 1 TEX. ADMIN. CODE §174.51, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=1&pt=8&ch=174&rl=51)

¹⁵ TEX. CODE CRIM. PROC. Art. 1.051(c-1) (2016).

¹⁶ TEX. CODE CRIM. PROC. art. 15.18(a-1) (2016).

¹⁷ TEX. CODE CRIM. PROC. art. 15.18(a-1) (2016).

¹⁸ TEX. CODE CRIM. PROC. art. 1.051(c-1) (2016).



Out-of-county requests can be tricky. Look below at some ways other counties have been handling them successfully!

- Travis County has an attorney wheel specifically for out-of-county appointments. The IDC uses the TIDC website for out-of-county arrest contacts to send the request within 24 hours.
- Collin County sends complete applications to the out-of-county contact with a form letter on top that includes the case number, charges, and a request for attorney contact information. There is another form to fill in who the other county has appointed. All the documents are saved in a shared folder, and the IDC checks regularly to see if there is a response.
- Bell County keeps an "Out-of-County" notebook with the names and phone numbers of counties that they have frequent prior contact with.

Questions to ask yourself:

1. *Do you receive all requests for counsel?*
 - a. When defendants say they want to request counsel at the **Article 15.17** hearing, make sure you receive those requests.
 - b. When jailed defendants request counsel later, make sure you receive those requests.
 - c. When defendants request counsel in court, make sure you receive those requests.

This will help you keep track of requests, so you do not miss any.

2. *Do we have a process for screening and taking requests for counsel for arrestees who bond out of jail before the affidavit of indigency is completed?*
 - a. Counsel still needs to be appointed within one or three days of receiving the request, depending on your county's size.
 - b. When arrestees are no longer confined, it may be possible for them to provide some form of documentation regarding their financial status, which will help make your job easier.
 - c. Your county must have procedures in place, including in your indigent defense plan, to allow defendants to obtain and submit forms to request counsel "at any time after the initiation of adversary judicial proceedings," i.e., after magistration.¹⁹
3. *How does TIDC measure prompt appointment of counsel?*
 - a. A county is considered in substantial compliance "if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely."²⁰
 - b. Please see our "Request for Counsel Checklist" in the "Applicable Forms" section at the end of the guide.

Bell County indigent defense staff are present at every magistration so they can interview defendants face-to-face. This ensures that they identify everyone who wants to request counsel and that counsel is appointed in a timely manner.



¹⁹ 1 TEX. ADMIN. CODE §174.51, [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&p-g=1&p_tac=&ti=1&pt=8&ch=174&rl=51](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&p-g=1&p_tac=&ti=1&pt=8&ch=174&rl=51).

²⁰ TEX. ADMIN. CODE Sec. 174.28(c)(4)(B).

Attorney Selection

One of the core requirements of the FDA is to select attorneys in a fair, neutral, and nondiscriminatory manner.²¹ Each county's indigent defense plan must include the method by which attorneys on the county's appointment lists are assigned to cases. Many county plans provide that judges or the court's designee (possibly an IDC) will appoint in rotation from an appointment list. This is the default appointment process under state law unless the court appoints counsel in another legally permissible manner.²²

What do you do?

- Appoint the first qualified attorney on the list.
- Select another attorney and note the good cause reason for appointing out of order.

How does TIDC measure "fair, neutral, and nondiscriminatory?"

- **In assigned counsel systems** (most Texas counties), TIDC presumes a jurisdiction has a fair, neutral, and nondiscriminatory appointment system if the top 10% of attorneys receiving cases at a given level receive no more than three times their respective share of appointments.²³ If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome the presumption by providing evidence as to why the system is fair, neutral, and nondiscriminatory.
- **For managed assigned counsel programs**, the law requires a policy from the entity's plan of operation to ensure that appointments are reasonably and impartially allocated among qualified attorneys.²⁴ This normally means we use the same distribution test as for assigned counsel systems.
- **For contract systems**, TIDC measures whether the contract terms were met. Usually, this means a check whether contract caseload maximums have been followed.
- **For public defender systems**, TIDC checks whether the plan of operation has been followed. Generally, for counties with public defender offices, you should give priority appointment to them.²⁵

To give less-experienced attorneys practice and to build the defense attorney community in smaller counties, judges in Kleberg and Kenedy appoint two attorneys to serious cases. One of the attorneys is from the qualifying wheel and the other is from a non-qualifying wheel.



21 Tex. Code Crim. Proc. Art. 26.04(b)(6) (2016).

22 Tex. Code Crim. Proc. Art. 26.04(a) (2016).

23 TEX. ADMIN. CODE § 174.28(c)(5)(D).

24 TEX. CODE CRIM. PROC. ART. 26.047(c)(7).

25 TEX. CODE CRIM. PROC. ART. 26.04(f).

Record Keeping

Below are some records you may need to collect and manage as an IDC:

- Maintain the rotation system to assign counsel and monitor the frequency and good cause reasons for appointing out of order.
- Report summary of appointment data to judges. Some data points to collect include the number of
 - Requests for counsel
 - Attorney appointments
 - Denials of indigence
- Manage the graduated lists of court-appointed attorneys and receive from attorneys' applications to be on appointment lists.
- Monitor appointment lists and attorneys' completion of continuing legal education (CLE) to meet minimum requirements of local ID plan and TIDC rules. Some examples of common requirements are:
 - Number of trials
 - Years of experience
 - Lack of disciplinary records
- The court must be made aware when there are issues with attorneys on the appointment list. Your job may include keeping records of complaints about attorneys on the list and reporting them to the court.
- You may also have the responsibility to submit your county's ID plan. These are due to TIDC every odd-numbered year by November 1st.

Attorney Practice Time Reporting

Each year, attorneys are required to submit practice time reports with the percentage of their time spent on indigent defense cases that fiscal year.²⁶ Part of your job is making sure attorneys complete these reports on time. They are due October 15th of each year.

The Bell County IDC also keeps track of jail visit records to make sure that each attorney is contacting his or her client in a timely manner according to the county's ID plan. After the 3rd violation of not seeing your defendants in a timely manner, the attorney is put on hold until all jail visits are current.



Attorneys can submit their reports directly to TIDC²⁷ or report to you, and then you can submit it to us. If attorneys fail to submit the report, some counties have procedures in place in their ID plans to prevent attorneys from being appointed additional cases until they report.

²⁶ TEX. CODE CRIM. PROC. Art. 26.04(j)(4).

²⁷ <https://tidc.tamu.edu/AttorneyReporting/>



Waivers of Counsel

Some defendants do not want counsel to represent them. If a defendant wants to represent themselves (“go pro se”), they must “waive” their right to counsel. They have a right to be informed of the procedures for requesting counsel before making this decision.²⁸ Please see the model form “Explaining Rights to Unrepresented Defendants” in the “Applicable Forms” section.

There are **two different types** of waivers:

- When speaking with a prosecutor:²⁹
 - The prosecutor may not initiate a waiver.
 - All requests for counsel must first be denied before prosecutor communicates with defendant.
 - Procedures for requesting counsel must be explained.
 - Waivers obtained in violation of the above provisions are presumed invalid.
- When considering a plea:³⁰
 - The court must determine the waiver is voluntarily and intelligently made.
 - Then the defendant must sign waiver like the one below. **The law requires these two steps.**

Waiver of Counsel

“I have been advised this _____ day of _____, 2 ____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”³¹

When determining whether a waiver was voluntarily and intelligently made, a judge may consider the “*Faretta* Factors,” which come from a United States Supreme Court case.³² Please see an example of a checklist that involves these factors in the “Applicable Forms” section.

Withdrawal of Waiver

A defendant can withdraw a waiver at any time.³³ In that case, counsel must be appointed to the defendant according to the normal procedures.

²⁸ *Faretta v. California*, 422 U.S. 806 (1975).

²⁹ TEX. CODE CRIM. PROC. ART. 1.051(f-1) and (f-2).

³⁰ TEX. CODE CRIM. PROC. ART. 1.051(g).

³¹ TEX. CODE CRIM. PROC. ART. 1.051(g).

³² *Faretta v. California*, 422 U.S. 806 (1975).

³³ TEX. CODE CRIM. PROC. ART. 1.051(h).

Communications and System Development

As an IDC, a lot of your job is communicating with defendants and criminal justice stakeholders to make sure there are procedures in place for the system to run smoothly.

Required Communications:

- Notify attorneys of appointments.
- Notify defendants of appointments or denials of indigence.
- Monitor jail population and followup with defendants who remain in custody without counsel.
- Act as a liaison between judges, the jail, pretrial services, and clerks.

System Development:

- Train law enforcement, magistrates, local bar, and other stakeholders on ID plan(s) adopted by the courts.
- Develop procedures to track attorney contact with clients, which includes tracking, investigating, and reporting allegations of attorneys not meeting their clients within statutory deadlines³⁴ or ID plan requirements.
- These tasks are required under TIDC's grant program.



