

Procedures for Appointment, Supervision, and Compensation of Counsel to Defendants Arrested Under Operation Lone Star Pursuant to the Texas Supreme Court's Border Security State of Disaster Emergency Order

The Executive Director of the Texas Indigent Defense Commission (TIDC) adopts these procedures to provide for the appointment of counsel to represent defendants arrested and charged with jailable misdemeanors and/or felonies as part of Operation Lone Star (OLS) in certain Counties covered by Governor Abbott's border security disaster declarations. These procedures are adopted pursuant to the Texas Supreme Court's "Emergency Order Regarding Indigent Defense and The Border Security State of Disaster," Misc. Docket Number 22-9118, and as subsequently renewed by the Texas Supreme Court.

As directed by the Supreme Court's order, these procedures supersede the counties' procedures for appointing counsel under Code of Criminal Procedure Article 26.04(a) (indigent defense plans) for the OLS cases in those counties. These procedures only apply to individuals arrested under OLS and who are brought before magistrates for proceedings under Article 15.17 in facilities designated by the Office of Court Administration (OCA), or whose request for counsel under Articles 15.17(a) or 15.18 has been transmitted to a judge assigned by the Supreme Court of Texas under Misc. Dkt. No. 22-9045, and as subsequently renewed by the Texas Supreme Court. (A list of the designated facilities can be found on OCA's website <http://www.txcourts.gov/oca>). These procedures do not apply to any other cases in those counties, nor in any other Texas counties.

If a defendant is brought before a magistrate in an OCA-designated facility and requests the appointment of counsel, the defendant shall be provided the affidavit of indigence (below). The indigence affidavits of both defendants magistrated at OCA-designated facilities, and those of defendants whose request for counsel under Articles 15.17(a) or 15.18 has been transmitted to the magistration facility, shall be forwarded to a magistrate assigned pursuant to the Supreme Court of Texas Order Amending Judicial Assignments for Proceedings Under Article 15.17, Code of Criminal Procedure, Dkt. No. 22-9045, and as subsequently renewed by the Texas Supreme Court. The magistrate is authorized to determine indigence and if the magistrate finds a defendant to be indigent under the Operation Lonestar Indigence Determination Standards (below), the magistrate shall forward the affidavit, reflecting the Court's indigency finding, along with the relevant magistration paperwork, to the Lubbock Private Defenders Office (LPDO)/Lone Star Defenders Office (LSDO) not later than 24 hours after receiving and ruling on the affidavit.

LPDO/LSDO shall maintain a form for defendants to request appointed counsel in OLS cases and that form shall be available on its website. LPDO/LSDO shall transmit any requests for appointed counsel in OLS cases, along with a completed affidavit of indigence, to a judge assigned by the Supreme Court of Texas under Misc. Dkt. No. 22-9045, and as subsequently renewed by the Texas Supreme Court. (A list of the designated facilities can be found on OCA's website <http://www.txcourts.gov/oca>). If the defendant is determined to be indigent under the Operation Lone Star Indigence Determination Standards, the judge shall forward the affidavit reflecting the Court's indigency finding, along with the relevant magistration or charging paperwork, to LPDO/LSDO for appointment of counsel.

TIDC hereby designates the LPDO/LSDO to appoint counsel to indigent defendants in OLS cases, pursuant to the Supreme Court's Emergency Order.

LPDO/LSDO is designated to compile and maintain a list, or more than one list, graduated according to: the degree of seriousness of the offense; the attorneys' qualifications; and whether representation will be provided in trial court proceedings, appellate proceedings, or

both, of attorneys to be appointed in OLS cases. The list, or lists, may include attorneys authorized to practice law in the State of Texas, including those from any Texas County, public defender offices, governmental entities, nonprofit corporations, or law firms, so long as LPDO/LSDO determines that each has the skills, resources, and available workload capacity to effectively represent additional defendants.

TIDC further authorizes LPDO/LSDO, as its designee, to remove any attorney on the list from consideration for an appointment for any reason. TIDC further authorizes LPDO/LSDO to remove an attorney from a specific case if warranted by good cause.

For cases in which compensation of court-appointed counsel, investigators, defense interpreters, or experts will be paid by the State, TIDC further designates LPDO/LSDO to review, approve and pay fee vouchers for legal services, interpreter services, investigator services, travel expenses, and other expenses necessary for the criminal case representation, in accordance with LPDO/LSDO's policies and procedures, the attached fee schedule, and contractual agreements, contingent on the availability of State funds. All requests for compensation, reimbursement, investigative, interpreter support, or other expenses must contain the information required by LPDO/LSDO.

A copy of this plan shall be posted on the Texas Indigent Defense Commission's website, www.tidc.texas.gov/operation-lone-star, and the Lubbock Private Defender's Office/Lone Star Defender's Office website, www.olsdefense.org.

