**Juvenile Plan Requirements with Statutory References**

1. Conduct prompt detention hearing if child not released by intake.
   * If child taken into custody, then must hold detention hearing by second working day, or first working day if detained on Friday or Saturday [Sec. 54.01(a), FC]
   * Prior to detention hearing, court must inform child's parent or other person responsible for child’s support of child’s right to appointed counsel if they are indigent [Sec. 54.01(b), FC]

Statutes:

Texas Family Code:

**Sec. 54.01. Detention Hearing.**

(a) Except as provided by Subsection (p), if the child is not released under Section 53.02, a detention hearing without a jury shall be held promptly, but not later than the second working day after the child is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

(b) Reasonable notice of the detention hearing, either oral or written, shall be given, stating the time, place, and purpose of the hearing. Notice shall be given to the child and, if they can be found, to his parents, guardian, or custodian. Prior to the commencement of the hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent and of the child's right to remain silent with respect to any allegations of delinquent conduct, conduct indicating a need for supervision, or conduct that violates an order of probation imposed by a juvenile court.

1. Determine indigence according to standards directed by the indigent defense plan.
   * Detail procedures used to determine whether a child’s parent(s) or other person(s) responsible for child’s support are indigent [Sec. 51.102(b)(1), FC & Art. 26.04(l)-(r), CCP]
   * State financial standard(s) to determine whether a child’s parent(s) or other person(s) responsible for child’s support are indigent [Art. 26.04(l), CCP]
   * List factors courts will consider when determining whether a child’s parent(s) or other person(s) responsible for child’s support are indigent [Art. 26.04(m), CCP]

Statutes:

Texas Family Code:

**Sec. 51.10. Right to Assistance of Attorney; Compensation.**

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

(1) the child is not represented by an attorney;

(2) the court determines that the child's parent or other person responsible for support of the child is financially unable to employ an attorney to represent the child; and

(3) the child's right to representation by an attorney:

(A) has not been waived under Section 51.09 of this code; or

(B) may not be waived under Subsection (b) of this section.  
 (g) The juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

**Sec. 51.102. Appointment of Counsel Plan**

(a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes the procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list; and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child’s parent or other person responsible for the child’s support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision or delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(ii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition; or

(B) determinate sentence proceedings have been initiated or proceedings for discretionary transfer to criminal court have been initiated.

Texas Code of Criminal Procedure:

**Art. 26.04. Procedures for appointing counsel.**

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(l) Procedures adopted under Subsection (a) must include procedures and financial standards for determining whether a defendant is indigent. The procedures and standards shall apply to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail.

(m) In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.

(n) A defendant who requests a determination of indigency and appointment of

counsel shall:

(1) complete under oath a questionnaire concerning his financial resources;

(2) respond under oath to an examination regarding his financial resources by the judge or magistrate responsible for determining whether the defendant is indigent; or

(3) complete the questionnaire and respond to examination by the judge or magistrate.

(o) Before making a determination of whether a defendant is indigent, the court shall request the defendant to sign under oath a statement substantially in the following form: "On this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, 20 \_\_\_, I have been advised by the (name of the court) Court 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. (signature of the defendant)"

(p) A defendant who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. If there is a material change in financial circumstances after a determination of indigency or non- indigency is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination.

(q) A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigency or to impeach the direct testimony of the defendant. This subsection does not prohibit prosecution of the defendant under Chapter 37, Penal Code.

1. A court may not threaten to arrest or incarcerate a person solely because the

person requests the assistance of counsel.

1. Establish minimum attorney qualifications.
   * Establish objective qualification standards for attorneys for three levels of conduct [Sec. 51.102(a),(b)(2), FC]:
     + Conduct indicating a need for supervision or delinquent conduct (no TJJD possible);
     + Delinquent conduct (TJJD possible); and
     + Determinate sentence or discretionary transfer to criminal court proceedings has been initiated.
   * Standards must require attorneys to complete at least 6 hours of continuing legal education pertaining to juvenile law during each 12-month reporting period (see [1 TAC §§174.1-174.4](http://www.courts.state.tx.us/tfid/Rules_on_CLE_(TJC_Ratification).asp))

* Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal and juvenile delinquency cases. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30 [Art. 26.04(j)(4), CCP]
  + Attorneys must be approved by a majority of the Juvenile Board to be placed on the appointment list [Sec. 51.102(a), FC & Art. 26.04, CCP]

Statutes:

Texas Family Code:

**Sec. 51.102. Appointment of Counsel Plan.**

(a) The juvenile board in each county shall adopt a plan that:

(1) specifies the qualifications necessary for an attorney to be included on an appointment list from which attorneys are appointed to represent children in proceedings under this title; and

(2) establishes the procedures for:

(A) including attorneys on the appointment list and removing attorneys from the list; and

(B) appointing attorneys from the appointment list to individual cases.

