

Task Force on Indigent Defense

Review of Dallas County Indigent Defense Systems

Site Visit: July 16 – July 20, 2007

Table of Contents

Introduction	3
Quality Assessment	7
Core Requirement 1. Conduct prompt and accurate magistration proceedings:	7
Core Requirement 2. Determine indigence according to standards directed by the indigent defense plan.	10
Core Requirement 3. Establish minimum attorney qualifications.	12
Core Requirement 4. Appoint counsel promptly.	17
Core Requirement 5. Institute a fair, neutral, and non-discriminatory attorney selection process.	21
Core Requirement 6. Promulgate standard attorney fee schedule and payment process.	27
Recommendations Not Included in the Quality Assessment	31
Self-Assessment	31
Direct Electronic Filing in Criminal Cases	31
Conclusion	31
Appendix -- How to Conduct an Initial Indigent Defense Self-Assessment	32

Introduction

Task Force Background

In January 2002, the 77th Texas Legislature established the Task Force on Indigent Defense (“Task Force”). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas. The Task Force is given a directive under Tex. Gov’t Code § 71.062(b) to monitor local jurisdictions compliance with the Fair Defense Act (“FDA”).

Goal

Promote local compliance and accountability with the requirements of the FDA through evidence-based practices and provide technical assistance to improve processes where needed. This visit is intended to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA. The review process will also help the Task Force test its monitoring procedures.

Core Requirements of the Fair Defense Act

1. Conduct prompt and accurate magistration proceedings:
 - Inform and explain right to counsel to accused;
 - Provide reasonable assistance to accused in completing necessary forms to request counsel;
 - Maintain magistrate processing records.
2. Determine indigence according to standards directed by the indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate a standard attorney fee schedule and payment process.

Methodology

The test site visit for Dallas County was conducted by Joel Lieurance between July 16 and 20, 2007. Carol Conner, the fiscal monitor, conducted a fiscal review during this same time period. The program monitor interviewed representatives of the following departments: the auditors office; a district judge; a statutory county judge; the district court manager; the statutory county court manager; the district attorney’s office; the public defender’s office; a magistrate judge; the district clerk’s office; the county clerk’s office; and the pre-trial release office. Reviewer also observed a magistration proceeding. Reviewer did not examine indigent defense practices or records pertaining to juveniles other than the indigent defense plan. Reviewer examined the following records:

- Jurisdiction’s indigent defense plan
- Magistrate’s warnings to determine time from arrest to magistration and to determine the percent of persons requesting counsel
- Affidavits of indigence, orders appointing attorneys, indigent defense coordinator logs, and bonding information to determine time from request to appointment of counsel
- Auditor’s payment records to determine whether appointments were made in a fair, neutral, and non-discriminatory manner

Summary of Findings

Areas to Address

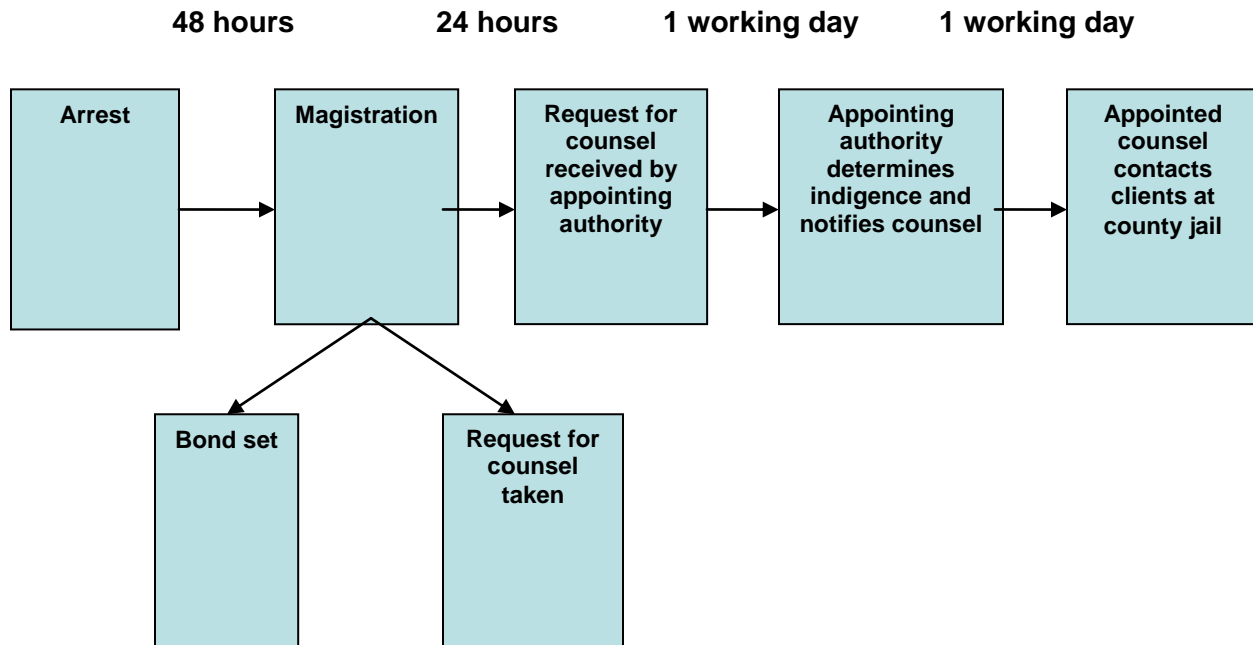
- Under the current system, appointments for detained persons in the statutory county courts are not timely in approximately 40% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met.
- Under the current system, appointments for detained persons in the district courts are not timely in approximately 22% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met. Many of these untimely appointments occurred just past the statutory deadline.
- While the data reviewed came from FY2006, the distribution of court appointments in the statutory county courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.
- While the data reviewed came from FY2006, the distribution of court appointments in the district courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.

Areas for Additional Consideration

- The County's record keeping would be improved if the magistration form listed whether counsel was requested. Requests for counsel made at magistration are being recorded as required by Article 15.17(e), but tracking original requests from the defendant file is difficult with the current system.
- No distinction is made in the indigent defense plan between bonded and detained persons. This is perfectly acceptable as the plan sets a higher standard than Article 26.04 requires. However, this means that bonded persons are to receive appointed counsel within one working day of the appointing authority receiving the request, and not by the earlier of the initial appearance or the initiation of adversarial judicial proceedings.
- Since the indigent defense plan does not differentiate between bonded and detained persons, the statutory county courts may want to consider ruling on requests for counsel forwarded to the respective courts before the court is able to track the arrestees in question and is able to determine whether the individual has bonded. Under the current indigent defense plan, the time for appointing counsel to both bonded and detained persons is one working day from when the appointing authority receives the request.
- The juvenile indigent defense plan states, "The **304th** and **305th** Juvenile District Courts shall create separate lists from which private attorneys are appointed to represent indigent children." This may conflict with the Tex. Fam. Code § 51.102 requirement for the juvenile board to adopt procedures for including and removing attorneys from the appointment list and for appointing attorneys to individual cases. The Task Force will seek guidance on this issue as to whether individual courts may maintain their own list and not follow a central wheel established by the juvenile board.

Overview of Dallas County's Indigent Defense Systems

Fair Defense Act Timeline Model for Counties with Populations Over 250,000



The Dallas County Jail receives arrestees from 67 different arresting agencies. With the exception of the City of Dallas, municipalities conduct their own magistration and then transfer arrestees to the Dallas County Jail where arrestees are again given magistrate's warnings by magistrate judges. The City of Dallas sends its arrestees directly to the Dallas County Jail. Upon being booked into the Dallas County Jail, the arrested person is assigned to a court based upon the arresting charge. Under the Dallas Indigent Defense Plan, prosecutors are to receive an offense report within 72 hours of the person being brought to the Dallas County Jail. The case is generally filed shortly after receiving the arrest report.

