

COUNTY OF ZAVALA



OFFICE OF THE

COUNTY JUDGE

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JOE LUNA, ESQ
COUNTY JUDGE

Mr. Joel Lieurance
Senior Police Monitor
Texas Indigent Defense Commission
209 west 14th street
Austin, Texas 78701
www.tidc.texas.gov

Re: Texas Indigent Defense Commission – Policy Monitoring Report

Dear Mr. Lieurance

In response to the findings entitled, “Third Follow-up Policy Monitoring Review of Zavala County’s Indigent Defense System,” dated April 2022, the County of Zavala proposes the following solution:

In order to make the magistration process more efficient, reliable and accountable, all magistrations will be conducted electronically via video magistration using a laptop or office computer. The Magistrate Warnings and the Declaration of Inability to Employ Council (Declaration) digital forms are contained in the computer programs. During the magistration process, the magistrate will not only read the warnings to the accused, but will provide the accused the Declaration of Inability to Employ Counsel (Declaration) and provide the accused with assistance to fill out the Declaration immediately after the warnings are read to the accused. Attached for you review is a copy of the Magistrate’s Warning and Declaration.

Changes were also made to the Declaration. In the section entitled “Offense Charged,” we added a checkbox for the accused to check if the case is a felony or a misdemeanor. We also added another space for the accused to input a complete address.

We also revised the Magistration Warning form. In the section where the accused is informed of his right to counsel, a box is added to indicate whether the accused wants or does not want an attorney. For example, “The accused does does not want to request court appointed attorney.” In addition, a check box and language was added to identify the person assisting the accused with the Declaration. For example, “ Assisted with filling out Declaration of Inability to Employ Counsel” and added a space for the person assisting to sign, along with a line to print his/her name.

Once the accused fills out the Declaration, the magistrate will e-mail immediately the form to either the District Judge if the case is a felony or to the County Judge if the case is a misdemeanor.

In the past, the magistrate would rely on the jailers to deliver the Declaration to the Judge. Delivery of the Declaration will no longer be the responsibility of the jailers. Delivery of the

Declaration to the Judges will now be the responsibility of the magistrates. As soon as the magistrate completes reading the warning to the accused, then the Declaration will be filled out. Upon completion, the Declaration will be e-mailed to the respective Judge by the magistrate. This process will assure the accused fills out the Declaration and timely receipt by the Judge.

In addition, once a month, the magistrates will provide a monthly report to the Commissioners Court during the commissioner's court regular meeting including the number of magistrations completed. The magistrate will also be required to check with the county judges' staff and review whether delivery of the Declaration is taking place on a timely basis.

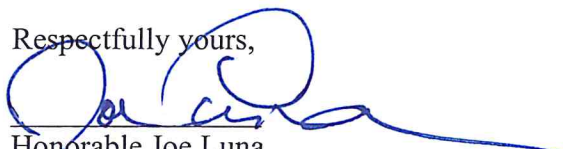
Upon receipt of the Declaration, the Judge will then rule on counsel requests as per article 1.051.

In the case of the County Judge, there is a standing order for Administrative Assistant to closely monitor e-mail received and to notify the Judge of a request for counsel. Upon receipt of the Declaration, the County Judge will rule on the request on a timely basis and e-mail the Declaration to the jail personnel to notify the accused. If an attorney is appointed, the name, address and phone number of the attorney appointed will be contained in the Declaration. A copy of the Declaration will also be e-mailed to the attorney and the magistrate notifying each of the appointment.

With regard to the District Judge, he will also do the same.

The Justice of the Peace, the Sheriff, the chief jail administrator and her assistant, the County Judge's office administrator, Information Technologist, the District Judges and I are all confident the above plan will be effective. I, therefore, trust that the above plan resolves all the issues raised in your findings, and more importantly, assures that the accused's right to counsel is adhered to.

Respectfully yours,



Honorable Joe Luna
Zavala County Judge

cc:

The Honorable Amado Abascal III, Local Administrative District Judge
The Honorable Maribel Flores, 293rd District Court Judge,
Mr. Carlos Pereda, Zavala County Auditor

(enclosure)

DECLARATION OF FINANCIAL INABILITY TO EMPLOY COUNSEL

Cause No. _____

THE STATE OF TEXAS
vs.