(b) A plan adopted under Subsection (a) must:

(1) to the extent practicable, comply with the requirements of Article 26.04, Code of Criminal Procedure, except that:

(A) the income and assets of the child’s parent or other person responsible for the child’s support must be used in determining whether the child is indigent; and

(B) any alternative plan for appointing counsel is established by the juvenile board in the county; and

(2) recognize the differences in qualifications and experience necessary for appointments to cases in which:

(A) the allegation is:

(i) conduct indicating a need for supervision or delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or

(ii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition; or

(B) determinate sentence proceedings have been initiated or proceedings for discretionary transfer to criminal court have been initiated.

Texas Code of Criminal Procedure:

**Art. 26.04. Procedures for appointing counsel.**

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

(1) applies to be included on the list;

(2) meets the objective qualifications specified by the judges under Subsection (e);

(3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and

(4) is approved by a majority of the judges who established the appointment list under Subsection (e).

(e) In a county in which a court is required under Subsection (a) to appoint an attorney from a public appointment list:

(1) the judges of the county courts and statutory county courts trying misdemeanor cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in the county in misdemeanor cases punishable by confinement; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment 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; and

(2) the judges of the district courts trying felony cases in the county, by formal action:

(A) shall:

(i) establish a public appointment list of attorneys qualified to provide representation in felony cases in the county; and

(ii) specify the objective qualifications necessary for an attorney to be included on the list; and

(B) may establish, if determined by the judges to be appropriate, more than one appointment 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.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(j) An attorney appointed under this article shall:

(4) not later than October 15 of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3, Family Code.

Texas Administrative Code:

**1 TAC §174.2. Appointment in Juvenile Cases.** An attorney who meets the requirements of this rule may be appointed to represent an indigent juvenile detained for or accused of engaging in delinquent conduct or conduct indicating a need for supervision, if the attorney is otherwise eligible under the plan developed under Section 51.101, Family Code. An attorney may be appointed under this rule only if an attorney:

1) Completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period. The juvenile board shall set the 12-month reporting period applicable to the jurisdiction. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. A juvenile board may require an attorney to complete more than the minimum number of hours of continuing legal education in juvenile law in the plan developed under Section 51.101, Family Code; or

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

**1 TAC §174.3. Reporting Period.**

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

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

**1 TAC §174.4. Emergency Appointment.** If no attorney who meets the continuing legal education or board certification requirements contained in this Subchapter is available by the time an attorney must be appointed in the case, another attorney may be appointed. The person making an appointment under this Section shall give priority to an attorney with experience in criminal or juvenile law, respectively.

1. Appoint counsel promptly.
   * Unless the court finds that 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 is held to represent the child at that hearing [Sec. 54.01(b-1), FC]
   * If the child was not represented by an attorney at the detention hearing and a determination was made to detain the child, the child shall immediately be entitled to representation by an attorney [Sec. 51.10(c), FC]
   * If not detained, attorney must be appointed on or before 5th working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served [Sec. 51.101(c)-(d), FC]

Statutes:

Texas Family Code:

**Sec. 54.01. Detention Hearing**

(b-1) Unless the court finds that 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 is held to represent the child at that hearing.

**Sec. 51.10. Right to Assistance of Attorney; Compensation**

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

**Sec. 51.101. Appointment of Attorney and Continuation of Representation**

(c) The juvenile court shall determine, on the filing of a petition, whether the child's family is indigent if:

(1) the child is released by intake;

(2) the child is released at the initial detention hearing; or

(3) the case was referred to the court without the child in custody.

(d) A juvenile court that makes a finding of indigence under Subsection (c) shall appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child. An attorney appointed under this subsection shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.