If an individual requests counsel, the request is transferred to the court assigned to the arrestee. This counsel request is usually transferred to the appointing authority prior to a case filing. The county has one working day to assign counsel after the request is transferred. Counsel is assigned by each individual court with public defenders receiving a portion of the cases, and private counsel receiving the rest of the cases. After assignment, the courts arrange for defendants to be brought from the jail to a location at the courthouse in order to meet with counsel. Meetings between arrestees and the public defender often occur within 24 hours of appointment. Counsel continues to represent the individual until final disposition of the case.

A summary of indigent defense statistics, which were submitted by the County to the Task Force on Indigent Defense through the Office of Court Administration (OCA), follows on the next page. The tables show appointment rates for the court systems as well as respective expenditure data.

Dallas County	2001 Baseline	2003	2004	2005	2006	2005 State of Texas
2000 Population	2,218,899	2,218,899	2,218,899	2,218,899	2,218,899	20,851,820
Population Estimate	2,248,226	2,284,665	2,287,288	2,293,394	2,304,909	22,678,651
Felony Cases Added		27,975	30,685	31,200	32,961	261,530
Felony Cases via Public Defender		10,954	12,583	11,583	11,360	16,633
Total Felony Appointments		23,038	24,172	23,535	23,452	153,685
Felony Appointment Rate		82.35%	78.77%	75.43%	71.15%	58.76%
Misdemeanor Cases Added		59,450	70,955	74,482	75,655	639,148
Misdemeanor Cases via Public Defender		15,641	21,052	17,454	16,527	22,641
Total Misdemeanor Appointments		23,966	28,457	27,215	27,688	185,560
Misdemeanor Appointment Rate		40.31%	40.11%	36.54%	36.60%	29.03%
Juvenile Cases Added		3,896	4,305	4,231	4,642	48,349
Juvenile Cases via Public Defender		8,729	9,454	8,787	10,186	12,040
Total Juvenile Appointments		11,153	12,042	11,466	13,255	57,357
Total Attorney Fees	\$10,369,198	\$9,976,504	\$9,095,766	\$9,019,055	\$9,832,718	\$113,931,370
Public Defender Expenditures		\$6,310,488	\$6,973,159	\$6,585,148	\$8,513,806	
Total ID Expenditures	\$16,099,401	\$18,326,945	\$17,812,870	\$17,483,135	\$20,338,385	\$140,274,559
Increase in Total Expenditures over Baseline		13.84%	10.64%	8.59%	26.33%	
Total ID Expenditures per Population	\$7.16	\$8.02	\$7.79	\$7.62	\$8.82	
Task Force Formula Grant Disbursement		\$1,042,618.00	\$1,030,405.00	\$1,182,229.00	1,208,511.00	
Recoupment of fees		\$392,239.00	\$479,779.00	\$451,547.00	\$713,655.00	

Quality Assessment

In the assessment that follows, the core requirements of the FDA were listed with statutory requirements, how the county's indigent defense plans compared to these requirements, and then how practice compared to statute. FDA statutes are referenced throughout this report and may be found in an attachment to the report.

Core Requirement 1. Conduct prompt and accurate magistration proceedings:

- Inform and explain right to counsel to accused;
- Provide reasonable assistance to accused in completing necessary forms to request counsel;
- Maintain magistrate processing records.

Statutory Provisions

The FDA requires that magistration is conducted without unnecessary delay, but not later than 48 hours after the person is arrested. At magistration, the arrestee is to be informed in clear language of the following:

- the accusation against him/her and of any affidavit filed;
- the right to retain counsel;
- the right to remain silent;
- the right to have an attorney present during any interview with peace officers or attorneys representing the state;
- the right to terminate the interview at any time;
- the right to have an examining trial; and
- 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. Tex. Code Crim. Proc. art. 15.17(a). If the arrestee requests appointed counsel, the arrestee is required to complete under oath a questionnaire concerning his financial resources. Tex. Code Crim. Proc. art. 26.04(n).

If the person arrested is not a US Citizen, he/she has the right to request that the consulate for his/her native country is informed that he/she is in jail. The consulate is to keep the family informed of the arrestee's situation and to make sure that the arrestee's rights are protected. The magistrate is to ask, "Do you request that the court notify the consulate for your native country that you are in jail at this time?" This is a continuing legal right that the arrestee may exercise at any time. (If the accused requests notification of his/her consulate, the magistrate must determine the country of origin and send notice to consulate by fax, if possible.) For more information regarding this subject please go to:

http://www.oag.state.tx.us/AG_Publications/pdfs/vienna_guidebook.pdf (*Magistrate's Guide to the Vienna Convention on Consular Notifications*).

The record of the magistrate's warning must comply with Article 15.17(e), and must contain information indicating that:

- (1) the magistrate informed the person of the person's right to request appointment of counsel;
- (2) the magistrate asked the person whether the person wanted to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

This record may consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a). Tex. Code Crim. Proc. art. 15.17(e)-(f).

Jurisdiction's Indigent Defense Plan

The county and district court indigent defense plans are consistent with the prompt and accurate magistration requirements set out in Article 15.17.

Adult Plan:

10.1 Each person arrested in Dallas County shall be brought before a magistrate within 48 hours of arrest.

10.2 Every Dallas County arresting agency shall comply with the requirements of the Order of the judges of the criminal district courts and district courts giving preference to criminal cases regarding detention of persons without charges filed. Any person who has not had charges filed within the time periods required by said Order shall be released in accordance with said Order.

Jurisdiction's Process

Under Article 15.17(a), magistration is to be conducted within 48 hours of arrest. The Dallas County Jail receives arrestees from 67 arresting agencies. Many of these agencies are municipal authorities who book the arrestee into their jail and provide magistrate's warnings. The arrestee is then transferred to the Dallas County Jail where magistrate's warnings are again provided, including the right to court appointed counsel. The only municipality that does not provide its own magistration is the City of Dallas, which sends all of its arrestees directly to the Dallas County Jail. Magistration is conducted throughout the day by magistrate judges at the Dallas County Jail. Often charges are not all filed at once against an individual. The Dallas County Indigent Defense Plan requires that charges be filed with the prosecutor by the arresting agency within three business days of the individual being booked at the Dallas County Jail. As such, cases are often brought in a piecemeal fashion, and the individual may have several charges filed on different days and be given separate magistrate's warnings each time charges are filed.

Magistrations data is stored electronically as well as on paper. The paper form does not include a checkbox indicating whether counsel is requested at magistrations. Instead request information is stored electronically, and requests are transferred to the appropriate court. However, verifying whether requests are actually being transferred correctly is difficult without being able to look at requests noted on the magistrations form. Instead one must look to defendant files, where affidavits of indigence are stored. These affidavits only make it into the defendant file if the person requesting counsel was actually given assistance in filling out the form and if the request was actually transferred to the correct court. If magistrations forms listed whether counsel was requested, one could note whether assistance in filling out affidavits of indigence was given timely and whether requests were correctly transferred and acted upon by the courts.

For Additional Consideration: The County’s record keeping would be improved if the magistrations form listed whether counsel was requested. Requests for counsel made at magistrations are being recorded as required by Article 15.17(e), but tracking original requests from the defendant file is difficult with the current system.

Magistrations Warnings Observed

Reviewer observed magistrations conducted at the Dallas County Jail for 28 arrestees (14 misdemeanors and 14 felonies). For most of the group, this magistrations was the result of additional charges brought by an arresting agency. Most of this group had already received magistrate’s warnings at the Dallas County Jail and had been given the opportunity to request counsel previously. All arrestees spoke English. The magistrate notified arrestees of the Article 15.17 warnings, including the right to court-appointed counsel. Four of the misdemeanor arrestees and three of the felony arrestees requested counsel. The magistrate judge appeared to clearly convey Article 15.17 warnings so that all persons desiring appointed counsel might understand the process for requesting counsel. Reviewer asked the magistrate judge what percent of persons she thought would generally request counsel, and she felt between 50% and 75% of arrested persons request with more felony arrestees requesting counsel than misdemeanor arrestees.