The Collin County IDC has created her own guide to the job! It includes key definitions, county guidelines for determining indigence, processes for mental health defendants, and other local procedures. Since every county has different policies and procedures, it would be helpful to create your own guide as a supplement to this one.

³⁴ As soon as practicable.

Language Access

Defendants have a right to understand the proceedings and their rights. If they do not speak or understand English or are deaf, the magistrate must use a language interpreter or sign-language interpreter. An interpreter can help with completing the necessary forms for requesting appointment of counsel.³⁵ Your affidavit of indigence/request for counsel form should be translated into Spanish. This can be done over the phone or Zoom. Court coordinators typically take the lead on these processes.

When appointing counsel for these defendants, you must “make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant.”³⁶ Please see the Other Resources section for more on language access.



The Office of Court Administration (OCA) operates the Texas Court Remote Interpreter Service, which provides licensed Spanish court interpreters at no cost to courts, via telephone and videoconference. These OCA interpreters often provide interpreter services at magistration.³⁷

Travis County has two full-time Spanish interpreters for both Zoom and in person. There is also a specific wheel for Spanish-speaking attorneys. For languages other than Spanish, staff uses LanguageLine Solutions, a telephonic translation service.

Padilla

Defendants who are not citizens of the United States may face immigration consequences because of a criminal conviction. Under the United States Supreme Court case *Padilla v. Kentucky*, attorneys must advise their clients of the immigration consequences of a conviction in their specific case.³⁸ If a defense attorney asks you for help in complying with this requirement, please direct them to *MyPadilla*,³⁹ which provides free immigration advise for assigned counsel and select public defender offices.

³⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

³⁶ TEX. CODE CRIM. PROC. ART. 26.04(c).

³⁷ See OFFICE OF COURT ADMINISTRATION, Language Access in Texas Courts, <https://www.txcourts.gov/lap/> (last visited Jan. 18, 2022).

³⁸ *Padilla v. Kentucky*, 559 U.S. 356, 374, 130 S. Ct. 1473, 1486, 176 L. Ed. 2d 284 (2010).

³⁹ <https://mypadilla.com/>.

Mental Health Issues

20% to 24% of Texas inmates have mental health needs,⁴⁰ and about 33% of those booked into Texas county jails have previously encountered the public mental health system.⁴¹ This means that many of the defendants you work with may have mental health needs that must be flagged for the court.⁴² If a defendant is suspected of having a mental illness or intellectual disability, the sheriff or municipal jailer has a duty to notify the magistrate within 12 hours of receiving “credible information” that defendant has mental illness (MI) or an intellectual or developmental disability (IDD).⁴³ Below are topics that can be helpful to you as an IDC.⁴⁴

How does the law define mental illness and intellectual or developmental disability?

“Mental illness means an illness, disease, or condition, other than epilepsy, dementia, substance abuse, or intellectual disability, that:

- (A) substantially impairs a person’s thought, perception of reality, emotional process, or judgment; or
- (B) grossly impairs behavior as demonstrated by recent disturbed behavior.”⁴⁵

“Intellectual Disability (ID) means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.”⁴⁶

Developmental Disability (DD) manifests before age of 22; severe chronic disability that involves impairments of general mental abilities resulting in at least three out of six of the following functional limitations:

- self-care;
- understanding & use of receptive and expressive language;
- learning;
- mobility;
- self-direction; and/or
- capacity for independent living, including economic self-sufficiency.

Examples of such disabilities include autism-spectrum disorder, fetal alcohol spectrum disorder, and cerebral palsy.

40 Serious Mental Illness “refers to adults and older adults whose diagnoses are seen as more severe, such as schizophrenia, severe bipolar disorder, or severe depression.” Meadows Mental Health Policy Institute (MMHPI), Texas Behavioral Health Landscape 1 (Dec. 2014), <http://mmhpi.org/wp-content/uploads/2016/02/000-Texas-Mental-Health-Landscape-December-2014R.pdf>. (Note: This is a working document and will continue to be updated periodically)

41 Email from Christopher Dickinson, Director, Mental Health Contract Management Unit at the TEXAS HEALTH AND HUMAN SERVICES to Scott Ehlers (June 8, 2022 11:30 AM) (on file with TIDC).

42 See <https://www.txcourts.gov/media/1441120/guide-for-addressing-the-needs-of-persons-with-mental-illness-in-the-court-system.pdf> (txcourts.gov) for more information on working with defendants with mental illness.

43 TEX. CODE CRIM. PROC. Art. 16.22.

44 Kama Harris at the Judicial Council on Mental Health helped draft this section of the guide.

45 TEX. HEALTH AND SAFETY CODE Section 571.003(14).

46 TEX. HEALTH AND SAFETY CODE Section 591.003(7-a).

Intellectual and Developmental Disabilities (IDD) is a broader category than ID. It includes people with ID, DD, or both. Some Texas statutes on early identification, screening, and assessment still do not currently address developmental disabilities, but developmental disabilities are important to consider as they often co-occur with mental illness and ID. Further, people with IDD⁴⁷ are more likely than their peers without disabilities to be involved in the justice system, both as victims and suspects.⁴⁸



For more information on how to tell if a person has ID or IDD as well as how best to communicate with individuals with ID or IDD, please see *The Judicial Commission on Mental Health's Bench Book*.⁴⁹

Where else can I look to see if there is any documented evidence of Mental Illness or IDD?

- Texas Law Enforcement Telecommunications System Continuity of Care Query (TLETS CCQ)
 - With limited exceptions, every jail is required to conduct a CCQ check on each inmate upon intake into the jail. It determines if the inmate has previously received state mental healthcare in the last 3 years. See [37 Tex. Admin. Code § 273.5](#).
 - If a person is suspected of having ID, or states that they are or have received services, but that information is not in the TLETS CCQ system, contact the LIDDA to determine whether the person has received or is receiving services.
- Jail Screening Form for Suicide and Mental, Mental, Developmental Impairments
 - The Texas Commission on Jail Standards (TCJS) requires that the TCJS-approved mental disabilities/suicide prevention screening instrument must be completed immediately for all inmates admitted to the jail. See [37 Tex. Admin. Code § 273.5](#).
 - A yes answer on this screening form will trigger the jail to provide notification to the magistrate of MI or IDD.
- Officer's Statements
- Family or Witness' Statements
- The medications the Defendant (or their family) brings into the jail
- Your Own Perceptions or the Magistrate's Perceptions

⁴⁷ See American Association on Intellectual and Developmental Disabilities (AAIDD), *Frequently Asked Questions on Intellectual Disability*, <https://www.aaidd.org/intellectual-disability/faqs-on-intellectual-disability> (last visited March, 15, 2022).

⁴⁸ See The Judicial Commission on Mental Health, *Texas Mental Health and Intellectual and Developmental Disabilities Bench Book* 111-13 (3d Ed. 2021-2022), <http://texasjcmh.gov/media/lbrdg1tk/jcmh-adult-bench-book-3rd-edition.pdf>. Hereinafter: "JCMH Bench Book."

⁴⁹ See The Judicial Commission on Mental Health, *Texas Mental Health and Intellectual and Developmental Disabilities Bench Book* 111-13 (3d Ed. 2021-2022), <http://texasjcmh.gov/media/lbrdg1tk/jcmh-adult-bench-book-3rd-edition.pdf>. Hereinafter: "JCMH Bench Book."

What should I do if a jailed defendant appears to have mental health issues or a low IQ, but no one seems to have identified the person as having a mental illness or IDD?

- Report it to the magistrate or to the jailer so that they may report it as part of the evidence of “credible information” that the defendant has MI or IDD.⁵⁰

After the Magistrate is notified, what happens next?

- The Magistrate reviews the notification form (or other document used by jail to notify magistrate of MH or IDD issues), the charges, and the defendant’s criminal history. Additionally, the magistrate can meet with the defendant and communicate with the LMHA, LIDDA, or Local Behavioral Health Authority (LBHA) or MH provider about this specific defendant.⁵¹
- If the magistrate determines there is reasonable cause to believe a defendant has MI or is a person with IDD, then the judge **shall** order the mental health provider to conduct the 16.22 interview through a 16.22 Collection of Information Order form.⁵²
 - Note: the judge does not *have to* (but may) order a 16.22 interview if:
 - 1) the defendant is no longer in custody; OR
 - 2) the defendant has had a 16.22 interview and report done within a year prior to the arrest date, and the judge elects to use that report. CCP art. 16.22(a)(2).⁵³
- The mental health provider is ordered to conduct the interview and collection of information, and return the report, within 72 hours if the defendant is in custody, or within 30 days if the defendant is out of custody.
- The law requires the written report of the interview and collection of information to be on the form approved by the Texas Correctional Office on Offenders with Medical or Mental Impairments.⁵⁴
- The magistrate (or Judge’s office) must give notice of the 16.22 report to all stakeholders and County Clerks.