IN THE ____ COUNTY COURT
IN THE ____ DISTRICT COURT
ZAVALA COUNTY, TEXAS

ARREST DATE: _____ OFFENSE CHARGED: _____
IN CUSTODY ____ YES, SINCE (DATE) _____; ____ NO _____ FELONY
HAVE YOU BEEN INDICTED? ____ YES ____ NO _____ MISDEMEANOR

I, _____ am a Defendant in the above-entitled action, I am not represented by counsel at this proceeding, I have no assets except the following:

1. My earnings are (Name and address of employer(s), and amount of weekly or monthly earnings)
2. I have other income in the amount of (State sources of income and amount paid weekly or monthly)

3. I am ____ am not ____ married and support children and/or ____ other dependents, as follows:

_____ (Name)	_____ (Relationship)	_____ (Name)	_____ (Relationship)
_____ (Name)	_____ (Relationship)	_____ (Name)	_____ (Relationship)

4. Earnings of my spouse are (Name of Employer(s) and amount of weekly or monthly earnings)

5. I own the following property: (Address where located) (Payments) (Balance Owed) (Value)

- | | |
|---------------------------|---------------------------------------|
| a. Home _____ | g. Other land and buildings _____ |
| b. Automobiles _____ | h. Notes, Mortgages, Trust deed _____ |
| c. Furniture _____ | i. Motorcycles _____ |
| d. Other vehicles _____ | j. Livestock _____ |
| e. Stocks and bonds _____ | k. Jewelry _____ |
| f. Other _____ | |

6. I have the following money:

- | | |
|-------------------------------|--|
| a. In Jail \$ _____ | b. e. In a safety deposit box \$ _____ |
| c. At home \$ _____ | d. being held or owed to me \$ _____ |
| e. Checking accounts \$ _____ | f. Other \$ _____ |
| g. Savings accounts \$ _____ | |

7. I have the following debts and/or expenses in addition to those listed above: _____

8. I am ____ am not ____ free on Bail \$ _____. Bail Bonds _____

On this _____ day of _____, 20 __, I have been advised by the _____ Court of my right to representation by counsel in the trial of the charge pending against me. I certify that I am without means to employ counsel of my own choosing and hereby request the court to appoint counsel for me. I declare under penalty of perjury that the foregoing is true and correct. THIS DECLARATION WILL NOT BE CONSIDERED COMPLETE UNLESS SIGNED BY DEFENDANT.

Defendant's Signature

Defendant's Address

Approved _____
Not Approved _____

Date Defendant's Telephone Number
Attorney Appointed: _____
Telephone Number: _____
Address: _____

Judge's Signature Date

Law Enforcement Agency: _____
Date Of Arrest: _____
Time Of Arrest: _____
Place Of Arrest: _____

Court #: _____
County/State: _____
Warrant #, If Any: _____
Bail Set: \$ _____

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? YES NO

MAGISTRATE'S WARNING

THE STATE OF TEXAS
COUNTY OF ZAVALA

§
§

Before me, the undersigned, magistrate of _____ County, Texas on the _____ day of _____, at _____ O'clock AM PM.,
appeared _____. I gave said person the following warning:

- You are charged with the offense of _____ a felony a misdemeanor
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel. *

***THE MAGISTRATE SHALL ENSURE THAT THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:**

- a. That an application for a court appointed attorney must be completed to determine if he/she qualifies for a court appointed attorney;
- b. That reasonable assistance will be provided to him/her when filling out the application for a court appointed attorney, if needed;
- c. That a financial affidavit must be signed;
- d. That an affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
- e. That if he/she meets indigence standards he/she will qualify for court appointed attorney; and,
- f. Attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when the accused is before the court, the accused will be given attorney's name, address, and phone number.

If you are not a United States citizen and you have been arrested or detained, you may be entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials?

- No. _____ YES. _____
 - If you responded "YES," what country? _____
- If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

THE ACCUSED DOES DOES NOT WANT TO REQUEST COURT APPOINTED ATTORNEY.
ASSISTED ACCUSED WITH FILLING OUT DECLARATION OF FINANCIAL INABILITY TO EMPLOY COUNCIL:

I acknowledge that I was given the above
warning (This is NOT an admission of guilt):

Magistrate _____

Person warned _____

Place of warning: _____

Time: _____

Date: _____

Accused refused to sign acknowledgement
of warning: _____

Witness (if any):

Name: _____

Address: _____

Magistrate
Remarks: _____

This hearing was interpreted by: _____
(Name of Interpreter)