Magistrations Records Examined

Reviewer was able to obtain arrest dates and times of the person’s last magistrations at the Dallas County Jail for 40 arrestees. Magistrations for these arrestees occurred between January, 2006 and November, 2006. All magistrations occurred within 2 days of arrest, and so appear to have occurred within 48 hours of arrest.

Dallas County Time to Magistrations Data	Sample Size	Percent
Magistrate’s warnings where days to magistrations could be determined	40	100%
Magistrations Occurs x days after booking:		
0 days	23	57.5%
1 day	17	42.5%
2 days	0	0%
Magistrations seems to be within 48 hours	40	100.0%

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

Statutory Provisions

Each jurisdiction must establish procedures and financial standards for determining indigence. The procedures must apply to each defendant equally, regardless of whether or not bail has been posted. In determining whether a defendant is indigent, the court or the court's 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 previously listed. Tex. Code Crim. Proc. art. 26.04(l)-(m).

A defendant who requests a determination of indigence and appointment of counsel must:

- (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.
- Tex. Code Crim. Proc. art. 26.04(n).

In addition the defendant is required to sign an oath that substantially conforms to the following:

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

Tex. Code Crim. Proc. art. 26.04(o).

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 indigence or non-indigence is made, the defendant, the defendant's counsel, or the attorney representing the state may move for reconsideration of the determination. Tex. Code Crim. Proc. art. 26.04(p).

For juveniles, Tex. Fam. Code § 51.10(f)-(g) states:

- (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.

The rules of Article 26.04 still apply to juveniles, except that the income and assets of the person responsible for the child's support are used in determining whether the child is indigent. Tex. Fam. Code § 51.102(b)(1).

Jurisdiction's Indigent Defense Plan

The county's indigent defense plans incorporate a standard of indigence consistent with Article 26.04 requirements.

Adult Plan (Statutory County Courts): *The judge or judge's designee appoints counsel prior to any adversarial judicial proceedings, or where the judge concludes that the interests of justice require representation, for all indigent defendants who do not refuse the appointment of counsel.*

A. Standard -- The standard for indigency for purposes of appointing counsel is whether the defendant is financially able to employ counsel.

B. Method For Determining Indigency -- Any defendant that cannot post bond and request a court appointed attorney will be assigned a court appointed attorney or an attorney from the Public Defenders Office. If the defendant does not request an attorney and the defendant has made no effort to obtain counsel, an attorney will be appointed. If a defendant posts bond after appointment, the attorney will continue to represent that defendant through final disposition. If a court appointed attorney is requested on the first setting the judge or the judge's designee shall receive evidence regarding:

- (1) the income, assets and financial resources available to the defendant;*
- (2) the necessary expenses and other financial obligations of the defendant;*
- (3) the number of dependents supported by the defendant.*

The defendant will be appointed counsel if the defendant is financially unable to afford counsel without substantial hardship in providing basic economic necessities to the person or the person's dependents. A defendant who has been found indigent is presumed indigent unless a material change in the defendant's financial circumstances occurs. If the court determines the defendant has the financial resources to pay for any expenses and costs of legal services the court has provided, the court shall order the defendant to pay during the pendency of the charges, if convicted, as court costs the amount the court determines the defendant is able to pay.

(District Courts):

4.1 The court or its designee must evaluate each request for a court appointed attorney to determine whether the defendant is indigent. The court or its 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 following factors: (a) the defendant's income; (b) the source of the defendant's income; (c) the assets and property owned by the defendant; (d) the defendant's outstanding obligations and necessary expenses; (e) the number and age of the defendant's dependents, and (f) income of the defendant's spouse that is available

to the defendant. The defendant will fill out a form addressing the above factors and if the court or its designee finds the defendant is indigent, the form will be filed in the court file.

Juvenile Plan: *The child's indigency is determined by the assets and income of the parent or other person responsible for the support of the child. Parents or other persons responsible for the support of the child shall be required to complete a final information sheet provided by the Court for filing among the papers of the Court. Financial ability shall be determined from the information required in the document. A parent who fails to file a financial statement is presumed to be not indigent.*

In determining whether a child is indigent the Court will take into consideration the parent's (or other person responsible for the child) income, assets, property owned, outstanding obligations, necessary expenses, and the number and ages of dependents of the parent. If the Court determines that the amount of real disposable income is less than the fee charged by competent counsel in Dallas County, Texas then the child will be presumed to be indigent.

In some instances parents or other persons responsible for the child request the appointment of private counsel although they are financially able to retain counsel. The Court upon a request of this nature shall appoint counsel in compliance with the terms of this plan but will notify the parent or other responsible party that they may be required to pay some portion or all of the expense of the attorney if their financial information sheet indicates the financial ability to do so.

Core Requirement 3. Establish minimum attorney qualifications.

Statutory Provisions

Judges of the statutory county courts are to establish an appointment list of qualified attorneys to provide representation in misdemeanor cases. Likewise, judges of the district courts are to establish an appointment list of qualified attorneys to provide representation in felony cases. The judges are to specify objective qualifications necessary to be included on the list and may establish graduated lists, according to the seriousness of the offense. Each attorney applying to be on an appointment list must be approved by a majority of the judges who try criminal cases at that court level. In a county where a public defender is used, the courts may appoint the public defender to represent defendants. Tex. Code Crim. Proc. art. 26.04(d)-(f). Attorneys accepting appointments are required to annually obtain 6 hours of criminal law continuing legal education (CLE) credit per Title 1, §174.1 of the Texas Administrative Code.

For juveniles, the juvenile board is to establish qualifications necessary for an attorney to be included on the appointment list. The plan must recognize the differences in qualifications and experience necessary for appointments involving supervision, delinquent conduct, or commitment to the Texas Youth Commission. Tex. Fam. Code § 51.102. Attorneys accepting appointments are required to annually obtain 6 hours of juvenile law continuing legal education (CLE) credit per Title 1, §174.2 of the Texas Administrative Code.

Appointed attorneys are to make every reasonable effort to contact the defendant by the end of the first working day after receiving the appointment and to interview the client as soon as

practicable. Tex. Code. Crim. Proc. art. 26.04(j). The public defender may have additional objective qualifications in providing quality representation as the duties of the public defender are to be specified by the commissioner's court in a written agreement. Art. 26.044(b). Attorneys must also meet the standard of care set by the Texas Bar in the Texas Disciplinary Rules of Professional Conduct.

Jurisdiction's Indigent Defense Plan

The jurisdiction's plans are consistent with Tex. Code Crim. Proc. art. 26.04 appointment list requirements and Tex. Admin. Code Title 1, Ch. 174 CLE requirements.

Adult Plan (Statutory County Courts): *Attorneys who wish to be placed on the misdemeanor court appointment wheel pursuant to the Dallas County Criminal Courts Indigent Defense Plan must be qualified to represent criminal defendants charged with misdemeanor offenses. The qualifications are:*

A. General Qualifications

1. *An attorney must be a member in good standing with the State Bar of Texas.*
2. *An attorney must have a secretary, receptionist, local area code answering service, or a local area code regularly monitored answering machine.*
3. *An attorney must have a functioning fax machine and an e-mail address, both available 24 hours a day.*
4. *An attorney shall have on file with the Court Managers Office a completed sworn application approved by the Judges of the County Criminal Courts.*
5. *An attorney shall promptly notify, in writing, the Court Managers Office and each individual Court Coordinator of any changes to the information contained in the application for appointments.*
6. *An attorney shall promptly notify, in writing, the Court Manager of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments in representing indigent defendants.*
7. *An attorney shall annually file with the Court Managers Office each year a copy of his/her Sate Bar of Texas Continuing Legal Education annual reporting form which demonstrates the annual completion of at least six hours of criminal law continuing legal education. None of the six hours of CLE may be self study, juvenile, federal, civil, or family. Your CLE report must be filed by January 15th of each year to remain eligible on the wheel. Hours are county by calendar year, not birth month.*
8. *An attorney must be licensed for at least one year before applying for the misdemeanor wheel.*
9. *An attorney must either live in Dallas County or office within Dallas County.*
10. *An attorney shall meet any additional requirements that may be later imposed by the Judges of the County Criminal Courts trying misdemeanor cases.*

B. Experience

- *Licensed to practice law and provide proof of participation in a law school criminal clinic; or attend either the Criminal Defense Lawyers Project Criminal Trial Advocacy*

Institute held at Sam Houston State University in Huntsville, in March each year or the National Institute of Trial Advocacy Course held in Dallas, at SMU every June.