Mental Health Bonds

There is a preference for release on personal bond⁵⁵ for defendants charged with nonviolent offenses, who have gone through the 16.22 interview and information-gathering process and are determined to have a mental illness or intellectual disability.⁵⁶ Because of this preference, it is important for you to know about available community-based services.

50 Please see the “Jail Mental Health Screener” in the “Applicable Forms” section.

51 Please see the “Mental Illness Assessment Magistrate Written Notification Form” in the “Applicable Forms” section.

52 The 16.22 form can be found at: https://www.tdcj.texas.gov/documents/rid/article_16.22.pdf.

53 TEX. CODE CRIM. PROC. ART. 16.22(a)(2).

54 TEX. CODE CRIM. PROC. ART. 16.22(a)(1)(B). Form available at: https://www.tdcj.texas.gov/documents/rid/SB_1326.pdf.

55 For more detailed information about mental health bond laws, procedure, and the 2021 statutory changes, please see the JCMH Bench Book, starting at page 116, <http://texasjcmh.gov/media/lbrdg1tk/jcmh-adult-bench-book-3rd-edition.pdf>.

56 TEX. CODE CRIM. PROC. ART. 17.032.

Where Can I Find Community-Based Services?

- **Your Local Mental Health Authority**⁵⁷
- Reach out to your Local Mental Health Authority. Find their contact information through the HHSC website: <https://www.hhs.texas.gov/services/mental-health-substance-use/mental-health-substance-use-resources/find-your-local-mental-health-or-behavioral-health-authority>.
- **Mental Health Texas** (www.MentalHealthTX.org)
- **Texas 211** (www.211texas.org)
- **Texas Court of Criminal Appeals Resource Guide that** lists resources by county: (<https://www.txcourts.gov/media/1445767/texas-mental-health-resource-guide-01242020.pdf>). Accessible through the txcourts.gov website.



Bell County's practice of having indigent defense staff present at every magistration is also important for the identification of defendants with mental health issues. If there is an issue identified, Bell County appoints an attorney from the mental health wheel.

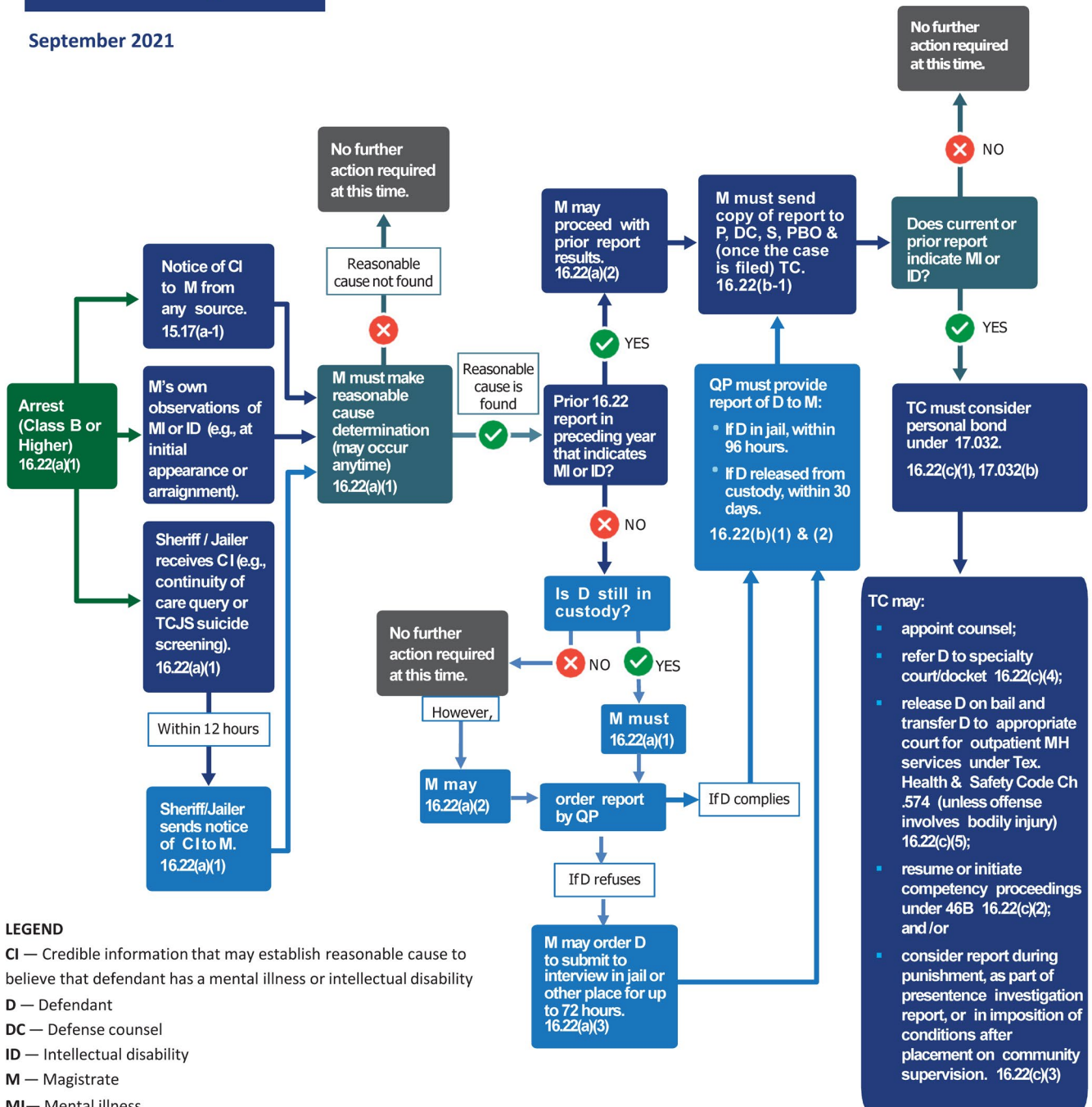
This IDC has found it helpful to create a flag or identifier to remind staff that a defendant has a mental health issue if he or she returns to their system. When these defendants do return, they often appoint the same attorney appointed to them before.

A possible red flag for a mental health issue could be if a defendant has the same repeated low-classified misdemeanor charges.

⁵⁷ For more information on Community Based Services, see the JCMH Bench Book – starting at page 21, <http://texasjcmh.gov/media/lbrdg1tk/jcmh-adult-bench-book-3rd-edition.pdf>.

16.22 Report

September 2021



LEGEND

CI — Credible information that may establish reasonable cause to believe that defendant has a mental illness or intellectual disability

D — Defendant

DC — Defense counsel

ID — Intellectual disability

M — Magistrate

MI — Mental illness

P — Prosecutor

PBO — Personal Bond Office (under art. 17.42) or Director of department that supervises D while on bail & receiving MH or IDD services as a condition of bail.

QP — Qualified professional (service provider that contracts with the jail to provide mental health or IDD services, LMHA, LIDDA, or another qualified mental health or IDD expert)

S — Sheriff (or other person responsible for D's medical records while in confinement)

TC — Trial court

Unless otherwise noted, all citations are to the Texas Code of Criminal Procedure



3

Juvenile Defendants

Key Terms

Detention Hearing: This is the hearing at which a judge determines (1) probable cause, and (2) whether a youth should be held pretrial at the detention facility or released. This hearing **must take place by the end of the second working day** after a youth is taken into custody or first working day if taken into custody on a Friday or Saturday.⁵⁸ You can think of it as the youth equivalent to a magistration hearing.

Adjudication Hearing: This is the hearing when the judge determines if it is true that the youth participated in delinquent conduct. This is the equivalent of a court determining if a criminal defendant is guilty of the crime.

Disposition Hearing: This is the hearing when the judge determines what the youth's sentence will be, which is typically some period of probation.

Petition: This is the charging instrument filed by the prosecutor that says the youth has been charged with delinquency. It is typically served personally on the child.

Juvenile Probation: Their role will vary by county, where cases are either referred to the prosecutor or probation. They often act as intake for the juvenile court and can release a youth from custody. They also report a youth's progress or issues to the court.

⁵⁸ TEX. FAM. CODE § 54.01.

Appointing Counsel

Counsel must be appointed when the youth is brought to a detention hearing and when the youth is served with a copy of the petition alleging misconduct.⁵⁹

Please see the “Juvenile Order Appointing Counsel” form in the “Applicable Forms” section.

Detention Hearing:

Unless the court finds the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within **a reasonable time before** the first detention hearing.⁶⁰

Petition:

Once a petition is served on the youth, the court has **5 working days** to appoint counsel or order the retention of counsel for the youth if there is a denial of indigence.⁶¹

LOOK OUT FOR...