(e) The juvenile court shall determine whether the child's family is indigent if a motion or petition is filed under Section 54.05 seeking to modify disposition by committing the child to the Texas Youth Commission or placing the child in a secure correctional facility. A court that makes a finding of indigence shall appoint an attorney to represent the child on or before the fifth working day after the date the petition or motion has been filed. An attorney appointed under this subsection shall continue to represent the child until the court rules on the motion or petition, the family retains an attorney, or a new attorney is appointed.

1. Institute a fair, neutral, and non-discriminatory attorney selection process.
   * Rotational method: Must appoint attorneys from among next five names on appointment list in the order in which the attorneys’ names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order [Art. 26.04(a), CCP]
   * Public Defender’s Office: Must meet the requirements in Article 26.044, CCP and process for appointment of the public defender’s office needs to be in indigent defense plan [Art. 26.04(f), CCP]
   * Managed Assigned Counsel Program: Must meet the requirements in Article 26.047, CCP and process for appointment of counsel needs to be in indigent defense plan [Art. 26.04(f-1), CCP]
   * Alternative method [Art. 26.04(g)-(h), CCP]:
     + Must be established by vote of two-thirds of the juvenile board
     + Must be approved by presiding judge of administrative judicial region
     + Must allocate appointments reasonably and impartially among qualified attorneys
     + For contract defender program, must meet contract defender standards (see [1 TAC §§174.10 – 174.25](http://www.courts.state.tx.us/tfid/docs/Contract%20Defender%20Rules%20w%20Commentary%20and%20Sample%20Fee%20Vouchers%20Final-Rev'd.doc))

Statutes:

Texas Code of Criminal Procedure:

**Art. 26.04. Procedures for appointing counsel.**

(a) The judges of the county courts, statutory county courts, and district courts trying criminal cases in each county, by local rule, shall adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant in the county arrested for, charged with, or taking an appeal from a conviction of a misdemeanor punishable by confinement or a felony. The procedures must be consistent with this article and Articles 1.051, 15.17, 26.05, and 26.052. A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (f-1), (h), or (i). The court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

(b) Procedures adopted under Subsection (a) shall:

(1) authorize only the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county, or the judges' designee, to appoint counsel for indigent defendants in the county;

(2) apply to each appointment of counsel made by a judge or the judges' designee in the county;

(3) ensure that each indigent defendant in the county who is charged with a misdemeanor punishable by confinement or with a felony and who appears in court without counsel has an opportunity to confer with appointed counsel before the commencement of judicial proceedings;

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with any applicable requirements under Articles 11.071 and 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

(6) ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.

(f) In a county in which a public defender’s office is created or designated under Article 26.044, the court or the courts' designee may appoint that office to represent the defendant in accordance with guidelines established for the office.

(f-1)  In a county in which a managed assigned counsel program is operated in accordance with Article 26.047, the managed assigned counsel program may appoint counsel to represent the defendant in accordance with the guidelines established for the program.

(g) A countywide alternative program for appointing counsel for indigent defendants in criminal cases is established by a formal action in which two-thirds of the judges of the courts designated under this subsection vote to establish the alternative program. An alternative program for appointing counsel in misdemeanor and felony cases may be established in the manner provided by this subsection by the judges of the county courts, statutory county courts, and district courts trying criminal cases in the county. An alternative program for appointing counsel in misdemeanor cases may be established in the manner provided by this subsection by the judges of the county courts and statutory county courts trying criminal cases in the county. An alternative program for appointing counsel in felony cases may be established in the manner provided by this subsection by the judges of the district courts trying criminal cases in the county. In a county in which an alternative program is established:

(1) the alternative program may:

(A) use a single method for appointing counsel or a combination of methods; and

(B) use a multicounty appointment list using a system of rotation; and

(2) the procedures adopted under Subsection (a) must ensure that:

(A) attorneys appointed using the alternative program to represent defendants in misdemeanor cases punishable by confinement:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the county courts and statutory county courts trying misdemeanor cases in the county;

(B) attorneys appointed using the alternative program to represent defendants in felony cases:

(i) meet specified objective qualifications for that representation, which may be graduated according to the degree of seriousness of the offense and whether representation will be provided in trial court proceedings, appellate proceedings, or both; and

(ii) are approved by a majority of the judges of the district courts trying felony cases in the county;

(C) appointments for defendants in capital cases in which the death penalty is sought comply with the requirements of Article 26.052; and

(D) appointments are reasonably and impartially allocated among qualified attorneys.