Participation in a criminal clinic must be within thirty months of being placed on the misdemeanor wheel; or

- *Licensed to practice law and have been lead counsel in two (2) or more criminal jury trials class B or higher; or*
- *Licensed to practice law and have sat (as a defense attorney) co-counsel / second chair in five or more criminal trials class B or higher, of which at least 3 must be jury trials; or*
- *Licensed to practice law and are employed as a public defender in the Dallas County Public Defender's Office;*
- *If applying for appeals, you must have authored briefs on at least 5 appeals;*
- *And be of sound mind and good character.*

Each County Criminal Court and County Criminal Court of Appeals will have a copy of the master list which will originate in alphabetical order. On a quarterly basis the Judges will, by majority vote, update the master list adding names of newly qualified attorneys and removing names of attorneys who fail to appear in court on their specified appointment date or who fall below the minimal standards and qualifications. The list will include: name state bar number, address, e-mail address, fax number, office phone number, cellular phone number, pager number and any secondary language that is spoken.

(District Courts):

1.1 Attorneys requesting court appointments must submit an application on the approved applications form to the district court judges. A majority of the judges – 9 criminal district judges – must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle cases corresponding to an appropriate level.

1.2 The master list will be multi-level, with four trial levels: 1st degree and non-death penalty capital cases, 2nd degree, 3rd degree, and state jail. Under each level there will be a sub-level for multi-lingual lawyers.

1.3 Attorneys on that master list at a certain level may petition to advance to a higher level by submitting a new application. A majority of the district judges must vote to approve the change.

1.4 An attorney who does not receive sufficient votes to be placed on any level of the master list may re-apply in 90 days.

1.5 A separate list will be maintained for appeals and writ appointments. Attorneys must submit the appropriate application. A majority of the judges – 9 criminal district judges – must screen applicants who meet the objective qualifications and approve those attorneys whom they consider competent to handle appeals and writs.

2.1 Requirements for attorneys qualifying at each level of the wheel will increase as the possible consequences to the defendant become more serious. Minimum requirements are as follows:

State Jail – Licensed for 2 years and at least 6 points on the application form;

Third Degree – Licensed for 3 years and at least 12 points on the application form;

Second Degree – Licensed for 4 years and at least 18 points on the application form;

First Degree and Non-Death Penalty Capital Murder – Licensed for 5 years and at least 25 points on the application form.

2.2 *Unusual or exceptional experience demonstrating substantial involvement in criminal law may be substituted for trial experience on the application form. If claiming this exception, the attorney must provide a detailed explanation of the attorney's experience as an attachment to the application.*

6.1 *To remain eligible for appointment an attorney must:*

(i) complete a minimum of twelve hours of continuing legal education pertaining to criminal law during each 12 month reporting period; or

(ii) attend all sessions of either the State Bar Advanced Criminal Law Course or the TCDLA Advanced Law Short Course once every two years; or

(iii) be currently certified in criminal law by the Texas Board of Legal Specialization.

6.2 *Continuing legal education may include teaching at an accredited CLE activity, or other CLE activities accredited under Section 4 Article XII, of the State Bar Rules, which may include online courses and credit for teaching or publishing criminal law materials.*

6.3 *Self-study hours may not be included in meeting the required CLE hours.*

6.4 *CLE hours completed during any reporting period in excess of the minimum required hours may be applied to the following reporting period's requirement. CLE hours may only be carried over for one year.*

6.5 *The reporting period shall be from January 1st to December 31st of each year. Each attorney must provide proof that the attorney has met the CLE requirements during the reporting period by reporting their CLE hours each January on the form approved by the judges of the criminal district courts and the district courts giving preference to criminal cases. The CLE compliance report must be sworn to by the attorney.*

6.6 *The CLE compliance report form shall be turned in to the Criminal District Court Manager during the month of January following each reporting period and must be received by the Criminal District Court Manager no later than January 31st of each year.*

Juvenile Plan: *The public lists shall be created from the appointment lists currently maintained by each court. Each Judge shall screen the current list and categorize the lists as outlined above. In categorizing attorneys on the current list those who have not been actively practicing in the area of juvenile law may be dropped from the list. All remaining shall be categorized based on years of experience, number of trials and CLE in criminal or juvenile law. Thereafter attorneys must apply to each Court to be included on the lists by submitting the attached Application/Affidavit with the Coordinator. Based on the application, the Judge will assign the attorney pursuant to the categories outlined herein. The qualifications for each category shall be assigned as follows:*

CINS CHARGES: a minimum of one (1) year experience in the practice of law or participation as counsel/co-counsel on three (3) juvenile cases. A minimum of 6 hours of CLE certified credit in juvenile law each year or currently in certified juvenile law by the Texas Board of Legal Specialization.

DELINQUENCY CHARGES WITH NO TYC COMMITMENT POSSIBLE: a minimum of one (1) year experience in the practice of law or participation as counsel/co-counsel in five (5) juvenile cases. A minimum of 10 hours of certified CLE credit in criminal or juvenile law each year or Board Certified in Juvenile Law.

DELINQUENCY CHARGES WITH TYC COMMITMENT POSSIBLE: a minimum of two (2) years in the practice of law or participation as counsel/co-counsel on ten (10) juvenile cases. A minimum of 15 hours of certified CLE credit in criminal or juvenile law each year or Board Certified in Juvenile Law.

DETERMINATE SENTENCING CHARGES: a minimum of three (3) years experience in the practice of law or participation as counsel/co-counsel on 15 juvenile cases. A minimum of 15 hours of certified CLE credit in criminal or juvenile law each year or Board Certified in Juvenile Law.

CERTIFICATION CHARGES: a minimum of three (3) years experience in the practice of law or participation as counsel/co-counsel on 20 juvenile cases. A minimum of 15 hours of certified CLE credit in criminal or juvenile law each year or Board Certified in Juvenile Law.

MENTALHEALTHISSUES AND APPEALS: at least the qualifications for determinate sentencing charges or Board Certified in Juvenile Law.

After submission of the Application/Affidavit with the Court Coordinator and review by the Judge, the attorney will be tentatively placed on the appointment list pending ratification by the Juvenile Board at the next regularly scheduled meeting for consideration to the Public Appointment List.

The appointment list for each court must receive the approval of the Dallas County Juvenile Board by a majority vote. The lists shall be approved annually. The Juvenile Board, by a majority vote, may strike any attorney from the list submitted by the Court.

The Juvenile Board shall set the applicable 12 month reporting period. Attorneys placed on the master list for appointments must provide proof during each 12 month reporting period that they meet the minimum CLE requirements. Attorneys who fail to provide proof that they meet the CLE requirements will be removed from the master list.

Jurisdiction's Process:

As required by Task Force policy, the jurisdiction tracks attorney CLE hours and provides additional standards above those set by 1 TAC 174. The jurisdiction is commended on these additional standards. The fiscal monitor observed tracking of attorney CLE hours and this issue is covered in her report.

Core Requirement 4. Appoint counsel promptly.

Statutory Provisions

An indigent defendant is entitled to have an attorney appointed to represent him/her in any adversarial 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. Tex. Code Crim. Proc. art. 1.051(a). 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 more than 24 hours after the request, transmit or cause to be transmitted to the appointing authority, the forms requesting counsel. Art. 15.17(a). For counties with a census population over 250,000, **if an indigent defendant is not released from custody prior to the appointment of counsel**, the court or court's designee shall appoint counsel as soon as possible, but **not later than the end of the first working day** after the date on which the court or the court's designee receives the defendant's request for appointment of counsel. Art. 1.051(c). **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**. Art. 1.051(j).