- The court may appoint counsel and order the person responsible for the youth to pay a reasonable attorney’s fee set by the court if they are financially able.⁶²
- If the child was not represented by an attorney at the detention hearing as required and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney.⁶³

59 TEX. FAM. CODE § 51.10(f).

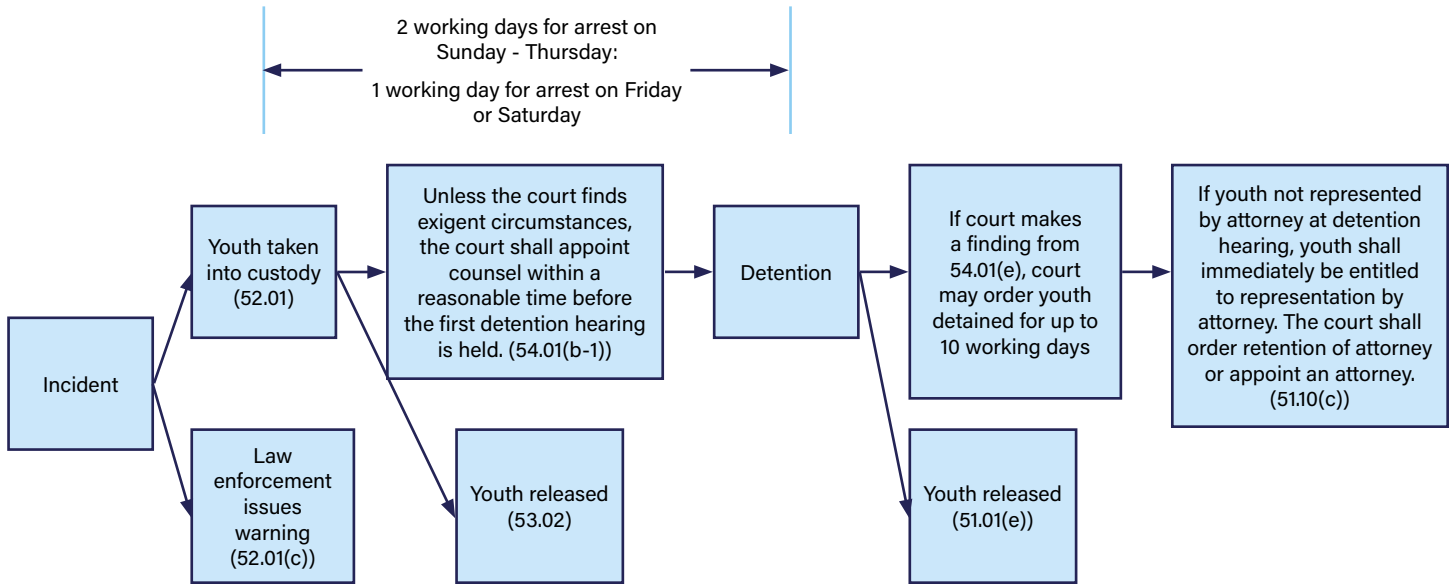
60 TEX. FAM. CODE § 54.01(b-1).

61 TEX. FAM. CODE § 51.101(c) and (d).

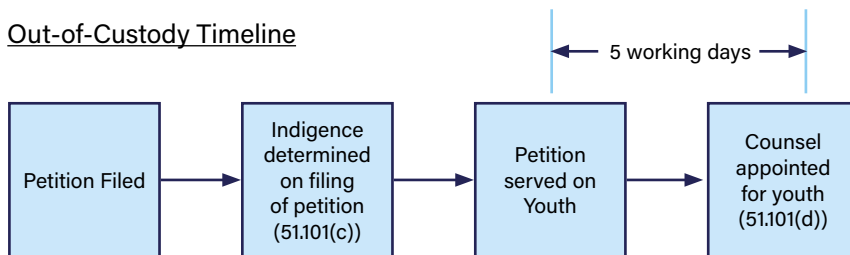
62 TEX. FAM. CODE § 51.10(d) and (e).

63 TEX. FAM. CODE § 51.10(c).

In-Custody Timeline



Out-of-Custody Timeline



ALSO LOOK OUT FOR...

Waiver of Counsel:

A youth cannot waive counsel during any of the following:

- 1) a hearing to consider transfer to criminal court ⁶⁴
- 2) an adjudication hearing⁶⁵
- 3) a disposition hearing⁶⁶
- 4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition⁶⁷
- 5) hearings required by Chapter 55 (Proceedings Concerning Children with Mental Illness or Intellectual Disability)⁶⁸

⁶⁴ As required by Section 54.02 of the Texas Family Code.

⁶⁵ As required by Section 54.03 of the Texas Family Code.

⁶⁶ As required by Section 54.04 of the Texas Family Code.

⁶⁷ In accordance with Section 54.05(f).

⁶⁸ TEX. FAM. CODE Section 51.10(b).

Additional Juvenile Resources:

- Texas Juvenile Justice Division -- <https://www.tjjd.texas.gov/index.php/juvenile-system#moving-through-the-system>
- 2020 Attorney General Juvenile Justice Handbook <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/juvenile-justice/JuvenileJusticeHandbook.pdf>
- State Bar Juvenile Law Section Link: <https://juvenilelaw.org/conference-materials/33rd-annual-juvenile-law-conference-materials/>

Determining Indigence for Juveniles

As with adult defendants, the factors to be considered in indigence determinations for youth vary by county and are listed in each county's ID plan.⁶⁹ Parents will fill out the affidavit of indigence instead of the youth themselves. Please see the "Juvenile Affidavit of Indigence" in the "Applicable Forms" section.

Examples of factors considered in Uvalde County:

- In juvenile cases, if the income of the person responsible for the youth is less than 150% of the Federal Poverty Guidelines, the youth is presumed to be indigent.
- The youth may also be determined to be indigent if the responsible person is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
- If the youth does not qualify under these conditions, the youth may still be determined to be indigent if counsel cannot be retained without substantial hardship.

⁶⁹ Current Indigent Defense Plan. TIDC. <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>.

Attorney Selection

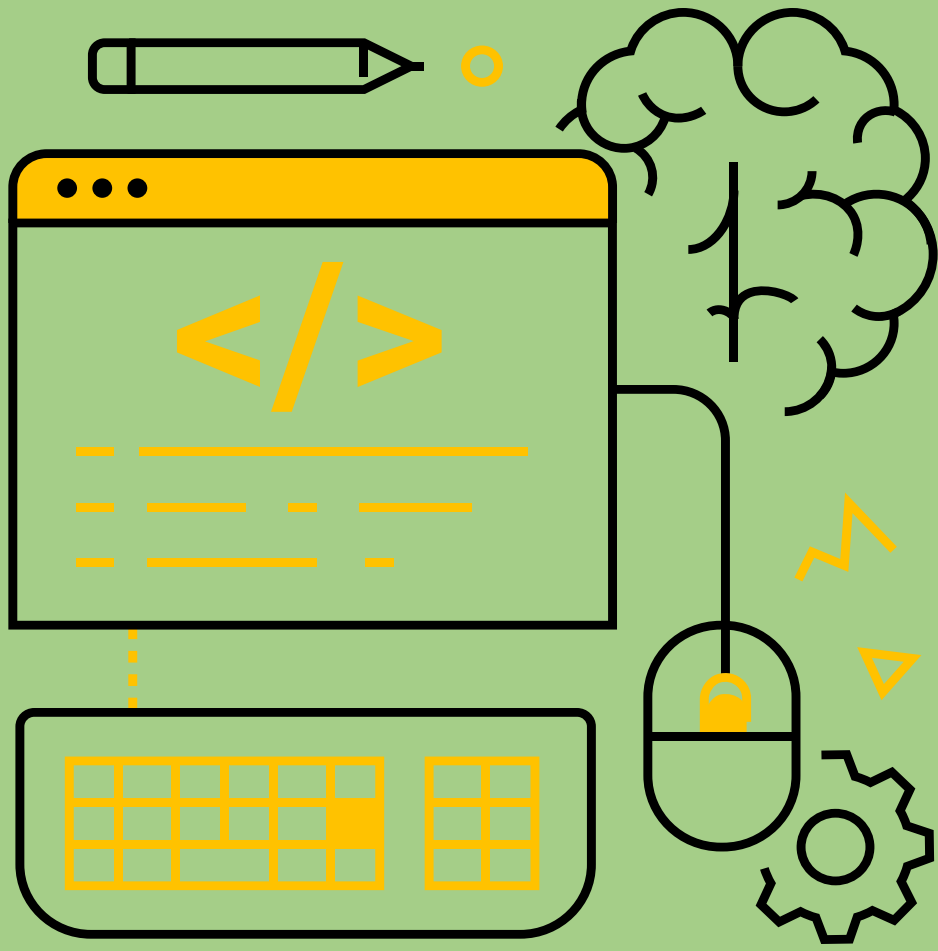
In juvenile cases, there is not a requirement that an attorney appointed must stay until the conclusion of the case. Some jurisdictions appoint a new attorney for each docket, and others appoint separate attorneys for juvenile detention hearings. For juvenile detention hearings, you need an attorney who is readily available. Because of this, contract programs for juvenile cases can be helpful. Many counties also have a specific wheel for juvenile detention hearings.