In addition, a copy of this indigent defense plan will be distributed to the following officials in each County covered by the state of disaster concerning border security issued by Governor Abbott:

- The County Judge
- Local Administrative District Judge, and, if applicable,
- Local Administrative Statutory County Court Judge

Further, copies will be sent to the Texas Office of Court Administration, Department of Public Safety, Texas Department of Emergency Management, and OCA magistration facilities.

TIDC will provide assistance to counties affected by OLS in amending their indigent defense plans as needed.

These procedures shall be in effect from the date they are signed and adopted until the termination and non-renewal of the Supreme Court's Indigent Defense and the Border Security State of Disaster Emergency Orders.

Signed and adopted this 31st day of October, 2023.



Scott Ehlers
Executive Director
Texas Indigent Defense Commission

Operation Lonestar Indigence Determination Standards

Financial Standards for Determining Indigence

These standards shall apply to each defendant equally, regardless of whether the defendant is in custody or has been released on bail.

The indigence assessment considers only the income and resources of the defendant and that person's spouse. The size of the household is equal to the defendant, the person's spouse, and any individuals who are dependents of either the defendant or the person's spouse.

Indigence Criteria

Defendants requesting appointed counsel who meet any the following criteria are presumed indigent:

- Current household income does not exceed 125% of the current Federal Poverty Guidelines.
- Currently receiving food stamps, Medicaid, Temporary Assistance for Needy Families, Social Security assistance or public housing.
- Currently resides in a correctional facility, mental health institution, or similar facility.
- An individual who has been in pretrial detention for not less than ten (10) days for a misdemeanor, and not less than twenty-one (21) days for a felony, and for whom counsel has not made an entry of appearance.
- The interests of justice indicate that counsel should be appointed.

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

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?

- I find the above-named defendant meets eligibility requirements and authorize the Lubbock Private Defenders Office or Lone Star Defenders Office to appoint counsel.
- I find the above-named defendant meets eligibility requirements, but the defendant wishes to retain own counsel.
- I find the above-named defendant **does not** currently meet eligibility requirements for appointment of counsel.

Date _____

Magistrate _____

DECLARACIÓN JURADA ESCRITA DE INDIGENCIA

ESTA SECCIÓN SERÁ LLENADA SOLO POR EL PERSONAL DE LA OFICINA

El Estado de Texas _____ Tribunal de Condado
vs. _____ Tribunal de Distrito

Delito: Grave/No Grave: ¿Se requiere de un intérprete? Sí No

Delito: Grave/No Grave: En caso afirmativo, indique el idioma:

Delito: Grave/No Grave:

Imputado actualmente en: Institución Penitenciaria Institución de Salud Mental

ESTA SECCIÓN SERÁ LLENADA POR EL IMPUTADO O EN PRESENCIA DEL MISMO

Nombre _____ Fecha de nacimiento _____ / _____ / _____

Nombre de Pila Inicial del Segundo nombre Apellido

Dirección _____

Calle Núm. de Depto. Ciudad Estado

Código Postal

Números telefónicos _____

miembro de la familia Casa Móvil Trabajo Otro

Marque si usted recibe alguno de _____

los siguientes servicios o beneficios: Medicaid SSI SNAP TANF Asistencia de Vivienda

¿Está usted trabajando actualmente? Sí No ¿En dónde trabaja? _____ ¿En qué trabaja?

Horas trabajadas por semana: _____ Tiempo que lleva trabajando ahí: _____

Estado civil: Soltero(a) Casado(a) Divorciado(a) Viudo(a) Separado(a)

Nombre de su cónyuge _____

Nombre de Pila Inicial del Segundo nombre Apellido

Nombres de los <u>Menor(es) que dependen</u> de usted (de 0 a 18 años de edad)	Edad	Nombres de los <u>Menor(es) que dependen</u> de usted (de 0 a 18 años de edad)	Edad

INFORMACIÓN SOBRE SU HOGAR

Hogar alquilado: Sí / No	Hogar propio: Sí / No	Vivo en el hogar de otros familiares: Sí / No	Sin hogar: Sí / No
INGRESOS MENSUALES Y BIENES		GASTOS MENSUALES	
Mis ingresos después de impuestos	\$	Pago de Alquiler o de Hipoteca	\$
Ingresos después de impuestos de mi cónyuge	\$	Servicios públicos (Luz, Gas, Agua)	\$
Manutención de Menores (Recibida)	\$	Total de gastos en los menores (Incluya pagos de Manutención de Menores hechos por usted)	\$
SNAP (Cupones alimenticios)	\$	Total de Gastos en Alimentos	\$
Seguro Social / Discapacitación	\$	Gastos de Transporte	\$
Otros Ingresos del Gobierno	\$	Teléfono móvil o de la casa	\$
Otros Ingresos	\$	Cuotas de Vigilancia de su libertad a prueba	\$
Bienes (auto, casa, etc.)	\$	Gastos Médicos / Seguro Médico	\$
TOTAL MENSUAL DE INGRESOS Y BIENES	\$	Pago Mínimo Mensual de Tarjetas de Crédito	\$
		TOTAL MENSUAL DE GASTOS	\$

Juramento del Imputado

El día de hoy __ de _____ del 20 __, he sido notificado sobre mi derecho a ser representado por un abogado en relación al cargo en mi contra. Yo declaro que no tengo los medios económicos para contratar un abogado por mi propia cuenta y por el presente solicito al Juez me asigne un abogado de oficio.