(h) In a county in which an alternative program for appointing counsel is established as provided by Subsection (g) and is approved by the presiding judge of the administrative judicial region, a court or the courts' designee may appoint an attorney to represent an indigent defendant by using the alternative program. In establishing an alternative program under Subsection (g), the judges of the courts establishing the program may not, without the approval of the commissioners court, obligate the county by contract or by the creation of new positions that cause an increase in expenditure of county funds.

(i) A court or the courts' designee required under Subsection (c) to appoint an attorney to represent a defendant accused or convicted of a felony may appoint an attorney from any county located in the court's administrative judicial region.

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed;

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the defendant after a finding of good cause is entered on the record; and

(3) with respect to a defendant not represented by other counsel, before withdrawing as counsel for the defendant after a trial or the entry of a plea of guilty:

(A) advise the defendant of the defendant’s right to file a motion for new trial and notice of appeal.

(B) if the defendant wishes to pursue either or both remedies described by Paragraph (A), assist the defendant in requesting the prompt appointment of replacement counsel; and  
(C) if replacement counsel is not appointed promptly and the defendant wishes to pursue and appeal, file a timely notice of appeal.

**Art. 26.044. Public Defender’s Office**

(a) In this chapter:

(1) “Governmental entity” includes a county, a group of counties, a department of a county, an administrative judicial region created by Section 74.042, Government Code, and any entity created under the Interlocal Cooperation Act as permitted by Chapter 791, Government Code.

(2) “Office of capital writs” means the office of capital writs established under Subchapter B, Chapter 78, Government Code.

(3) “Oversight board” means an oversight board established in accordance with Article 26.045.

(4)“Public defender’s office” means an entity that:

(A) is either:

(i) a governmental entity; or

(ii) a nonprofit corporation operating under a written agreement with a governmental entity, other than an individual judge or court; and

(B) uses public funds to provide legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 79.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases or cases under Title 3, Family Code, in the county, may create a department of the county or by contract may designate a nonprofit corporation to serve as a public defender’s office. The commissioners courts of two or more counties may enter into a written agreement to jointly create or designate and jointly fund a regional public defender’s office. In creating or designating a public defender’s office under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if creating or designating a regional public defender’s office:

(1) the duties of the public defender’s office;

(2) the types of cases to which the public defender’s office may be appointed under Article 26.04(f) and the courts in which an attorney employed by the public defender’s office may be required to appear;

(3) if the public defender’s office is a nonprofit corporation, the term during which the contract designating the public defender’s office is effective and how that conract may be renewed on expiration of the term; and

(4) if an oversight board is established under Article 26.045 for the public defender’s office, the powers and duties that have been delegated to the oversight board.

(b-1) The applicable commissioners court or commissioners courts shall require a written plan from a governmental entity serving as a public defender’s office.

(c) Before contracting with a nonprofit corporation to serve as a public defender’s office under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender’s office

(c-1) A written plan under Subsection (b-1) or a proposal must include:

(1) a budget for the public defender’s office, including salaries;

(2) a description of each personnel position, including the chief public defender position;

(3) the maximum allowable caseloads for each attorney employed by the public defender’s office;

(4) provisions for personnel training;

(5)  a description of anticipated overhead costs for the public defender’s office;

(6)  policies regarding the use of licensed investigators and expert witnesses by the public defender’s office; and

(7) a policy to ensure that the chief public defender and other attorneys employed by the public defender’s office do not provide representation to a defendant if doing so would create a conflict of interest that has not been waived by the client.

(d)  After considering each proposal for the public defender’s office submitted by a nonprofit corporation under Subsection (c), the commissioners court or commissioners courts shall select a proposal that reasonably demonstrates that the public defender’s office will provide adequate quality representation for indigent defendants in the county or counties.

(e)  The total cost of the proposal under Subsection (c) may not be the sole consideration in selecting a proposal.

(f)   A public defender’s office must be directed by a chief public defender who:

(1)  is a member of the State Bar of Texas;

(2)  has practiced law for at least three years; and

(3)  has substantial experience in the practice of criminal law.

(g)  A public defender’s office is entitled to receive funds for personnel costs and expenses incurred in operating as a public defender’s office in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the public defender’s office serves more than one county.