All attorneys who take juvenile cases must obtain at least six juvenile CLE hours annually or be board certified in juvenile law.⁷⁰



Judges in Travis County appoint the Travis County Juvenile Public Defender Office to a youth's case at the detention hearing. Attorneys from the office then stay with the case through disposition. This consistency is just one benefit to having a public defender office!

⁷⁰ TEX. ADMIN. CODE § 174.1 – 4.



4

Technology

We hope this guide is helpful to you and will make your job easier by laying out your main duties and the rules that go along with them. Technology can also be helpful when you have so many responsibilities and busy days.

TechShare

TechShare has indigent defense management software (Techshare Indigent Defense) that can streamline the appointment process and payments, as well as help you with other duties of your job.⁷¹ Some of its capabilities include:

- **Eligibility Screening:** Defendant financial information is entered and analyzed, then the program issues a recommendation on eligibility for an appointed attorney.
- **Selection of Attorneys:** It automates the selection and appointment of the next qualified attorney from the county's appointment list based on charged offense.
- **Attorney Payment:** Attorneys submit electronic fee vouchers that are routed to judges for review and approval. Approved vouchers are sent electronically to the auditor for payment.
- **Reporting:** Can be used to streamline preparation of the Indigent Defense Expenditure Report (IDER).

“

TECHSHARE TESTIMONIALS

Bell County: TechShare is very helpful with appointing attorneys and keeping up with CLE hours. It's all automatic.

Tarrant County: Helps with out-of-county requests by sending the out-of-county contact the defendant's request and financial info. It auto-sends an email with the request. Everything took at least twice as long before TechShare.

Clearly, TechShare can help you save time, so you can focus on other aspects of your job!

”

⁷¹ See <https://techsharetx.gov/indigent-defense/>.

Other Technology Options

There are other platforms that can help you with your job tasks including Odyssey, Defender Data, and Legal Server. Some counties even have their IT departments create software inhouse, such as Travis County and Collin County.

Travis County has developed the Indigent Defense Application, which handles appointments and vouchers.

Collin County's Laserfiche-built application assists the IDC with processing requests for attorneys made outside of magistration as well as keeping records about attorneys.

FOR MORE INFO

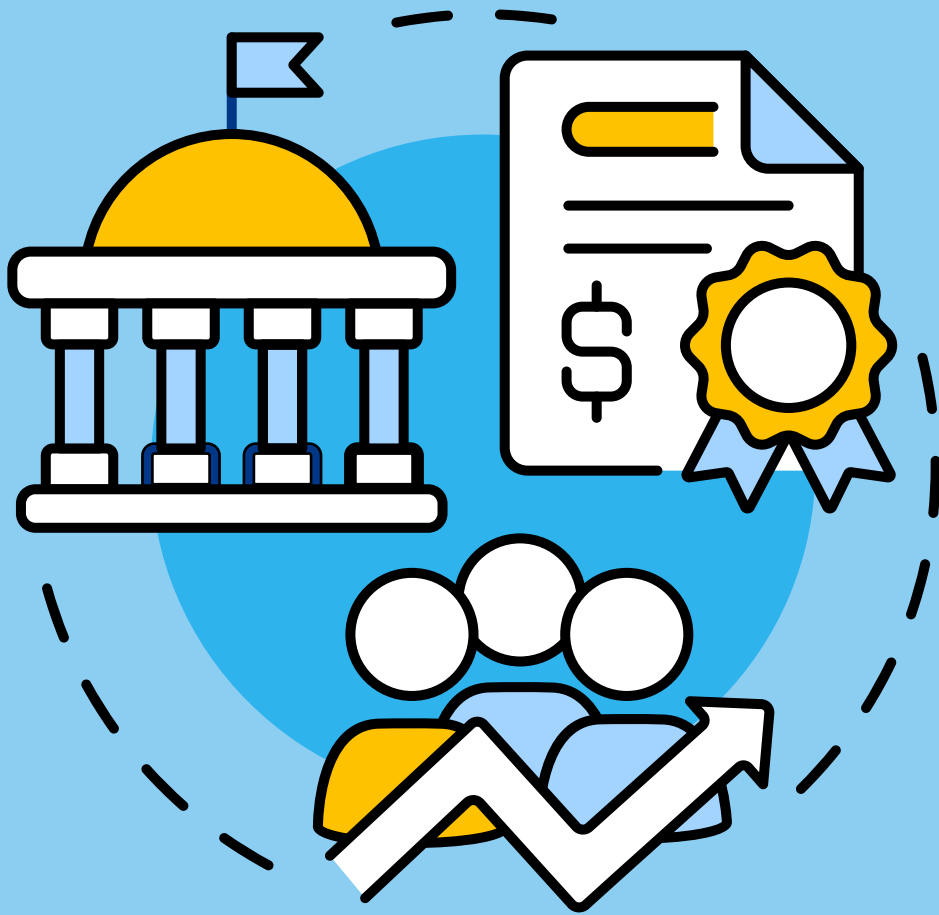
Contact Nick Sawyer at TIDC if you have questions about technology solutions, including ways to automate your workflow! He can be reached at nsawyer@tidc.texas.gov.

Tech Grants from TIDC

Does your county still operate under a paper-based system? Looking for an upgrade? Want to try out TechShare? TIDC offers grants that can help!⁷²

- **Improvement Grants:** Available to fund 50% of your county's costs to implement TechShare.
- **Single Year Improvement Grants:** Minimum of \$5,000 to help with process improvement projects including technology projects. These do require a cash match from the county.
- **Technical Support Grants:** Developing new processes that can be applied in other counties. Each grant must result in a paper describing the implementation and benefits to the county.

⁷² For more information, please visit our website and view our Request for Applications, <http://tidc.texas.gov/funding/improvement-grants/>.





Grant Information

- **What?**

- TIDC provides Improvement Grants for programs that improve the provision of indigent defense services.

- **Who?**

- These grants are available for new IDC positions as four-year, multi-year grants.

- **When?**

- The period for funding and program operations is from October 1 to September 30 each year. Applications for priority consideration are due in May of each year. Applications submitted after the priority deadline in May may be considered if funding is available.

- **How?**

- Details on current grant opportunities and application instructions are posted in the Improvement Grant Request for Applications at www.tidc.texas.gov/funding/. Applications are submitted via TIDC's Grant and Plan Management Website (<http://tidc.tamu.edu>). Below is a description of the IDC position that is eligible for funding.

Required Program Elements for Indigent Defense Coordinators:

- a. Must perform all appointments (in and out of court) as the designee of the judge or judges;
- b. Must maintain the rotation default system on assigned counsel systems and monitor the frequency and reasons for off list appointments;
- c. Must report summary of appointment data to judges at least monthly;
- d. Must manage the graduated list of court appointed attorneys for judges and receive applications for advancements or adjustments as higher qualifications are met by attorneys;
- e. Must monitor appointment list and attorneys' completion of continuing legal education (CLE) to meet minimum requirements of local plan and Commission rules;
- f. Must review invoices submitted by attorneys and compare to appointment schedule prior to judicial approval;
- g. Perform training for law enforcement, magistrates, local bar, and other stakeholders on ID plan(s) adopted by courts;
- h. Report directly to the judges (rural) or board of judges (mid-size or urban);
- i. Develop procedures to track attorney contact with client, which includes tracking, investigating, and reporting allegations of attorneys not meeting their clients within statutory or plan requirements; and
- j. Must involve all courts in the jurisdiction (rural and mid-sized) or all of the judges of a type of court (larger jurisdiction)





Other Resources

<https://www.tjctc.org/Mental-Health.html> This website from the Texas Justice Couty Training Center has tons of links to resources that can help you understand how to work with defendants with mental health issues.

<http://texasjcmh.gov/publications/bench-books> This link will lead you to the Judicial Council for Mental Health's most recent bench books, mentioned in our "Mental Health Issues" section.

<http://www.tidc.texas.gov/improvement/publications/> This link is to the TIDC publications page. Here is where you will find the most up-to-date statutes that apply to your job in the Fair Defense Laws.

<http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx> This is where you can view each county's ID plan.