Firma del Imputado

Fecha

JURAMENTADO y FIRMADO ante mí, la autoridad que suscribe, el día de hoy _____ de _____, del 20_____.

Firma del Secretario del Tribunal/Fedatario

Fecha

¿El imputado cumple actualmente con los requisitos para calificar?

- Yo determino que el acusado mencionado anteriormente sí es de escasos recursos y autorizo a la **Oficina de Abogados Defensores Privados de Lubbock/Oficina de defensores del Operativo Estrella Solitaria** que le asignen un abogado defensor gratuito que lo represente.
- Yo determino que el acusado mencionado anteriormente sí es de escasos recursos, pero el acusado desea contratar su propio abogado.
- Encuentro que el acusado mencionado anteriormente no cumple actualmente con los requisitos de elegibilidad para la asignación de un abogado.

Fecha _____

Juez de Control _____

Indigence Affidavit for Defendants Who are Not Detained
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 <u> </u> / <u> </u> / <u> </u>	
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)		Name of Dependent Child(ren)	
(0-18 yrs.)	Age	(0-18 yrs.)	Age
RESIDENCE INFORMATION			
Rent: yes or no	Own: yes or no	Reside with family: yes or no	Homeless: yes or no

<u>MONTHLY INCOME AND ASSETS</u>		<u>MONTHLY EXPENSES</u>	
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	\$

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

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?

- I find the above-named defendant meets eligibility requirements and authorize the Lubbock Private Defenders Office or Lone Star Defenders Office to appoint counsel.
- I find the above-named defendant meets eligibility requirements, but the defendant wishes to retain own counsel.
- I find the above-named defendant **does not** currently meet eligibility requirements for appointment of counsel.

Date _____

Magistrate _____

DECLARACIÓN JURADA ESCRITA DE INDIGENCIA

ESTA SECCIÓN SERÁ LLENADA SOLO POR EL PERSONAL DE LA OFICINA

El Estado de Texas _____ Tribunal de Condado
vs. _____ Tribunal de Distrito

Delito: Grave/No Grave: ¿Se requiere de un intérprete? Sí No

Delito: Grave/No Grave: En caso afirmativo, indique el idioma:

Delito: Grave/No Grave:

Imputado actualmente en: Institución Penitenciaria Institución de Salud Mental

ESTA SECCIÓN SERÁ LLENADA POR EL IMPUTADO O EN PRESENCIA DEL MISMO

Nombre _____ Fecha de Nacimiento ____/____/____

Nombre de Pila Inicial del Segundo nombre Apellido

Dirección _____

Calle Núm. De Depto. Ciudad Estado

Código Postal

Números telefónicos _____

miembro de la familia Casa Móvil Trabajo Otro

Marque si usted recibe alguno de _____

los siguientes servicios o beneficios: Medicaid SSI SNAP TANF Asistencia de Vivienda

¿Está usted trabajando actualmente? Sí No ¿En dónde trabaja? _____ ¿En qué trabaja?

Horas trabajadas por semana: _____ Tiempo que lleva trabajando ahí: _____

Estado civil: Soltero(a) Casado(a) Divorciado(a) Viudo(a) Separado(a)

Nombre de su cónyuge _____

Nombre de Pila Inicial del Segundo nombre Apellido

Nombres de los <u>Menor(es) que dependen</u> de usted (de 0 a 18 años de edad)	Edad	Nombres de los Menor(es) que dependen de usted (de 0 a 18 años de edad)	Edad

INFORMACIÓN SOBRE SU HOGAR

Hogar alquilado: Sí / No	Hogar propio: Sí / No	Vivo en el hogar de otros familiares: Sí / No	Sin hogar: Sí / No
INGRESOS MENSUALES Y BIENES		GASTOS MENSUALES	
Mis ingresos después de impuestos	\$	Pago de Alquiler o de Hipoteca	\$
Ingresos después de impuestos de mi cónyuge	\$	Servicios públicos (Luz, Gas, Agua)	\$
Manutención de Menores (Recibida)	\$	Total de gastos en los menores (Incluya pagos de Manutención de Menores hechos por usted)	\$
SNAP (Cupones alimenticios)	\$	Total de Gastos en Alimentos	\$
Seguro Social / Discapacitación	\$	Gastos de Transporte	\$
Otros Ingresos del Gobierno	\$	Teléfono móvil o de la casa	\$
Otros Ingresos	\$	Cuotas de Vigilancia de su libertad a prueba	\$
Bienes (auto, casa, etc.)	\$	Gastos Médicos / Seguro Médico	\$
TOTAL MENSUAL DE INGRESOS Y BIENES	\$	Pago Mínimo Mensual de Tarjetas de Crédito	\$
		TOTAL MENSUAL DE GASTOS	\$