For juveniles, if the child does not have counsel at the detention hearing and a determination was made to detain the child, the child is entitled to immediate representation of an attorney. The court must order the retention of an attorney or appoint an attorney. Tex. Fam. Code § 51.10(c).

If a determination was not made to detain the child, determinations of indigence are made on the filing of a petition 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. Tex. Fam. Code § 51.101(c). A juvenile court that makes a finding of indigence under Subsection 51.101(c) must 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. § 51.101(d).

Jurisdiction's Indigent Defense Plan

The indigent defense plans meet the time requirements for appointing counsel set in Tex. Code Crim. Proc. art. 26.04 and Tex. Fam. Code Ch. 51. The adult plans set out a higher standard than the requirements laid out in Article 26.04.

Adult Plan: *Counsel shall be appointed for eligible defendants within one working day of the court's receipt of a request for appointed counsel.*

When an eligible defendant requests appointment of counsel and submits the required documents, the request and any required documentation shall be transmitted to the court within 24 hours of the request for appointment of counsel being made.

For Additional Consideration: No distinction is made in the indigent defense plan between bonded and detained persons. This is perfectly acceptable as the plan sets a higher standard than Article 26.04 requires. However, this means that bonded persons are to receive appointed counsel within one working day of the appointing authority receiving the request, and not by the earlier of the initial appearance or the initiation of adversarial judicial proceedings.

Juvenile Plan (child in custody): *Since it is often difficult to make a determination of financial need in a timely fashion, the Juvenile Public Defender will be appointed to represent all children in custody for their detention hearings. Parents will be advised that they have the right to retain private counsel at any stage of the proceedings and said private counsel may appear to represent the child for his/her detention hearing. In the absence of private counsel (either retained or otherwise appointed herein) the public defender will continue representation at the detention hearing for so long as the child remains in custody.*

(child out of custody): *If a child is released at the initial detention hearing, or was released by intake, or referred to the Juvenile Court without being in custody, then there is no need under Section 51.01 for appointment of counsel unless and until a petition for adjudication or discretionary transfer is filed. If a petition is filed then the Court is required by Section 51.101 to determine indigency and if it is determined that the family is indigent, appointment becomes necessary not later than five working days after the petition is served on the child. Because the Court has no financial information on the parents to make a determination of indigency at the point of service, the Public Defender's office will be appointed at the time the service of citation is issued in order to comply with the Statute. The parents will receive notification of the appointment of the Public Defender with their citation and will be advised that the appointment will be reviewed by the Court at the child's first Court hearing at which time the Public Defender may be continued on the case or Private Counsel appointed if the family has not retained counsel. Along with the citation and appointment, parents will additionally receive a financial information sheet with instructions to complete the sheet before the child's first hearing for the Court's review in making appointments on the case because of indigency. If indigency is determined at the initial hearing and appointment of counsel needs to continue, preference shall be given to the appointment of private counsel from the Public Appointment List in the manner herein outlined to allow the Public Defender to be primarily appointed for children in custody.*

(appointment after modification motion filed): *If a child is already on judicial probation and a Motion to Modify is filed that seek either revocation with commitment to the Texas Youth Commission or modification to require confinement in a secure local facility, then indigency must be determined upon the filing of the petition and if the family is determined to be indigent, appointment of counsel made within five days of filing the motion. The obligation to determine indigency arises from the filing of the Motion to Modify, rather than from serving it, since the law does not require that a Motion to Modify be served. (Section 54.05 (d) merely requires that reasonable notice be given to all parties).*

Jurisdiction's Process

Misdemeanor Appointments: According to interviews, there is no method for the statutory county courts to track jailed persons until a case is filed by the prosecutor. Cases are assigned to

a court upon a person being booked into the Dallas County Jail. However, the courts are not able to track these persons until the prosecution files a case. Requests for counsel are forwarded to the court assigned to the arrestee at the time of booking. Initial hearings are held shortly after the case is filed, and attorneys are appointed at this initial hearing. If a person has not requested counsel before this hearing, the person may request at the initial hearing. According to interviews, the courts' software is being upgraded so that the courts can track persons who are assigned to their courts before a case is filed. This upgrade is expected by January, 2009.

Reviewer examined 97 indigence determinations for the statutory county courts to see if determinations were timely. The indigence determinations occurred between January, 2006 and May, 2007. Where no request was found in the defendant file, but an appointment order was present, reviewer assumed that the request occurred on the date of appointment. For persons not making bond, time from request until appointment ranged from 0 to 181 work days.

Dallas County Court Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	97		
Persons bonding before requesting and receiving counsel within 1 working day		36	37.1%
Persons not bonding and receiving counsel		61	62.9%
Persons not bonding who received counsel (or denial) in:	61		
0 work days (often initial appearance)		34	55.7%
1 work day + 24 hour transfer		3	4.9%
Timely appointments for persons not bonding		37	60.7%
2 work days + 24 hour transfer		1	1.6%
More than 2 work days + 24 hour transfer		23	37.7%

Recommendation: Under the current system, appointments for detained persons in the statutory county courts are not timely in approximately 40% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met.

Action Plan:

Contact person(s): _____
Completion date: _____

For Additional Consideration: Since the indigent defense plan does not differentiate between bonded and detained persons, the statutory county courts may want to consider ruling on requests for counsel forwarded to the respective courts before the court is able to track the arrestees in question and is able to determine whether the individual has bonded. Under the current indigent defense plan, the time for appointing counsel to both bonded and detained persons is one working day from when the appointing authority receives the request.

Felony Appointments: Reviewer examined 103 indigence determinations for the district courts to see if determinations were timely. The indigence determinations occurred between December, 2005 and October, 2006. For persons not making bond, the time to appointment ranged from zero to six work days. Where no request was found in the defendant file, but an appointment order was present, reviewer assumed that the request occurred on the date of appointment.

Dallas District Court Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	103		
Persons bonding before requesting and receiving counsel within 1 working day		1	1.0%
Persons not bonding and receiving counsel		102	99.0%
Persons not bonding who received counsel (or denial) in:	102		
0 work days (often initial appearance)		34	33.3%
1 work day + 24 hour transfer		45	44.1%
Timely appointments for persons not bonding		79	77.5%
2 work days + 24 hour transfer		12	11.8%
More than 2 work days + 24 hour transfer		11	10.8%

Recommendation: Under the current system, appointments for detained persons in the district courts are not timely in approximately 22% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met. Many of these untimely appointments occurred just past the statutory deadline.

Action Plan:

Contact person(s): _____

Completion date: _____

Core Requirement 5. Institute a fair, neutral, and non-discriminatory attorney selection process.

Statutory Provisions

Tex. Code Crim. Proc. art. 26.04(b) requires that appointments are allocated among qualified attorneys in a fair, neutral, and non-discriminatory manner. Article 26.04(a) states: “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), (h), or (i).” Subsection (f) allows for the court to appoint the public defender. Subsection (h) allows the court to appoint counsel via an alternative program. Subsection (i) allows for appointment of attorneys from the court’s administrative judicial region when a person is accused of a felony and the court is unable to adequately appoint appropriate counsel. When a rotational system is used for appointments, “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.” Art. 26.04(a). When an alternative system is used, appointments are to be reasonably and impartially allocated among qualified attorneys. Art. 26.04(g)(2)(D).

Jurisdiction’s Indigent Defense Plan

Both the statutory county court plan and the juvenile plan allow for individual courts to establish an appointment list rather than using a single public appointment list mentioned in Article 26.04 and Tex. Fam. Code Ch. 51. Task Force staff will seek guidance on this issue as to whether individual courts may maintain their own list and not follow a central wheel.

Adult Plan (Statutory County Courts): *The County Criminal Court Manager will create maintain the master wheel and each court will maintain its own list or use a public defender or a combination thereof. When an appointment is to be made, the Court or its designee will select an attorney from the individual court list in a fair, neutral and nondiscriminatory manner taking into account the complexity of the case and the immediacy of the requirement for representation.*

If the court of the courts’ designee determines that the defendant does not speak and understand the English language or that the defendant is deaf, the court or the courts’ designee will appoint an attorney that is capable of communicating in a language understood by the defendant. If such an attorney is not available a licensed interpreter will be appointed. If appointed counsel does not appear on his or her specified appointment date, the Court or its designee may appoint at its discretion any qualified attorney from the master list. An attorney’s intentional or repeated failure to appear in court or make every reasonable effort to contact the defendant may be grounds for removal from the master list. An attorney may be removed from the master list by a majority vote (7 Judges) of the County Criminal Court and County Criminal Court of Appeals Judges.

