**Adult Minimum Plan Requirements**

1. Conduct prompt and accurate magistration proceedings.

* Accused must be brought before magistrate within 48 hours of arrest\* [Art. 14.06(a), CCP]
* Magistrate must inform and explain right to counsel and right to appointed counsel to accused [Art. 15.17(a), CCP]
* Magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused. [Art. 15.17(a), CCP]
* Record must be made of:
  + Magistrate informing the accused of the accused’s right to request appointment of counsel [Art. 15.17(e)(1), CCP]
  + Magistrate asking whether accused wants to request appointment of counsel [Art. 15.17(e)(2), CCP]
  + Whether the person requested court appointed counsel [Art. 15.17(e)(3), CCP]
* If authorized to appoint counsel, magistrate must do so within 1 working day after receipt of request for counsel in counties with a population of 250,000 or more and within 3 working days in counties under 250,000 [Art. 15.17(a) & 1.051(c), CCP]
* If not authorized to appoint counsel, magistrate within 24 hours must transmit or cause to be transmitted to the appointing authority an accused’s request for counsel [Art. 15.17(a), CCP]
* For a person arrested on an out-of-county warrant, the magistrate must ask if the person wants to request counsel, inform the person of the procedures for requesting counsel, and ensure the person is provided reasonable assistance in completing the necessary forms for requesting counsel in the county issuing the warrant. [Art. 15.18(a-1), CCP]
* Requests for counsel made by persons arrested on out-of-county warrants must be transmitted to the appointing authority of the county issuing the warrant within 24 hours of the request being made. [Art. 15.18(a-1), CCP]

\* Note: Person arrested in a county with a population of less than three million for misdemeanor without a warrant must be released on bond in an amount no more than $5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time. Person arrested in a county with a population of three million or more for a misdemeanor without a warrant must be released on bond in an amount no more than $5,000 not later than 36 hours after arrest if a magistrate has not determined probably cause by that time. [Art. 17.033(a) & (a-1), CCP]

Statutes:

Code of Criminal Procedure:

**Art. 14.06. Must Take Offender Before Magistrate.**

(a) Except as otherwise provided by this article, in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other county of this state. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

(b) A peace officer who is charging a person, including a child, with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02, Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, the offense charged, and the following admonishment, in boldfaced or underlined type or in capital letters:

"If you are convicted of a misdemeanor offense involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. Section 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney."

**Art. 15.17. Duties of arresting officer and magistrate.**

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this subsection, “electronic broadcast system” means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

(f) A record required under Subsection (e) may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

**Art. 15.18. Arrest for Out-Of-County Offense.**

(a-1) If the arrested person is taken before a magistrate of a county other than the county that issued the warrant, the magistrate shall inform the person arrested of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant.

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

* Detail procedures used to determine whether a defendant is indigent [Art. 26.04(l)-(r), CCP]
* State financial standard(s) to determine whether a defendant is indigent [Art. 26.04(l), CCP]
* List factors courts will consider when determining whether a defendant is indigent [Art. 26.04(m), CCP]

Statutes:

Code of Criminal Procedure:

**Art. 1.051. Right to representation by counsel.**

(b) For purposes of this article and Articles 26.04 and 26.05 of this code, “indigent” means a person who is not financially able to employ counsel.

**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.

(r) A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel.

3. Establish minimum attorney qualifications.

* Establish objective qualification standards for attorneys [Art. 26.04, CCP]
  + Standards must require attorneys to complete at least 6 hours of continuing legal education pertaining to criminal 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 majority of judges to be placed on the appointment list [Art. 26.04(d)(4), CCP]

Statutes:

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.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. 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 from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

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

(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.

Texas Administrative Code:

**1 TAC §174.1. Appointment in Criminal Cases.** An Attorney who meets the requirements of this rule may be appointed to represent an indigent person arrested for or charged with a crime, if the attorney is otherwise eligible under the procedures developed under Article 26.04, Code of Criminal Procedure. Crime has the meaning assigned by §173.2(2). 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 criminal law during each 12-month reporting period. The judges of criminal courts of the county 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. The judges may require attorneys to complete more than the minimum number of hours of continuing legal education in criminal law in the procedures developed under Article 26.04, Code of Criminal Procedure; or

2) Is currently certified in criminal 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.