(h)  A public defender’s office may employ attorneys, licensed investigators, and other personnel necessary to perform the duties of the public defender’s office as specified by the commissioners court or commissioners courts under Subsection (b)(1).

(i)   Except as authorized by this article, the chief public defender and other attorneys employed by a public defender’s office may not:

(1)  engage in the private practice of criminal law; or

(2)  accept anything of value not authorized by this article for services rendered under this article.

(j) A public defender’s office may accept an appointment under Article 26.04(f) if:

(1) a conflict of interest exists that has not been waived by the client;

(2) the public defender’s office has insufficient resources to provide adequate representation for the defendant;

(3) the public defender’s office is incapable of providing representation for the defendant in accordance with the rules of professional conduct; or

(4) the public defender’s office shows other good cause for not accepting the appointment.

(k) The judge may remove from a case a person who violates a provision of Subsection (i).

(l) A public defender’s office may investigate the financial condition of any person the public defender’s office is appointed to represent. The public defender’s office shall report the results of the investigation to the appointing judge. The judge may hold a hearing to determine if the person is indigent and entitled to representation under this article.

(m) If it is necessary that an attorney who is not employed by a public defender’s office be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

1. An attorney employed by a public defender's office may be appointed with respect to an application for a writ of habeas corpus only if:
2. an attorney employed by the office of capital writs is not appointed in the case; and
3. the attorney employed by the public defender's office is on the list of competent counsel maintained under Section 78.056, Government Code.

**Art. 26.047.  Managed Assigned Counsel Program**

(a) In this article:

(1)  "Governmental entity" has the meaning assigned by Article 26.044.

(2)  "Managed assigned counsel program" or "program" means a program operated with public funds:

(A)  by a governmental entity, nonprofit corporation, or bar association under a written agreement with a governmental entity, other than an individual judge or court; and

(B)  for the purpose of appointing counsel under Article 26.04 of this code or Section 51.10, Family Code.

(b)  The commissioners court of any county, on written approval of a judge of the juvenile court of a county or a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a governmental entity, nonprofit corporation, or bar association to operate a managed assigned counsel program. In appointing an entity to operate a managed assigned counsel program under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify:

(1)  the types of cases in which the program may appoint counsel under Article 26.04 of this code or Section 51.10, Family Code, and the courts in which the counsel appointed by the program may be required to appear; and

(2)  the term of any agreement establishing a program and how the agreement may be terminated or renewed.

(c)  The commissioners court or commissioners courts shall require a written plan of operation from an entity operating a program under this article. The plan of operation must include:

(1)  a budget for the program, including salaries;

(2)  a description of each personnel position, including the program's director;

(3)  the maximum allowable caseload for each attorney appointed by the program;

(4)  provisions for training personnel of the program and attorneys appointed under the program;

(5)  a description of anticipated overhead costs for the program;

(6)  a policy regarding licensed investigators and expert witnesses used by attorneys appointed under the program;

(7)  a policy to ensure that appointments are reasonably and impartially allocated among qualified attorneys; and

(8)  a policy to ensure that an attorney appointed under the program does not accept appointment in a case that involves a conflict of interest for the attorney that has not been waived by all affected clients.

(d)  A program under this article must have a director. Unless the program uses a review committee appointed under Subsection (e), a program under this article must be directed by a person who:

(1)  is a member of the State Bar of Texas;

(2)  has practiced law for at least three years; and

(3)  has substantial experience in the practice of criminal law.

(e)  The governmental entity, nonprofit corporation, or bar association operating the program may appoint a review committee of three or more individuals to approve attorneys for inclusion on the program's public appointment list described by Subsection (f). Each member of the committee:

(1)  must meet the requirements described by Subsection (d);

(2)  may not be employed as a prosecutor; and

(3)  may not be included on or apply for inclusion on the public appointment list described by Subsection (f).

(f)  The program's public appointment list from which an attorney is appointed must contain the names of qualified attorneys, each of whom:

(1)  applies to be included on the list;

(2)  meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) and the Texas Indigent Defense Commission; and

(3)  is approved by the program director or review committee, as applicable.

(g)  A court may replace an attorney appointed by the program for the same reasons and in the same manner described by Article 26.04(k).

(h)  A managed assigned counsel program is entitled to receive funds for personnel costs and expenses incurred in amounts fixed by the commissioners court and paid out of the appropriate county fund, or jointly fixed by the commissioners courts and proportionately paid out of each appropriate county fund if the program serves more than one county.