When an attorney has been appointed and subsequently the defendant retains counsel, other than the appointed counsel, the appointed attorney will be restored to his or her place on the list. The burden of notification of such change will be on the appointed attorney.

C. Distribution of cases.

- 1. Appointments will be made from a rotating list of eligible attorneys.*
- 2. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.*
- 3. The Court Appointed Attorney list will be updated quarterly. All necessary applications and information should be delivered to the Court Managers Office by the 4:00 PM on the following dates: March 1, 2006, June 1, 2006, September 1, 2006, and December 1, 2006.*
- 4. Court Appointed Attorneys are appointed to the defendant within 24 hours of the request. The court appointed attorney shall remain on that case through disposition.*

Comments regarding Statutory County Courts' Plan: For rotational systems, Article 26.04(a) requires that "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". This wording is slightly different from the indigent defense plan where "the Court or its designee will select an attorney from the individual court list in a fair, neutral and nondiscriminatory manner taking into account the complexity of the case and the immediacy of the requirement for representation." The current plan differs from the rotational system described in Article 26.04(a) in that under the rotational system, the appointment list would not deviate from the top name on the list unless there is a finding of good cause on the record. If there is good cause to deviate from the top name, each of the next four names would be considered, and good cause would also have to be found to deviate from these names.

The statutory county courts indigent defense plan states, "the County Criminal Court Manager will create maintain the master wheel and each court will maintain its own list or use a public defender or a combination thereof." This language differs from the rotational system described in Article 26.04(a) where an appointment is to be made from a public appointment list using a system of rotation. Task Force staff will seek guidance on this issue as to whether individual courts may maintain their own list under a rotational system and not follow a central wheel.

(District Courts)

- 3.1 An attorney qualified for appointment to any felony level will automatically be qualified for all the levels below. Thus a lawyer on the highest level will be on the felony levels below his/her name will come up in rotation on each level independently of all other levels and will not result in a forfeiture of position on any other level.*
- 3.2 Lawyers will be randomly, not alphabetically, listed on each level of the wheel. Names on the initial wheel will be shuffled. Thereafter, additional names will be randomly inserted at each level of the wheel.*
- 4.4 A master list of qualified attorneys will be maintained on the county computer. Daily access to that list will be limited to appointing courts and their designees. Those accessing the list will not be able to preview the order of the attorneys as they appear on the list. The court or its designee may draw as many names from the list, in the order that they appear at the required level, as there are appointments to be made that day. The court shall appoint attorneys from*

among the next five names on the appointment list unless the court makes a finding of good cause on the record for appointing an attorney out of order.

4.5 A court or its designee may appoint from the master list or the Public Defender's Office.

4.6 An attorney cannot be appointed on a case level higher than that for which the attorney has been qualified by a vote of the judges.

4.7 When a defendant has two or more cases, one attorney will be appointed to all cases and will be appointed from the level of the greater offense.

4.8 An attorney will be appointed only after a case is pre-assigned to a court.

4.9 Defendants who speak only a foreign language will be matched to an attorney qualified to speak that language if available. Those attorneys will also be on the non-multi-lingual part of each level of the wheel and their names will come up on both parts, but an appointment as a multi-lingual speaker from any level of the wheel will result in forfeiture of position for appointment on the other part at the same level.

4.10 When a defendant is subsequently charged with a higher grade of offense, the court may appoint new counsel from the list.

4.11 Felonies with enhancement paragraphs may, in the discretion of the court, be classified for purposes of appointment at the level of the underlying offense or at the level of the potential maximum punishment.

4.12 A judge, for good cause stated either on the record or by written notation placed in the court's file, may appoint an attorney out of order. The replaced attorney will remain at the top of that level of the list from which the appointment was made.

Juvenile Plan: *The 304th and 305th Juvenile District Courts shall create separate lists from which private attorneys are appointed to represent indigent children. Each list will be alphabetized and delineate the assigned category of the attorney recognizing the differences in qualifications and experience necessary for appointment for different types of cases and will thus be a graduated list.*

In cases where the Judge (including his/her designees) determines that the appointment of a public attorney is appropriate, the appointment shall be made from the appointment list using a system of rotation. The Judge (including his/her designee) shall determine the proper category (based on the classifications herein established) and shall appoint an attorney from the list using a system of rotation. The Judge (including designee) shall appoint attorneys from among the next five names on the appointment list in the order in which the attorney's names appear on the list for the category involved, 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 for his/her assigned category.

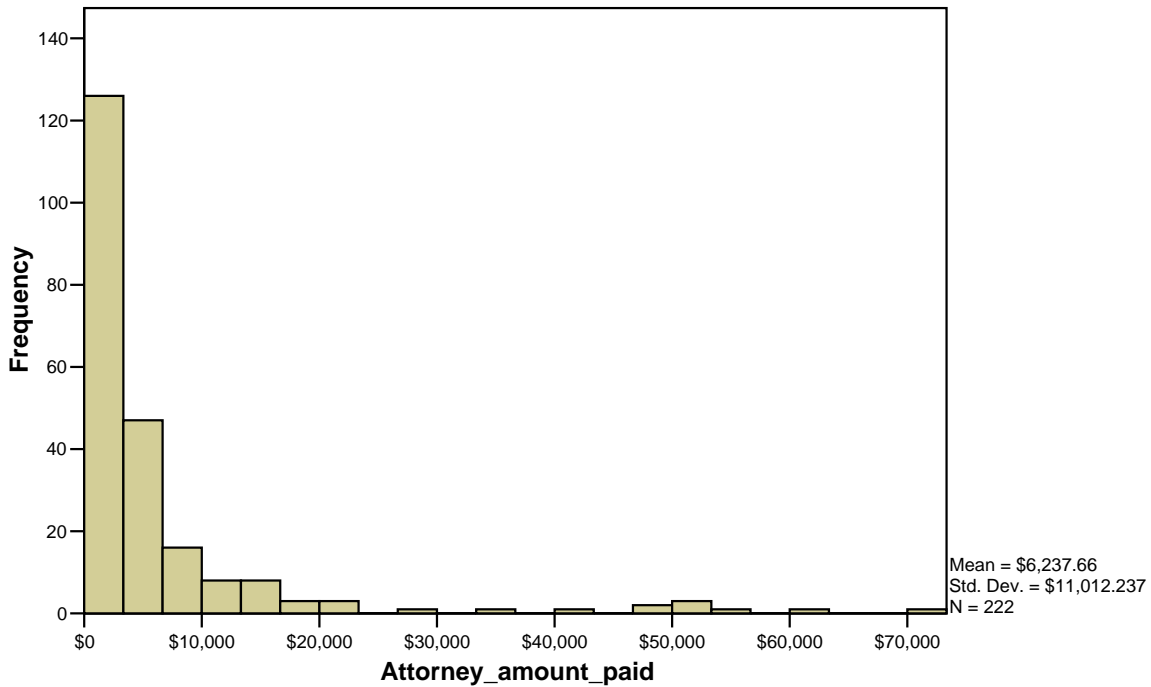
For Additional Consideration: The juvenile indigent defense plan states, "The 304th and 305th Juvenile District Courts shall create separate lists from which private attorneys are appointed to represent indigent children." This may conflict with the Tex. Fam. Code § 51.102

requirement for the juvenile board to adopt procedures for including and removing attorneys from the appointment list and for appointing attorneys to individual cases. Task Force staff will seek guidance on this issue as to whether individual courts may maintain their own list and not follow a central wheel established by the juvenile board.