<https://gato-docs.its.txstate.edu/jcr:8fbd93ed-85d0-4f6b-9848-476326e0160b/Magistration%20-%20Deskbook.pdf> Here is a link to a publication all about magistration put out by the Texas Justice Courts Training Center.

https://eagenda.collincountytx.gov/docs/2019/CC/20190304_2299/46196_2017_primer-for-county-officials_final3.pdf This is our own Primer for County Officials.

<http://tidc.tamu.edu/public.net/default.aspx> This is TIDC's data site, where you can find out indigent defense information about any county.

<https://www.txcourts.gov/lap/> This link contains other links to helpful information on language access.

<http://texasjcmh.gov/technical-assistance/resources/forms-bank/> This is the link for the newly released forms bank that has MH specific forms that were vetted by many judges and our forms committee.

IDC Meet-Ups

TIDC hosts a quarterly TIDC Meet-Up for all IDCs across Texas. In these meetings, we teach the law and hear first-hand from speakers and IDCs on certain topics that you encounter every day. We also have a listserv for the community. For more information, please reach out to Olivia Lee at olee@tidc.texas.gov.

Conclusion

Your job is essential in ensuring that people are appointed counsel and that counties are complying with the law. We hope you keep this guide handy to refresh yourself on the law and learn about what other IDCs across the state are doing. As always, TIDC and your fellow IDCs are here if you have any questions. This guide could not have been developed without your help, so please make it your own! Thank you.

Many of the following terms and definitions are from Tracye Langley, the indigent defense coordinator for Collin County. She created her own IDC Guide for use in her county. We are very thankful to her for allowing us to use many of her definitions.

1. **Affidavit of Indigence** – The application that the defendant completes to request a court appointed attorney.
2. **Indigent** – This means that means a person is not financially able to employ counsel. Each ID plan sets presumptions in determining who is indigent.
3. **Public Assistance** – Government assistance based on indigence (Food Stamps, Medicaid, SSI, SSDI, Public Housing, CCIHP, TANF)
4. **Gross Income** – The defendant’s income prior to deductions (taxes, etc.).
5. **Net Income** – The defendant’s income after deductions (excluding monthly bills) have been taken out.
6. **Annual Income** – The income that the defendant makes per year.
7. **Unfiled/Unindicted Charges** – Charges that have not been assigned to a court yet.
8. **Arraignment** – A process in which the defendant goes before a magistrate judge, is read their rights, told what they are charged with and gets bond set.
9. **Jury Trial** – A trial where guilt or innocence is determined by a panel of peers.
10. **Bench Trial** – A trial where guilt or innocence is determined by the Judge.
11. **Disposed Case** – A case where the defendant has either pled guilty or been found guilty of an offense and sentenced or was dismissed. Case closed.
12. **Sentenced** – Punishment assessed.
13. **Dismissed** – Charges dropped.
14. **Indictment** – The formal charge of a felony offense.
15. **Filed by Information** – The formal charge of a misdemeanor offense.
16. **Plea Bargain** – A negotiation of punishment between the DA, defense attorney (if there is one) and the defendant.
17. **Plea of Not True** – The defendant is denying the allegations in a motion to revoke or adjudicate.
18. **Probation** - Rather than receiving a jail sentence for their offense, the person is ordered to abide by a set of terms and conditions for a certain period of time and is monitored by the Community Supervision and Corrections Department during that time.

19. **Motion to Revoke or Adjudicate** – A formal motion filed by the Community Supervision and Corrections Department that alleges what violations of the terms and conditions of a defendant's probation have occurred.
20. **Mental Health Bond** – A bond that is issued by the Court for defendants who are on the mental health caseload that allows them to be released without paying money. They are given conditions that must be followed while out on bond.
21. **Personal Bond** – A bond issued by the Court that allows a defendant to be released without paying money. These are sometimes called a Personal Recognizance Bond (or PR bond).
22. **Writ of Habeas Corpus** - Used to bring a prisoner or other detainee (e.g. institutionalized mental patient) before the court to determine if the person's imprisonment or detention is lawful.
23. **Commitment** – When a defendant is ordered by the Court to serve a period of time incarcerated.
24. **Offense Degree** – The level of severity or classification of an offense.
25. **Pretrial Diversion Program** – This is a program through the DA's Office where rather than going through the usual court process with their case, the defendant is placed on probation for a period of time (6-12 months) and if they complete it successfully, the charge is dismissed and can be expunged.



APPLICABLE FORMS

A. Request for Counsel Checklist

REQUEST FOR COUNSEL CHECKLIST

1. MAGISTRATION REQUIREMENTS UNDER ARTICLE 15.17, CCP

<input type="checkbox"/>	Arrestees must be taken before a magistrate within 48 hours of arrest and informed of their rights, including their right to request counsel.
<input type="checkbox"/>	The magistrate must inform the person arrested of the procedures for requesting appointment of counsel and ensure reasonable assistance in completing the necessary forms for requesting counsel.
<input type="checkbox"/>	The magistrate must make a record of: (1) informing the person of the right to counsel; (2) asking the person if they want to request counsel; and (3) whether the person requested counsel or not.
<input type="checkbox"/>	If the magistrate is authorized to appoint counsel, the magistrate shall appoint counsel or determine that the person is not indigent.
<input type="checkbox"/>	Otherwise, the magistrate must transmit the request to the appointing authority within 24 hours.

2. APPOINTMENT OF COUNSEL UNDER ARTICLE 1.051 AND 26.04, CCP

<input type="checkbox"/>	Upon receipt of the request for counsel, the appointing authority has 3 working days (for counties under 250,000) or 1 working day (for counties larger than 250,000) to rule upon the request and either appoint counsel or determine that the person is not indigent.
<input type="checkbox"/>	The appointing authority must appoint counsel or determine that the person is not indigent in accordance with the county's financial standard, as set in the local indigent defense plan.
<input type="checkbox"/>	Once appointed, counsel must make every reasonable effort to contact the client within 1 working day and interview the client as soon practicable.

3. INITIAL APPEARANCE REQUIREMENTS UNDER ARTICLE 1.051, CCP

<input type="checkbox"/>	The court must advise the defendant of the right to counsel and the procedure for requesting appointed counsel. The court must give the defendant a reasonable opportunity to request appointed counsel before directing or encouraging the defendant to speak with the prosecuting attorney.
<input type="checkbox"/>	Any waiver of counsel by a defendant who has requested appointed counsel must occur after the court has determined the defendant is not indigent, and the defendant: 1) has been given a reasonable opportunity to retain counsel; or 2) has waived the opportunity to retain counsel.
<input type="checkbox"/>	A prosecutor may speak to a defendant who has requested appointed counsel only if the court has determined the defendant is not indigent, and the defendant: 1) has been given a reasonable opportunity to retain counsel; or 2) has waived the opportunity to retain counsel.
	Any waiver obtained from a defendant in violation of the above provisions is presumed invalid.
<input type="checkbox"/>	If a defendant wishes to waive the right to counsel in order to enter a guilty plea, the court must advise the defendant of the nature of the charges against him and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation.
<input type="checkbox"/>	If a defendant pleads guilty without counsel, the court must determine that the waiver is voluntarily and intelligently made and must provide the defendant with a statement in substantially the following form: <i>"I have been advised this __ day of __ 2__, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)."</i>

B. Affidavit of Indigence

AFFIDAVIT OF INDIGENCE

<i>THIS PORTION TO BE COMPLETED BY OFFICE PERSONNEL ONLY</i>			
The State of Texas		_____ County Court	
vs.		_____ District Court	
Offense:	Felony/Misd:	Interpreter required? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Offense:	Felony/Misd:	If yes, language required:	
Offense:	Felony/Misd:		
Defendant Currently In: <input type="checkbox"/> Correctional Facility <input type="checkbox"/> Mental Health Facility			
<i>THIS PORTION TO BE COMPLETED BY OR WITH DEFENDANT</i>			
Name _____		Date of Birth _____ / _____ / _____	
First Name	MI	Last Name	
Address _____			
Street	Apt No.	City	State Zip Code
Phone Numbers _____			
Home	Cell	Work	Family Member
I receive: <input type="checkbox"/> Medicaid <input type="checkbox"/> SSI <input type="checkbox"/> SNAP <input type="checkbox"/> TANF <input type="checkbox"/> Public Housing			
Are you Employed? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, where? _____ Type of Work _____			
Number of Hours per Week: _____ How long have you worked at this job? _____			
Marital Status : <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated			
Name of Spouse _____			
First	MI	Last	
Name of Dependent Child(ren) (0-18 yrs.)	Age	Name of Dependent Child(ren) (0-18 yrs.)	Age
RESIDENCE INFORMATION			
Rent: yes or no	Own: yes or no	Reside with family: yes or no	Homeless: yes or no
MONTHLY INCOME AND ASSETS		MONTHLY EXPENSES	
My take home pay	\$	Rent/Mortgage	\$
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$
SNAP (Food Stamps)	\$	Total Food Expenses	\$
Social Security/Disability	\$	Transportation Costs	\$
Other Government Check	\$	Cell/home phone	\$
Other Income	\$	Probation fees	\$
Assets (car, house, etc.)	\$	Medical Expenses / Health Insurance	\$
TOTAL MONTHLY INCOME AND ASSETS	\$	Minimum Monthly Credit Card Payment	\$
		TOTAL MONTHLY EXPENSES	\$

_____ COUNTY

Cause No. _____

Defendant's Oath

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

Defendant's Signature

Date

ONLY ONE SECTION BELOW TO BE COMPLETED.