**Note: THIS IS A TWO-SIDED FORM: SPANISH ONE SIDE, ENGLISH OTHER SIDE
ESTE FORM TIENE DOS LADOS: EN ENGLIS UN LADO Y ESPANOL EN LO OTRO**

Dependencia del orden público: _____
Fecha del arresto: _____
Hora del arresto: _____
Lugar del arresto: _____

Juzgado #: _____
Condado / Estado: _____
No. de la orden de aprehensión, si existe: _____
Fianza fijada en: \$ _____

¿SE HA PRESENTADO UNA DECLARACIÓN DE CAUSA PRESUNTA? SÍ NO

ADVERTENCIAS DEL JUEZ DE INSTRUCCIÓN

ESTADO DE TEXAS
CONDADO DE ZAVALA

§
§

Ante mí, el juez de instrucción del condado de _____, Texas, el día _____ de _____, a las _____ horas de la mañana tarde, compareció _____, a quien se le dieron las siguientes advertencias:

- Usted está acusado del siguiente delito: _____ delito mayor (*felony*) delito menor (*misdemeanor*)
- Tiene derecho a contratar a un abogado que lo represente.
- Tiene derecho a que su abogado esté presente cuando usted sea entrevistado o interrogado por los agentes del orden público o abogados fiscales del estado, o antes de participar de una entrevista o interrogatorio.
- Tiene derecho a guardar silencio.
- No se le puede exigir que declare nada, pero cualquier declaración que haga puede ser y va a ser usada en su contra en el tribunal.
- Tiene derecho a interrumpir su interrogatorio o entrevista en cualquier momento.
- Tiene derecho a una audiencia previa al juicio para examinar la acusación (sólo para delitos mayores).
- Tiene derecho a que le nombren un abogado que lo represente si no tiene los recursos necesarios para contratar uno.*

*EL JUEZ DE INSTRUCCIÓN SE ASEGURARÁ QUE EL ACUSADO ESTÉ INFORMADO DE LOS SIGUIENTES PROCEDIMIENTOS:

- g. Debe completarse una solicitud para el nombramiento de un abogado defensor para que el tribunal determine si el acusado reúne los requisitos necesarios para dicho nombramiento.
- h. En caso de ser necesario, se le ayudará al acusado en la medida de lo razonable, a llenar la solicitud para que le nombren un abogado.
- i. Debe firmarse la declaración de situación económica del acusado (*financial affidavit*).
- j. La declaración (*financial affidavit*) debe ser por escrito, detallar los hechos relacionados al estado económico del acusado, debe ser dada por propia voluntad, y bajo juramento de decir verdad ante una autoridad competente.
- k. En caso de que se demuestre que el acusado es indigente, se le nombrará un abogado para que represente al acusado, y
- l. El abogado defensor nombrado por el tribunal debe comunicarse con el acusado en el transcurso del primer día hábil después de su nombramiento. Si el acusado está ante el juez en el momento del nombramiento, se le hará saber el nombre, dirección y teléfono del abogado.

Si usted no es ciudadano de los Estados Unidos y ha sido arrestado o detenido, posiblemente tenga derecho a que se notifique a los representantes consulares de su país en los Estados Unidos. ¿Desea que notifiquemos al consulado de su país?

- No. _____ Sí. _____
- Si respondió afirmativamente, ¿de que país es usted? _____

Si usted es ciudadano de un país que nos exige notificar a sus representantes consulares, notificaremos a los mismos tan pronto sea posible.

EL ACUSADO DESEA NO DESEA SOLICITAR UN ABOGADO NOMBRADO POR EL TRIBUNAL PARA DEFENDERLO.
AYUDÓ AL ACUSADO A COMPLETAR LA DECLARACIÓN DE INCAPACIDAD FINANCIERA PARA EMPLEAR AL CONSEJO:

He sido informado de las advertencias mencionadas anteriormente (Ésta NO es una admisión de culpabilidad):

Persona a la que se le dieron las advertencias

El acusado rehusó firmar el reconocimiento de las advertencias of warning:

Juez de instrucción
Comentarios:

Juez de instrucción

Lugar en que se dieron las advertencias: _____
Hora: _____
Fecha: _____

Testigo (si hay):
Nombre y apellido: _____
Dirección: _____

Esta audiencia fue interpretada por: _____ (Nombre del intérprete)

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