Jurisdiction's Process

Adult System: The district and county courts split between using the public defender and following a rotational system for appointing private attorneys to cases. In the district courts, a central electronic wheel is present which notes the attorney at the top of the rotational list. Each court then individually assigns an attorney to a case. A current software upgrade is in process that will eventually enable a central appointing wheel to be used. In the statutory county courts, each court appoints private attorneys under a rotational system as the individual court sees fit. Since the appointments in both the district and county courts are not made centrally, the distribution of attorneys may be skewed from an equal distribution of private attorneys being appointed.

Statutory County Courts: Reviewer examined the statutory county court payments to attorneys for fiscal year 2006. These payments are not current, and may not be indicative of present practices. Two hundred twenty two (222) attorneys received payments. The annual payments ranged from \$100 to \$71,175. The median amount received by attorneys during the year was \$2700. Since a few attorneys received large payment amounts, the mean payment was much higher than the median (\$6238-mean compared to \$2700-median). Many of the attorneys who received more than the mean payment amount were Spanish-speaking attorneys who were appointed to Spanish-speaking defendants. A few of the attorneys that began the year on the appointment list were removed from the list (either by choice or for disciplinary reasons) and so some of the lower annual payment amounts occurred because of this removal.



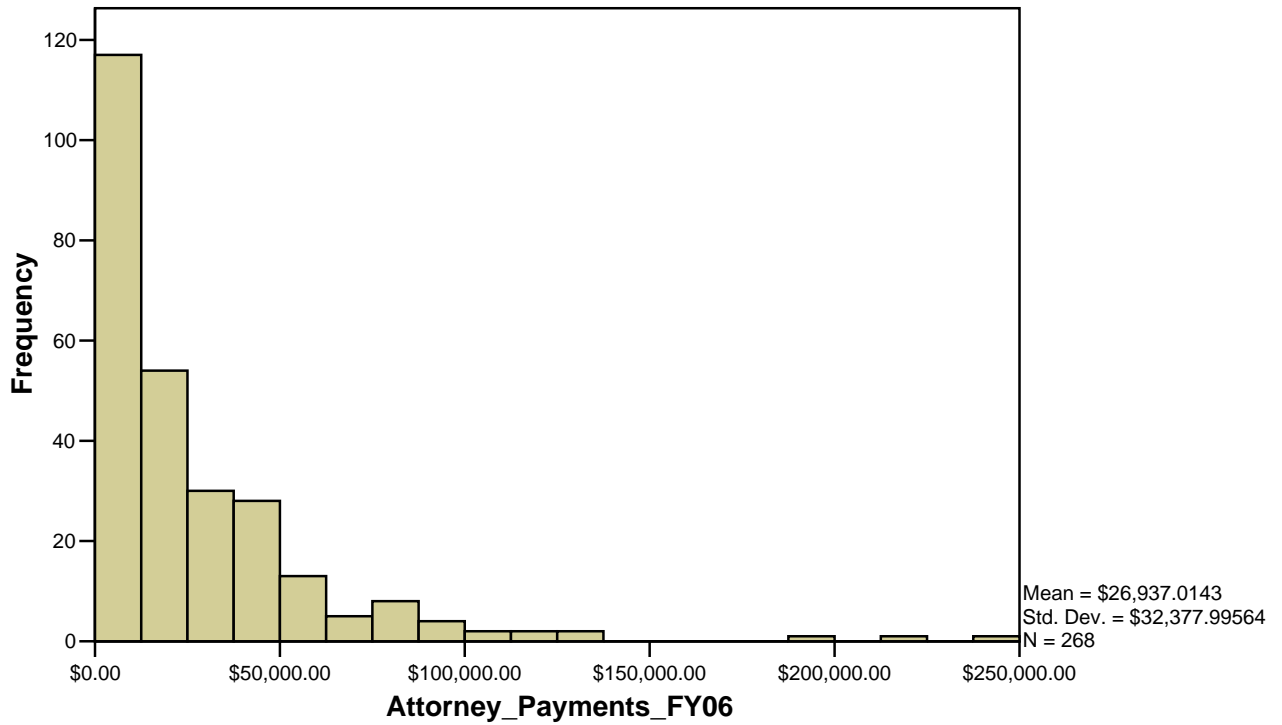
Recommendation: While the data reviewed came from FY2006, the distribution of court appointments in the statutory county courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.

Action Plan:

Contact person(s): _____

Completion date: _____

District Courts: Reviewer examined the district court payments to attorneys for fiscal year 2006. These payments are not current, and may not be indicative of present practices. Two hundred sixty eight (268) attorneys received payments. The annual payments ranged from \$100 to \$238,075. The median amount received by attorneys during the year was \$17,175 as compared to the mean of \$26,937. Felony payment amounts may not be proportional to the number of cases assigned to an attorney. Higher level felonies that go to trial cost significantly more than state jail felony pleas. See the chart that follows showing the distribution of attorney payments.



Recommendation: While the data reviewed came from FY2006, the distribution of court appointments in the district courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.

Action Plan:

Contact person(s): _____
Completion date: _____

Core Requirement 6. Promulgate standard attorney fee schedule and payment process.

Statutory Provisions

Attorneys are to be paid a reasonable fee for the following: time spent in court making an appearance; reasonable and necessary time spent out of court on the case, supported by documentation that the court requires; preparation of an appellate brief and preparation and presentation of oral argument to an appellate court; and preparation of a motion for rehearing. A fee schedule is to govern these payments, taking into account reasonable and necessary overhead rates. No payment is to be made to the attorney unless the judge approves the payment. If the judge disapproves the requested amount, the judge shall make written findings stating the amount of payment and the reasons for any disapproval. An attorney whose request for payment is disapproved may appeal the disapproval. Tex. Code Crim. Proc. art. 26.05(a)-(e).

Counsel is to be reimbursed for reasonable and necessary investigation and expert witness fees. Expenses incurred without prior court approval shall be reimbursed if the expenses were reasonably necessary and reasonably incurred. Tex. Code Crim. Proc. arts. 26.05(d), 26.052(h).

Jurisdiction’s Indigent Defense Plan

The jurisdiction’s indigent defense plans are consistent with Article 26.05’s requirement for a standard attorney fee schedule and payment process.

Adult Plan (Statutory County Courts): *Total compensation paid by the Court to any attorney will follow the approved Court Appointed Attorney Fee Schedule below.*

Fixed Daily Rate

	<u>Minimum</u>	<u>Maximum</u>
<u>Non-Jury Disposition</u>	\$ 75.00	\$750.00
<u>Jury Trial</u>	\$200.00	\$1,000.00
<u>Dismissals</u> including 12.45 dismissals	\$ 25.00	\$500.00
<u>Appeals</u>	\$500.00	\$2,500.00

Hourly Rates

<u>Non-Appeals</u>	\$75.00/hr	\$100.00/hr
<u>Appeals</u>	\$60.00/hr	\$120.00/hr

Prior court approval should be obtained for all investigative and expert witnesses expenses. Counsel may incur expenses without prior court approval. Expenses incurred without prior court approval will be reimbursed if the court finds the expenses to be reasonable necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

(District Courts) *The Criminal District Court Judges of Dallas County and the Judges of the District Courts giving preference to criminal cases in Dallas County, in accordance with the requirements of Senate Bill 7 of the Seventy-Seventh Legislature, formally adopt the following fee schedule for the compensation of appointed counsel:*

I. PLEA OF GUILTY OR NOLO CONTENDERE

Mini-Cap/1st Degree	\$500.00 based on 6 hours of work
2 nd Degree	\$400.00 based on 5 hours of work
3 rd Degree/State Jail	\$300.00 based on 4 hours of work

If the attorney documents more time spent than the schedule allows, the judge may pay additional time at \$75.00 per hour.

II. REVOCATIONS

\$200 based on 3 hours of work

If the attorney documents more time spent than the schedule allows, the judge may pay additional time at \$75.00 per hour.

III. TRIALS BEFORE THE COURT

\$500.00 based on 6 hours of work

If the attorney documents more time spent than the schedule allows, the judge may pay additional time at \$75.00 per hour.

