

Key Provisions of the Texas Fair Defense Act (FDA)

Indigence Determination/Consideration of Bail. The defendant's ability to post bail may not be considered apart from the defendant's actual financial circumstances (i.e., 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). A court may not threaten to arrest or incarcerate a person solely because the person requests the assistance of counsel. The local indigent defense plan, which is discussed in more detail below, must include financial standards for determining whether a defendant is eligible to receive appointed counsel. Every effort should be made to follow the indigence standard in the applicable local plan.

Waiver of Counsel. The 2007 Legislature promulgated procedures for obtaining waivers of the right to counsel from defendants in HB 1178. It also imposed limits on when prosecutors may speak with unrepresented defendants and when judges may direct such defendants to speak with prosecutors. Under the law a judge or magistrate may not order a defendant rearrested or require another, higher bond because a defendant withdraws a waiver of counsel or requests the assistance of counsel. An overview of the changes and flowcharts depicting the steps in the process are available at: <http://www.courts.state.tx.us/tfid/Resources.asp>

Time-frames for appointment of counsel. The judge (or designee) must rule on requests for counsel and appoint counsel to indigent defendants within one working day of receiving requests in counties of 250,000 or more or three working days in counties of less than 250,000. Persons out of custody: counsel must be appointed at defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first (see Article 1.051(j), and *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008)).

Attorney Selection Methodology. The local indigent defense plan must include the method by which attorneys on the appointment lists are assigned to cases. For example, in many counties the plan provides that judges will make appointments in rotation order from the appointment list. Every effort should be made to follow the applicable local plan.

Attorneys Fees. All court appointed attorney fees must be paid in accordance with a schedule of fees adopted by formal action of the local judges. If a judge disapproves an attorney's fee request, the judge must make written findings stating the amount approved and the reason for disapproving the requested amount. The attorney may appeal to the presiding judge of the administrative judicial region.

Experts and Investigators. The FDA requires reimbursement of expert and investigative expenses with and *without* prior court approval if they are reasonably necessary and reasonably incurred.

Indigent Defense Plan. Under the FDA, the criminal court judges and juvenile board in each county must adopt and publish county-wide indigent defense plans. Copies of the plan should be available locally and also on the data website of the Task Force at: <http://tfid.tamu.edu/Public/>