4. Appoint counsel promptly.

* Incarcerated persons: After receipt of request for counsel, counsel must be appointed within 1 working day in counties with a population of 250,000 or more and 3 working days in counties under 250,000 [Art. 1.051(c), CCP]
* Persons out of custody: Counsel must be appointed at defendant’s first court appearance or when adversarial judicial proceedings are initiated, whichever comes first [Art. 1.051(j), CCP] (*See also*, [*Rothgery v. Gillespie County*](http://www.scotusblog.com/wp/wp-content/uploads/2008/06/07-440.pdf), 554 U.S. 191, (2008); [presentation](http://www.courts.state.tx.us/tfid/08workshopinformation/AndreaREVISEDTF%20Indigent%20Defense%20Conference%2010%2023%2008.ppt) from indigent defense workshop)
* Persons arrested in other counties on local warrants must be appointed counsel within 1 working day of receipt of the request in counties with a population of 250,000 or more and within 3 working days of receipt of the request in counties under 250,000. [Art. 1.051(c-1), CCP]
* Persons arrested on out-of-county warrants must be appointed counsel if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. [Art. 1.051(c-1), CCP]
* Procedures for defendants to obtain the necessary forms to request counsel and to submit these forms to the appointing authority at any time after the initiation of adversary judicial proceedings. [1 TAC § 174.51]
* Advise unrepresented defendants of the right to counsel and procedures for obtaining counsel [Art. 1.051(f-2), CCP]

Statutes:

Texas Code of Criminal Procedure:

Code of Criminal Procedure:

**Art. 1.051. Right to representation by counsel.**

(c) An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement and in any other criminal proceeding if the court concludes that the interests of justice require representation. Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection as soon as possible, but not later than the end of the first working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel.

(e) An appointed counsel is entitled to 10 days to prepare for a proceeding but may waive the preparation time with the consent of the defendant in writing or on the record in open court. If a non-indigent defendant appears without counsel at a proceeding after having been given a reasonable opportunity to retain counsel, the court, on 10 days' notice to the defendant of a dispositive setting, may proceed with the matter without securing a written waiver or appointing counsel. If an indigent defendant who has refused appointed counsel in order to retain private counsel appears without counsel after having been given an opportunity to retain counsel, the court, after giving the defendant a reasonable opportunity to request appointment of counsel or, if the defendant elects not to request appointment of counsel, after obtaining a waiver of the right to counsel pursuant to Subsections (f) and (g), may proceed with the matter on 10 days' notice to the defendant of a dispositive setting.

(c-1) If an indigent defendant is arrested under a warrant issued in a county other than the county in which the arrest was made and the defendant is entitled to and requests appointed counsel, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county that issued the warrant shall appoint counsel within the periods prescribed by Subsection (c), regardless of whether the defendant is present within the county issuing the warrant and even if adversarial judicial proceedings have not yet been initiated against the defendant in the county issuing the warrant. However, if the defendant has not been transferred or released into the custody of the county issuing the warrant before the 11th day after the date of the arrest and if counsel has not otherwise been appointed for the defendant in the arresting county under this article, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the arresting county immediately shall appoint counsel to represent the defendant in any matter under Chapter 11 or 17, regardless of whether adversarial judicial proceedings have been initiated against the defendant in the arresting county. If counsel is appointed for the defendant in the arresting county as required by this subsection, the arresting county may seek from the county that issued the warrant reimbursement for the actual costs paid by the arresting county for the appointed counsel. (f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

(f-1) In any adversary judicial proceeding that may result in punishment by confinement, the attorney representing the state may not:

(1)  initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or

(2)  communicate with a defendant who has requested the appointment of counsel, unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

(A)  has been given a reasonable opportunity to retain and has failed to retain private counsel; or

(B)  waives or has waived the opportunity to retain private counsel.

(f-2) In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

(1)  has been given a reasonable opportunity to retain and has failed to retain private counsel; or

(2)  waives or has waived the opportunity to retain private counsel.

(g) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings:

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

(h) A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

(i) Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have not been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel immediately following the expiration of three working days after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the three working days, the court or the courts' designee shall appoint counsel as provided by Subsection (c). In a county with a population of 250,000 or more, the court or the courts' designee shall appoint counsel as required by this subsection immediately following the expiration of one working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. If adversarial judicial proceedings are initiated against the defendant before the expiration of the one working day, the court or the courts' designee shall appoint counsel as provided by Subsection (c).

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

5. 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 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 judges
  + 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:

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 office.

(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 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 a 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 an 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 judges [Art. 26.05(b), CCP]
* No payment shall be made until judge or director, if the county operates a managed assigned counsel program, approves payment after submission of attorney fee voucher [Art. 26.05(c), CCP]
* If judge or director disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount. [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. [Art. 26.05(c), CCP]
* 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:

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.
   * Magistrate’s Warning Form
   * Affidavit of Indigence [1 TAC § 174.51]
   * Attorney Application for Appointment
   * Attorney Fee Schedule [Art. 26.05(b), CCP]
   * Attorney Fee Voucher [Art. 26.05(c), CCP]
   * Waiver of Counsel
   * 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:

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;