Administered Oath

(Clerk/Notary ONLY)

SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20____.

Clerk/Notary Public Signature Date

Unsworn Declaration by Defendant

(Defendant ONLY)

My name is _____, my date of birth is _____.
(First Name) (Middle Name) (Last Name)

My address is _____, _____, _____, _____, _____.
(Street Number and Name) (City) (State) (Zip Code) (Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of Texas, on the _____ day of _____, _____.
(Month) (Year)

Defendant Currently Meets Eligibility Requirements?

YES

NO

Date _____

C. Order Appointing Counsel

ORDER APPOINTING COUNSEL

_____ is appointed to represent defendant _____
on the following charge(s): _____

_____.

Approved: _____ Date: _____
Appointing Authority

Attorney's Information

Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____

Defendant's Location

Bond Amount: _____ Bond: Personal Cash/Surety
Bonding Company: _____

On Bond

Jailed

Address: _____
City, State, Zip: _____
Telephone Number: _____

County _____
Facility _____

Was the defendant arrested on an out of county warrant? Yes No

If yes, warrant-issuing county: _____

Necessary forms have been transmitted to the appointing authority in the warrant issuing county within 24 hours.

D. Order Appointing Counsel for Out of County Warrants

APPOINTMENT OF COUNSEL FOR OUT-OF-COUNTY WARRANTS

Defendant _____ was arrested on a warrant from _____ County and remains incarcerated in this county for more than ten days without the appointment of counsel in this county. Defendant is not being held on any pending charges in this county. In accordance with Article 1.051(c-1), Code of Criminal Procedure, and the county's indigent defense plan, _____ is appointed to represent the accused on pending charges in any matter under Chapter 11 or 17, Texas Code of Criminal Procedure. Representation continues until matters under these statutes are resolved.

Approved: _____
Appointing Authority

Date: _____

Attorney's Information

Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____

E. Juvenile Affidavit of Indigence

JUVENILE AFFIDAVIT OF INDIGENCE				
<i>THIS PORTION TO BE COMPLETED BY OFFICE PERSONNEL ONLY</i>				
The State of Texas vs. _____	_____ County Court _____ District Court			
Offense:	Interpreter required? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Offense:	If yes, language required: _____			
Juvenile Currently Residing In: <input type="checkbox"/> Correctional Facility <input type="checkbox"/> Mental Health Facility				
<i>THIS PORTION TO BE COMPLETED BY JUVENILE'S PARENT OR GUARDIAN</i>				
Name _____ Date of Birth ____/____/____ First Name MI Last Name				
Address _____ Street Apt No. City State Zip Code				
Phone Numbers _____ Home Cell Work Family Member				
I receive: <input type="checkbox"/> Medicaid <input type="checkbox"/> SSI <input type="checkbox"/> SNAP <input type="checkbox"/> TANF <input type="checkbox"/> Public Housing				
Are you Employed? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, where? _____ Type of Work _____				
Number of Hours per Week: _____ How long have you worked at this job? _____				
Marital Status : <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated				
Name of Spouse _____ First MI Last				
Name of Dependent Child(ren) (0-18 yrs.)		Age	Name of Dependent Child(ren) (0-18 yrs.)	
RESIDENCE INFORMATION				
Rent: yes or no	Own: yes or no	Reside with family: yes or no	Homeless: yes or no	
MONTHLY INCOME AND ASSETS		MONTHLY EXPENSES		
My take home pay	\$	Rent/Mortgage	\$	
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$	
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$	
Food Stamps	\$	Total Food Expenses	\$	
Social Security/Disability	\$	Transportation Costs	\$	
Other Government Check	\$	Cell/home phone	\$	
Other Income	\$	Probation fees	\$	
Assets (car, house, etc.)	\$	Medical Expenses / Health Insurance	\$	
TOTAL MONTHLY INCOME AND ASSETS		Minimum Monthly Credit Card Payment	\$	
		TOTAL MONTHLY EXPENSES		
		\$		

_____ COUNTY

Cause No. _____

Parent or Guardian's Oath

On this _____ day of _____, 20____, I have been advised of my child's right to representation by counsel in connection with the charge pending against him/her. I certify that I am without means to employ counsel of my own choosing for my child, and I hereby request the court to appoint counsel for my child.

Parent or Guardian's Signature

Date

ONLY ONE SECTION BELOW TO BE COMPLETED.

Administered Oath

(Clerk/Notary ONLY)

SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20____.

Clerk/Notary Public Signature Date

Unsworn Declaration by Parent/Guardian

(Parent/Guardian ONLY)

My name is _____, my date of birth is _____.
(First Name) (Middle Name) (Last Name)

My address is _____, _____, _____, _____, _____.
(Street Number and Name) (City) (State) (Zip Code) (Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of Texas, on the _____ day of _____, _____.
(Month) (Year)

Juvenile Currently Meets Eligibility Requirements?

YES

NO

Date _____

F. Juvenile Order Appointing Counsel

ORDER APPOINTING COUNSEL

_____ is appointed to represent juvenile _____ on
the following charge(s): _____

_____.

Approved: _____
Appointing Authority

Date: _____

Attorney's Information
Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____

Juvenile's Location	
<input type="checkbox"/> Released	<input type="checkbox"/> In Detention
Address: _____	County _____
City, State, Zip: _____	Facility _____
Telephone Number: _____	

G. Application for Public Appointment



Application for Public Appointment to Represent Indigent Defendants in the Williamson County Courts

A. Attorney Contact Information

Last Name:

First Name:

Physical Office Address (no PO Boxes):

Mailing Address (incl. City/State/Zip):

Office Telephone #

Cell #

Email Address

B. General Qualification & Disciplinary Information

State Bar #

Date Licensed to Practice Law in Texas

1. Are you currently in good standing with the State Bar of Texas and the Williamson County Bar Association? Yes No
2. Are you certified by the Texas Board of Legal Specialization (TBLS) in Criminal Law? Yes No
3. Are you a member of the State Bar College Yes No
4. Are you currently under indictment or charged with a criminal offense other than a class C traffic offense? Yes No
5. Have you ever been convicted or placed on deferred adjudication for any offense other than a class C offense? Yes No
6. Have you ever been sanctioned by the State Bar Grievance Committee? Yes No
7. Do you have an appeal pending of any State bar Sanction? Yes No
8. Have you ever been sanctioned for failure to appear before a court? Yes No
9. Has a court ever found that you have provided ineffective assistance of counsel? Yes No
10. What percentage of your practice is criminal law? _____
11. Approximately how many criminal cases have you tried to conclusion before a jury as LEAD COUNSEL?
 - a. How many of these were felony cases? _____
12. Approximately how many criminal cases have you tried to conclusion before a jury as SECOND CHAIR counsel?
 - a. How many of these were felony cases? _____

Williamson County Courts
Application for Public Appointment to Represent Indigent Defendants
Page 2

13. Approximately how many appeals have you pursued in which you authored the brief (excluding subcontracted briefs)? _____
14. Do you have unique training or skill in mental health cases? Yes No
15. Do you have training or skill as a sign-language interpreter? Yes No
16. Are you fluent in any language other than English?
 a. If so, please list: _____
17. Do you represent any municipality as a judge or attorney?
 a. If so, please list: _____
18. Do you have any legal conflicts that would prohibit you from taking appointments?
 a. If so, please state: _____

C. Appointment List(s) Requested

I am applying to be considered for the following appointments (check each that applies):

1. Misdemeanors and Petitions to Revoke or Adjudicate [Circle Specific Court Below]
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(C). CCL 1 CCL2 CCL3
2. Misdemeanors along with felony case pending [Circle Specific Court Below]
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(C). CCL 1 CCL2 CCL3
3. Felony C List (State Jail/3rd Degree and Motions to Revoke or Adjudicate)
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(D).
4. Felony B List (2nd Degree and Motions to Revoke or Adjudicate)
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(E).
5. Felony A List (1st Degree and Motions to Revoke or Adjudicate)
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(F).
6. Appeals
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(H).
7. Mental Health Cases
Note specific requirements for this list contained in the Williamson County District Courts and County Courts at Law Fair Defense Plan V(I).

H. Waiver of Counsel to Speak with Prosecutor

IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS

JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS WITHOUT ATTORNEY

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;
3. You may represent yourself.