(i)  A managed assigned counsel program may employ personnel and enter into contracts necessary to perform the program's duties as specified by the commissioners court or commissioners courts under this article.

Texas Administrative Code:

**Division 1. Definitions.**

**1 TAC § 174.10. Subchapter Definitions.** The following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appointing Authority. The appointing authority is the:

(A) Judge or judges who have authority to establish an indigent defense plan and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure; and/or

(B) Juvenile board that has authority to establish an indigent defense plan and approve attorneys to represent indigent respondents in juvenile cases under §51.102, Family Code.

(2) Contract Defender Program. Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.

(3) Contracting Authority. The contracting authority is the county or counties that have the authority to conclude a contract and to obligate funds for the provision of indigent defense services.

(4) Contractor. The contractor is an attorney, law firm, professional association, lawyer's association, law school, bar association, non-profit organization or other entity that can be bound by contract.

(5) Itemized Fee Voucher. An itemized fee voucher is any instrument, such as an invoice, that details services provided by a contractor providing indigent defense services. The itemized fee voucher may be in paper or electronic form. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by §71.0351, Government Code.

**Division 2. Application of Standards and Contracting Procedures.**

**1 TAC § 174.11. Application of Subchapter.** This subchapter applies to all contract defender programs. This subchapter does not apply to public defender programs established and governed by Chapter 26, Code of Criminal Procedure.

**1 TAC § 174.12. Application Process.** The appointing authority shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.

(1) Notification. The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.

(2) Opportunity to Respond. All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract.

(3) Application. All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records-Local Schedule GR.

**1 TAC § 174.13. Application Review Process.** Following the review of all applications the appointing authority shall by a majority vote select contractor(s), specify the types of cases each contractor is qualified to handle, and authorize the contracting authority to enter into a contract. The attorneys associated with the selected contractor(s) must meet the attorney qualification requirements contained in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the attorneys associated with the selected contractor(s) must also meet the attorney qualifications set by the regional selection committee and be approved by the regional selection committee to represent clients in capital cases. The appointing authority shall consider at least the following factors when evaluating applications:

(1) Experience and qualifications of the applicant;

(2) Applicant's past performance in representing defendants in criminal cases;

(3) Applicant's disciplinary history with the state bar;

(4) Applicant's ability to comply with the terms of the contract; and

(5) Cost of the services under the contract.

**1 TAC § 174.14. Awarding the Contract.** In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority may approve the recommended contractor(s) and enter into a contract for services. The contracting authority shall enter into a contract only if it complies with these standards and all applicable law governing professional services contracts entered into by counties. A contract shall not be awarded solely on the basis of cost.

**Division 3. Required Elements of a Contract for Indigent Defense Services (Each Component Shall be Included in a Contract for Indigent Defense Services and Shall Serve as the Basis for the NOA).**

**1 TAC § 174.15. Parties.** Identify the appointing authority, contracting authority, and contractor.

**1 TAC § 174.16. Term of Contract.** The contract shall specify the term of the contract, including any provision for extensions, and a provision for terminating the contract by either party.

**1 TAC § 174.17. Scope of Contract.** The contract shall specify the categories of cases in which the contractor is to provide services.

**1 TAC § 174.18. Minimum Attorney Qualifications.** The contract shall specify minimum qualifications for attorneys covered by the contract and require such attorneys to maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If the contract does not exclude capital cases in which the death penalty is sought, the qualifications shall equal or exceed the minimum attorney qualifications set by the regional selection committee and the attorneys covered by the contract shall be required to be on the list of attorneys approved by the regional selection committee to represent clients in capital cases. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to meet and maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide defense services.

**1 TAC § 174.19. Duration of Representation.** The contract shall specify that the contractor has the responsibility to complete all cases once representation is commenced during the term of the contract, unless an attorney covered by the contract is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure.

**1 TAC § 174.20. Substitution of Attorneys.** The contract shall identify the attorney(s) who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority. Nothing in the contract shall prohibit an attorney covered by the contract from being relieved or replaced in accordance with Article 26.04(j)(2) of the Code of Criminal Procedure.

**1 TAC § 174.21. Caseload Limitations.** The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract.

**1 TAC § 174.22. Standards of Representation.** The contract shall require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct.