IV. JURY TRIALS

\$750.00 per trial day with a jury

\$75.00 per hour as documented for all other activity

V. MTS, EXAMINING TRIALS, WRIT HEARINGS, COMPETENCY HEARINGS, OUT OF COURT TIME, ETC.

\$75.00 per hour

VI. APPEALS

Hourly rate: \$100.00

Jury trial range: \$1800.00 - \$3500.00

Anders brief: \$400.00 - \$1000.00

Standard approved expenses: reading record, research, writing the brief

Discretionary pay: letters, phone calls, meetings with family

Appellate argument: will pay for time to prepare, argument, travel, hotel

VII. EXPERT AND INVESTIGATIVE FEES

Expenses for investigators will be reimbursed at a rate of \$40.00 per hour plus mileage at a rate of 34 ½ cents per mile, not to exceed a maximum of \$750.00 without prior court approval.

Expert witnesses will be reimbursed at the expert's actual hourly rate, not to exceed a maximum of \$750.00 without prior court approval.

Prior court approval should be received for all investigator and expert witness expenses. Counsel may incur expenses without prior court approval. Expenses incurred without prior court approval, including expert and investigator fees, will be reimbursed up to a maximum of \$750.00 if the court finds them to be reasonably necessary and reasonably incurred. Any fees or expenses in excess of \$750.00 must receive prior court approval.

Juvenile Plan: *Appointed counsel will 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 Respondent 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 Appeal; and
- (4) preparation of a motion for rehearing.

Effective June 1, 2007 appointed attorneys will receive an hourly rate of \$100.00 for both in court and out of court time submitted. Appointed counsel shall be required to itemize the types of out of court services performed.

A private attorney appointed to represent a Respondent shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed according to the procedures set for below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts. Attorneys are encouraged to seek such prior court approval.

PROCEDURE WITH PRIOR COURT APPROVAL:

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- (3) an itemized list of anticipated expenses for each investigation or each expert.

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.

PROCEDURE WITHOUT PRIOR COURT APPROVAL

Appointed counsel may incur investigative or expert 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. Unreasonable or unnecessary expenses will not be approved.

Jurisdiction's Process

Attorney payments were not observed as part of the program monitoring visit. The fiscal monitor reviewed attorney payments on this same visit and this core requirement is covered in her report.

Recommendations Not Included in the Quality Assessment

Self-Assessment

Dallas County's indigent defense services would benefit from periodic internal self-assessments. Self-assessment is necessary for the county to maintain up-to-date knowledge of the effectiveness of its indigent defense processes. The assessment becomes very complicated and time consuming if all pertinent records which measure times between events are not in a central location, such as in defendant court files. The self-assessment would measure:

- 1) times from arrest to magistration;
- 2) that magistration records are maintained
- 3) times from request for counsel to appointment;
- 4) that counsel is appointed according to the indigent defense plan in a fair, neutral, and non-discriminatory manner; and
- 5) that only properly qualified attorneys are on the appointment list.

See Appendix for more details.

Direct Electronic Filing in Criminal Cases

The Public Policy Research Institute at Texas A&M University has published a study titled *Evaluating the Impact of Direct Electronic Filing in Criminal Cases: Closing the Paper Trap* (<http://www.courts.state.tx.us/tfid/pdf/FinalReport7-12-06wackn.pdf>) which highlights the benefits of early screening and direct filing of case information from law enforcement to prosecutors to the courts. The study noted that quicker filing between entities results in improved case screening and prompt disposition of cases, better case quality, greater protection of defendants' rights and a better quality of legal defense for persons charged with crimes, and a reduction in hidden costs.

Conclusion

The Task Force staff was impressed with Dallas County's dedication to indigent defense. Task Force staff enjoyed meeting with court personnel and was impressed with the commitment to serving the community.

Appendix -- How to Conduct an Initial Indigent Defense Self-Assessment

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine whether all Fair Defense Act (FDA) requirements are being met. The Task Force recommends that self-assessments be conducted to verify procedures and operational practices (e.g. local plan, rules and procedures, attorneys' applications, attorneys' CLE hours). Self-assessments ensure familiarity with county policies, procedures, and operational practices. Moreover, best practices indicate that internal periodic reviews of documents/forms and processes assist in identifying possible problems or errors. Self-assessment can be performed by any jurisdiction and adds accountability to the indigent defense process. Court personnel may have an internal belief of performance based on experience with a part of the indigent defense process, but without actual records, one cannot know the effectiveness of the system.

Self-assessment items

1. Time to magistration

Check magistration records to see that magistration occurred within 48 hours of arrest (use an acceptable sample size as defined in the methodology). Compare the time of arrest to the time of magistration. The magistration record may be on a paper magistration form or on an electronic record.

The sample should be as random as reasonably possible, from a representative cross-section of persons/places where magistration was conducted. For instance, if magistration duties are rotated between justices-of-the-peace, the sample should include magistration data from all the different justices. The sample size should be large enough to allow one to gauge performance of the system. A sample size calculator is available at <http://www.surveysystem.com/sscalc.htm> and allows for the calculation of an appropriate sample size. Reasonable confidence requirements may be a 95% confidence level with a 15% confidence interval. In this way if the sample showed that 75% of magistrations were timely, one could say with 95% confidence that all magistrations are timely 75% +/- 15% of the time (or between 60% and 90% of the time). More accurate confidence intervals may be used but require larger sample sizes or a basis for knowing the performance level of the system. If a second review were conducted, the performance from the initial review could be used as a base level for system performance. Plugging this initial review percentage into the sample size calculator may yield much tighter confidence intervals with the same sample size.

2. Timely appointment of counsel

Review counsel request forms for each court system and make separate performance estimates for each court system (i.e. district courts and statutory county courts) to see that counsel was appointed for each court system within the time required by the FDA. Under the FDA, for persons not making bond, a jurisdiction has 24 hours to transfer a request for counsel to an appointing authority. The appointing authority has one or three working days (depending on whether the 2000 county population was over 250,000 persons) in which to appoint counsel. This means that from the time of request, the arrestee must receive appointed counsel within one or three working days plus 24 hours of the request. For persons bonding before the deadline to

appoint counsel is reached, counsel is to be appointed by the earlier of the initiation of adversarial judicial proceedings (the indictment or information) or the defendant's initial appearance (arraignment).

Take random samples of defendants receiving counsel from both the district and statutory county courts using the appropriate sample sizes listed above. Check the percentage of persons who receive timely appointment of counsel. Appropriate forms for this verification are the attorney appointment form and the affidavit of indigence.

3. Review attorney qualifications

Check all attorneys who have received appointments from the previous 12 months to see that they are on the approved list (voted by a majority of judges) and that they have met the applicable CLE requirements.

4. Review attorney selection process

To check that a rotation system is fair, neutral and non-discriminatory, observe the distribution of all criminal appointments in each court system (district courts and statutory county courts) from the previous year. Look for instances when an individual or small group of individuals are given a far greater share of appointments than one would expect if given out according to the wheel. Mere disparity in felony appointments is not an indication of discriminatory appointments, as some attorneys may be qualified to receive more types of appointments than other attorneys.

5. Review indigence standards

Check that a determination of indigence has been made for persons requesting counsel (use an acceptable sample size as done when measuring time to appointment of counsel).

6. Review payment for indigent services

- a. Check that attorney fee vouchers are complete. (Did the judge and attorney sign the voucher? Is the voucher for a felony or a misdemeanor?)
- b. Do the amounts on the attorney fee voucher add up correctly?
- c. Is the voucher payment in accordance with the attorney fee schedule?
- d. Are written findings made for disapproved/reduced reimbursements?

The attorney fee voucher and attorney fee schedule should be used in reviewing payment for indigent services. A representative cross-section of vouchers is necessary in reviewing this item. Errors in processing payment may be caused either by judge or attorney error. Using a sample from the entire criminal court system may not yield a large enough sample to observe errors in the system. On the other hand, making separate sample estimates of performance for each court processing criminal matters could be very time consuming. To adequately review this item in a timely manner, one may want to review the district courts together as a sample and the statutory county courts together as a sample