If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.

If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.

You may not speak to the prosecutor about your case unless you sign a written waiver of your right to be represented by an attorney.

Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.

If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.

Judge Presiding

DEFENDANT'S CHOICE [mark initials next to only ONE choice]

_____ I want to reset this case to hire my own attorney.

_____ I have hired an attorney, whose name is: _____

_____ I want to apply for court-appointed counsel.

_____ I have a court-appointed attorney, whose name is: _____

_____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____

I. Waiver of Counsel to Plea or Proceed to Trial

IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS

**WAIVER OF COUNSEL FOR PURPOSES OF ENTERING
A GUILTY PLEA OR PROCEEDING TO TRIAL**

I have been advised of the nature of the charges against me and the dangers and disadvantages of self-representation. My waiver is voluntarily and intelligently made. Furthermore,

I have been advised this _____ day of _____, 20 ____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.

Defendant

Date: _____

I have determined that this waiver is voluntarily and intelligently made.

Judge Presiding

Date: _____

J. Explaining Rights to Unrepresented Defendants

IN THE [INSERT COURT]
[INSERT COUNTY] COUNTY, TEXAS

**JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS
WITHOUT ATTORNEY**

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;
3. You may represent yourself.

If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.

If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.

You may not speak to the prosecutor about your case unless you sign a written waiver of your right to be represented by an attorney.

Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.

If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.

Judge Presiding

DEFENDANT'S CHOICE [mark initials next to only **ONE** choice]

- _____ I want to reset this case to hire my own attorney.
_____ I have hired an attorney, whose name is: _____
_____ I want to apply for court-appointed counsel.
_____ I have a court-appointed attorney, whose name is: _____
_____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____

K. Faretta Factors: Waiver of Counsel

Right to Self-Representation Questionnaire

Defendants have a right to represent themselves if they knowingly and willingly waive the right to appointed counsel. *Faretta v. Cal.*, 422 U.S. 806 (1975). The Court may grant your request to proceed without a lawyer if you are able to show the ability to effectively do so.

Please answer the following questions regarding your ability to represent yourself.

1. Do you understand that under the 6th Amendment to the Constitution of the United States you have a right to assistance of counsel? _____
2. Do you understand that you have the right to have counsel appointed for you if you cannot afford to employ counsel? _____
3. Do you understand how to conduct legal research? _____
4. Have you ever studied law? _____
5. Are you familiar with the Rules of Evidence? _____
6. Are you familiar with the Code of Criminal Procedure? _____
7. Do you understand the rules of preservation of error? _____
8. Are you familiar with and do you understand that you must abide by the Rules of Appellate Procedure? _____
9. Do you understand what constitutes proper voir dire? _____
10. Do you understand what should, and should not be contained in the court's charge to the jury? _____
11. Have you ever before represented yourself in a criminal action? _____
12. Did you finish high school? _____
13. Do you have a college degree? _____
14. Do you understand that you will be on your own and will receive no advice, guidance or help from the court? _____
15. Do you understand the appellate court will not create arguments for you? _____
16. Do you understand that it is generally unwise to represent yourself? _____
17. Understanding these questions, is it still your desire to represent yourself and give up your right to be represented by an attorney? _____
18. Is your decision freely and voluntarily made? _____

Signed on the ____ day of _____, 20__.

Cause No: _____

Sign your Name here

L. Jail Mental Health Screen

https://www.prainc.com/wp-content/uploads/2015/10/bjmhsform.pdf

BRIEF JAIL MENTAL HEALTH SCREEN

Section 1

Name: _____ <small>First MI Last</small>	Detainee #: _____	Date: ___/___/_____	Time: _____ AM PM
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Section 2

Questions	No	Yes	General Comments
1. Do you <i>currently</i> believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?			
2. Do you <i>currently</i> feel that other people know your thoughts and can read your mind?			
3. Have you <i>currently</i> lost or gained as much as two pounds a week for several weeks without even trying?			
4. Have you or your family or friends noticed that you are <i>currently</i> much more active than you usually are?			
5. Do you <i>currently</i> feel like you have to talk or move more slowly than you usually do?			
6. Have there <i>currently</i> been a few weeks when you felt like you were useless or sinful?			
7. Are you <i>currently</i> taking any medication prescribed for you by a physician for any emotional or mental health problems?			
8. Have you <u>ever</u> been in a hospital for emotional or mental health problems?			

Section 3 (Optional)

Officer's Comments/Impressions (check <i>all</i> that apply):		
<input type="checkbox"/> Language barrier	<input type="checkbox"/> Under the influence of drugs/alcohol	<input type="checkbox"/> Non-cooperative
<input type="checkbox"/> Difficulty understanding questions	<input type="checkbox"/> Other, specify: _____	

Referral Instructions: This detainee should be referred for further mental health evaluation if he/she answered:

- YES to item 7; OR
- YES to item 8; OR
- YES to at least 2 of items 1 through 6; OR
- If you feel it is necessary for any other reason

Not Referred

Referred on ___/___/_____ to _____

Person completing screen _____

INSTRUCTIONS ON REVERSE

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INSTRUCTIONS FOR COMPLETING THE BRIEF JAIL MENTAL HEALTH SCREEN

GENERAL INFORMATION:

This Brief Jail Mental Health Screen (BJMHS) was developed by Policy Research Associates, Inc., with a grant from the National Institute of Justice. The BJMHS is an efficient mental health screen that will aid in the early identification of severe mental illnesses and other acute psychiatric problems during the intake process.

This screen should be administered by Correctional Officers during the jail's intake/booking process.

INSTRUCTIONS FOR SECTION 1:

NAME: Enter detainees name — first, middle initial, and last
DETAINEE#: Enter detainee number.
DATE: Enter today's month, day, and year.
TIME: Enter the current time and circle AM or PM.

INSTRUCTIONS FOR SECTION 2:

ITEMS 1-6:

Place a check mark in the appropriate column (for "NO" or "YES" response).

If the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

ITEMS 7-8:

ITEM 7: This refers to any *prescribed* medication for any emotional or mental health problems.

ITEM 8: Include any stay of one night or longer. Do NOT include contact with an Emergency Room if it did not lead to an admission to the hospital

If the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

General Comments Column:

As indicated above, if the detainee REFUSES to answer the question or says that he/she DOES NOT KNOW the answer to the question, do not check "NO" or "YES." Instead, in the General Comments section, indicate REFUSED or DON'T KNOW and include information explaining why the detainee did not answer the question.

All "YES" responses require a note in the General Comments section to document:

- (1) Information about the detainee that the officer feels relevant and important
- (2) Information specifically requested in question

If at any point during administration of the BJMHS the detainee experiences distress, he/she should follow the jails procedure for referral services.

INSTRUCTIONS FOR SECTION 3:

OFFICER'S COMMENTS: Check any one or more of the four problems listed if applicable to this screening. If any other problem(s) occurred, please check OTHER, and note what it was.

REFERRAL INSTRUCTIONS:

Any detainee answering YES to Item 7 or YES to Item 8 or YES to at least two of Items 1-6 should be referred for further mental health evaluation. If there is any other information or reason why the officer feels it is necessary for the detainee to have a mental health evaluation, the detainee should be referred. Please indicate whether or not the detainee was referred.

M. Mental Illness Assessment Magistrate Written Notification Form

MENTAL ILLNESS ASSESSMENT MAGISTRATE WRITTEN NOTIFICATION FORM

<i>AUTHORITY: 85TH LEGISLATIVE SESSION, SENATE BILL 1326</i>	
Client Name:	
SID Number:	
Care Identification #:	
DOB:	
Last Four Digits of SSN:	
Previous Assessment (ANSA) or (CANS): LIDDA assessment: *To include but not limited to crisis assessment	
Previously recommended treatment:	
Most recent diagnosis(es):	(Date)
Is the client acutely (at time of assessment) decompensated, suicidal, or homicidal according to self-report?	Yes / No If yes, explain:
Other relevant information pertaining to Mental Health History:	
Current County or Municipality of Incarceration:	
Name of Person Submitting Form:	
Date of Submission:	
<i>MAGISTRATE IS NOT REQUIRED TO ORDER THE COLLECTION OF INFORMATION IF THE DEFENDANT IN THE YEAR PROCEEDING THE DATE OF APPLICABLE ARREST HAS BEEN DETERMINED TO HAVE A MENTAL ILLNESS OR INTELLECTUAL DISABILITY BY THE LOCAL MENTAL HEALTH AUTHORITY, LOCAL INTELLECTUAL DEVELOPMENTAL DISABILITY AUTHORITY, OR ANOTHER MENTAL HEALTH OR INTELLECTUAL DISABILITY EXPERT.</i>	

Updated 9/1/17

Upon completion of this form, its contents remain confidential as applicable to Health and Safety Code Chapter 614.017