Juramento del Imputado

El día de hoy __ de _____ del 20 __, he sido notificado sobre mi derecho a ser representado por un abogado en relación al cargo en mi contra. Yo declaro que no tengo los medios económicos para contratar un abogado por mi propia cuenta y por el presente solicito al Juez me asigne un abogado de oficio.

Firma del Imputado

Fecha

JURAMENTADO y FIRMADO ante mí, la autoridad que suscribe, el día de hoy _____ de _____, del 20_____.

Firma del Secretario del Tribunal/Fedatario

Fecha

¿El imputado cumple actualmente con los requisitos para calificar?

- Yo determino que el acusado mencionado anteriormente sí es de escasos recursos y autorizo a la **Oficina de Abogados Defensores Privados de Lubbock/Oficina de defensores del Operativo Estrella Solitaria** que le asignen un abogado defensor gratuito que lo represente.
- Yo determino que el acusado mencionado anteriormente sí es de escasos recursos, pero el acusado desea contratar su propio abogado.
- Encuentro que el acusado mencionado anteriormente no cumple actualmente con los requisitos de elegibilidad para la asignación de un abogado.

Fecha _____

Juez de Control _____

Fee Schedule for Private Attorneys Appointed to Represent Indigent Defendants in Operation Lone Star Cases

Private Attorneys appointed to represent indigent defendants in Operation Lone Star cases will be compensated based on the following schedule:

Felony Cases:

Hourly Rates

- 1st Degree \$150.00
- 2nd Degree \$150.00
- 3rd Degree \$150.00
- State Jail Felony \$150.00

Misdemeanor Cases:

Hourly Rates

- A and B Misdemeanors \$120.00

Appeals

Appellate case work will be paid equivalent to hourly rates for trial work based on the degree of offense.

The hourly rate applicable is determined based on the “top charge” or highest charge the indigent defendant is facing. All representation for a case will be compensated according to the fee schedule in effect on the date of appointment on the case.

Special Rates for Jurisdictions with an Urgent Unmet Need

Special rates may be approved for representation if the standard fee schedule above does not attract sufficient panel attorneys to accept Operation Lone Star case appointments. LPDO/LSDO may increase the hourly compensation rate up to \$200.00 per hour, with prior written approval from the Executive Director of the Texas Indigent Defense Commission (TIDC). The approval shall be for representation on cases in specific jurisdictions and levels of cases and will remain in effect until rescinded by TIDC’s Executive Director. When an increase in the hourly rate is authorized, the increased rate shall apply to all work performed on a case appointed under the special rate authorization from appointment until the end of representation.

Jurisdictions for which special rates are approved, and the date upon which the rates are effective, will be listed in an appendix to these procedures.

Travel Time, Expenses, and Compensation

In addition to reimbursement for LPDO/LSDO-approved actual travel expenses (mileage, flight, and rental car), appointed attorneys may be compensated for case-

related travel time necessary to provide representation based on the above rates. Such compensation requests will be considered reasonable if the travel time does not exceed the travel time estimate based on flight schedules or from common travel planning applications, such as Google Maps.

Attorneys should attempt to conserve travel expenses by handling matters on multiple cases during a single trip, if possible. Hourly pay for travel time and travel expenses incurred during a single trip on behalf of multiple cases may be claimed for only one of the cases.

Vouchers and Reimbursements

Attorneys should refer to LPDO/LSDO's policies for information related to vouchers, timekeeping, and reimbursements for travel expenses.

Effective Date: October 31, 2023

Approved by: 

Scott Ehlers, Executive Director
Texas Indigent Defense Commission

APPENDIX-SPECIAL RATES FOR JURISDICTIONS WITH AN URGENT UNMET NEED

The following counties have been found to have an urgent unmet need for attorneys to represent defendants in Operation Lone Star cases:

- Dimmit
- Maverick County
- Zavala County

LPDO/LSDO may increase the hourly compensation rate up to \$200.00 per hour for representation in felony cases provided in these counties.

All representation for a case will be compensated according to the fee schedule in effect on the date of appointment on the case.

Appendix Effective Date: December 8, 2023

Approved by: 

Scott Ehlers, Executive Director
Texas Indigent Defense Commission