**1 TAC § 174.23. Conflicts of Interest.** The contract shall state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest.

**1 TAC § 174.24. Investigators and Experts.** The contract shall specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure.

**1 TAC § 174.25. Compensation and Payment Processes.** The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in §174.19 of this subchapter.

1. Fee and expense payment process.
   * Payments shall be in accordance with a schedule of fees adopted by the Juvenile Board [Art. 26.05(b), CCP]
   * No payment shall be made until judge or director of a managed assigned counsel program approves payment after submissions on court’s attorney fee voucher [Art. 26.05(c), CCP]
   * If judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount that the judge or director approves and each reason for approving an amount different from the requested amount [Art. 26.05(c), CCP]
     + An attorney whose request for payment is disapproved or is not acted upon within 60 days of submission may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region
   * Expenses incurred without prior approval shall be reimbursed if expenses are reasonably necessary and reasonably incurred [Arts. 26.05(d) & 26.052(h), CCP]

Statutes:

Texas Code of Criminal Procedure:

**Art. 26.05. Compensation of counsel appointed to defend.**

(a) A counsel, other than an attorney with a public defender’s office or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

(d) A counsel in a non-capital case, other than an attorney with a public defender’s office, appointed to represent a defendant under this code shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed in the same manner provided for capital cases by Articles 26.052(f) and (g), and expenses incurred without prior court approval shall be reimbursed in the manner provided for capital cases by Article 26.052(h).

(e) A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove an attorney from consideration for appointment if, after a hearing, it is shown that the attorney submitted a claim for legal services not performed by the attorney.

**Art. 26.052. Appointment of counsel in death penalty case; reimbursement of investigative expenses.**

(f) Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state:

(1) the type of investigation to be conducted;

(2) specific facts that suggest the investigation will result in admissible evidence; and

(3) an itemized list of anticipated expenses for each investigation.

(g) The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

(1) state the reasons for the denial in writing;

(2) attach the denial to the confidential request; and

(3) submit the request and denial as a sealed exhibit to the record.

(h) Counsel may incur expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

1. Forms.
   * Affidavit of Indigence
   * Attorney Application for Appointment
   * Attorney Fee Schedule [Art. 26.05(b), CCP]
   * Attorney Fee Voucher [Art. 26.05(c), CCP]
   * Public Defender Plan or Proposal [Sec. 79.036(a)(2), GC]
   * Managed Assigned Counsel Plan of Operation [Sec. 79.036(a)(3), GC]
   * Contracts for Indigent Defense Services [Sec. 79.036(a)(4), GC]
   * Other Forms

Statutes:

Texas Family Code:

**Sec. 51.10. Right to Assistance of Attorney; Compensation.**

(i) Except as provided in Subsection (d) of this section, an attorney appointed under this section to represent the interests of a child shall be paid from the  general fund of the county in which the proceedings were instituted according to the schedule in Article 26.05 of the Texas Code of Criminal Procedure, 1965. For this purpose, a bona fide appeal to a court of civil appeals or proceedings on the merits in the Texas Supreme Court are considered the equivalent of a bona fide appeal to the Texas Court of Criminal Appeals.

Texas Code of Criminal Procedure:

**Art. 26.05. Compensation of counsel appointed to defend.**

(a) A counsel, other than an attorney with a public defender’s office or an attorney employed by the office of capital writs, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing.

(b) All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. On adoption of a schedule of fees as provided by this subsection, a copy of the schedule shall be sent to the commissioners court of the county.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. An attorney whose request for payment is disapproved or is not otherwise acted on by the 60th day after the date the request for payment is submitted may appeal the disapproval or failure to act by filing a motion with the presiding judge of the administrative judicial region. On the filing of a motion, the presiding judge of the administrative judicial region shall review the disapproval of payment or failure to act and determine the appropriate amount of payment. In reviewing the disapproval or failure to act, the presiding judge of the administrative judicial region may conduct a hearing. Not later than the 45th day after the date an application for payment of a fee is submitted under this article, the commissioners court shall pay to the appointed counsel the amount that is approved by the presiding judge of the administrative judicial region and that is in accordance with the fee schedule for that county.

Texas Government Code:

**Sec. 79.036. Indigent Defense Information**

(2) any plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;

(3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;

(4) any contract for indigent defense services required under rules adopted by the commission relating to a contract defender program;