



Supplemental Publication re

**The Costs and Benefits of an
Indigent Defendant Verification Study**

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**Task Force on Indigent Defense
205 W. 14th Street, Suite 700
Austin, Texas 78701
Ph: 512.936.6994
www.courts.state.tx.us/tfid**

Task Force on Indigent Defense members and staff:

Officers

Honorable Sharon Keller
Honorable Olen Underwood

Chair – Presiding Judge, Court of Criminal Appeals
Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

Ex Officio Members:

Honorable Sharon Keller
Honorable Wallace Jefferson
Honorable Orlinda Naranjo
Honorable Aaron Peña
Honorable Sherry Radack
Honorable Todd Smith
Honorable Jeff Wentworth
Honorable John Whitmire

Austin, Presiding Judge, Court of Criminal Appeals
Austin, Chief Justice, Supreme Court
Austin, Judge, 419th Judicial Civil District Court
Edinburg, State Representative
Houston, Chief Justice, First Court of Appeal
Bedford, State Representative
San Antonio, State Senator
Houston, State Senator

Members Appointed by the Governor:

Honorable Jon Burrows
Mr. Knox Fitzpatrick
Mr. Anthony Odiorne
Honorable Olen Underwood
Honorable B. Glen Whitley

Temple, Bell County Judge
Dallas, Attorney, Fitzpatrick, Hagood, Smith & Uhl
Wichita Falls, Chief Public Defender, Wichita County
Conroe, Presiding Judge, 2nd Administrative Judicial Region of Texas
Hurst, Tarrant County Judge

Staff:

James D. Bethke
Carol Conner
Joel Lieurance
Wesley Shackelford
Whitney Stark
Terri Tuttle
Sharon Whitfield

Director
Program Monitor
Research Specialist
Special Counsel
Grants Administrator
Executive Assistant
Budget and Accounting Analyst

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Jamie Dickson, University of Texas School of Law, Intern for Task Force

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Charles McConnel, Ph.D., University of Texas Southwestern Medical Center at Dallas

Richard K. Scotch, Ph.D., University of Texas at Dallas

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Introduction

The Sixth Amendment of the U.S. Constitution provides, “In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.”¹ In *Gideon v. Wainwright*, the Court announced, “[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is appointed for him.”² Following the Supreme Court’s decision in 1963, states have developed different processes for determining who is indigent and cannot afford counsel. Texas’ Fair Defense Act of 2001 provides procedures, codified in Article 26 of the Code of Criminal Procedure, to ensure that counties not only meet constitutional standards, but are in compliance with the Fair Defense Act. In meeting these requirements, counties often must shoulder a significant financial burden in paying for indigent defense. The purpose of this supplement is to give counties guidance on how they can efficiently screen defendants and verify eligibility for court-appointed counsel. This can help a county fulfill its constitutional obligation while also serving its financial interests.

One caution is that verifying indigence and denying counsel based on a bright-line rule (i.e. a distinct cut-off) can raise concerns for those in the “gray area.” Defendants who may not qualify for counsel under a bright-line rule, but who are still too poor to hire a lawyer, are entitled to counsel under the Sixth Amendment to the U.S. Constitution. The test for indigence in Texas is provided in Article 1.051(b), Code of Criminal Procedure, which states:

"indigent" means a person who is not financially able to employ counsel.

The Justice Program at the Brennan Center for Justice at NYU School of Law is publishing a report with recommendations for standards for appointing counsel.³ It suggests that counties should take the true cost of representation, including cost of counsel in a specific jurisdiction and the type of the charges, into account when making an indigence determination.⁴ Counties may want to conduct a short survey of the costs of retaining counsel in their particular jurisdiction in the main categories that clients face: minor and major misdemeanors and felonies.⁵ Screeners can then use these figures to compare with assets and income to determine if a defendant is eligible for counsel. Jurisdictions should also keep in mind that they may recover indigent defense costs by finding a defendant partially indigent or providing for recoupment of fees in their indigent defense plan.⁶

A corollary concern of the bright-line standard is that defendants often cannot accurately describe their financial situation and may even *overestimate* their assets and income. The reasons for lying about having more resources can vary, including: not wanting to appear

¹ U.S. CONST. amend. VI

² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS (2007).

⁴ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 5, 10-11 (2007).

⁵ *Id.*

⁶ Art. 26.05(g) C.C.P. provides: If the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including an expenses and costs, the court shall order the defendant to pay during the pendency of the charges or, if convicted, as court costs the amount that it finds the defendant is able to pay.

worthy of lesser bond, not wanting to appear destitute in front of other defendants, or simply not knowing how much compensation they receive from work.⁷ Defendants may unintentionally report false information, may overestimate their income and assets, or may initially look ineligible under a bright-line standard but are constitutionally entitled to appointed counsel. With those limitations in mind, every county must have some sort of process to screen out those who are eligible for counsel from those who can afford their own representation.

I. DEFINING INDIGENCE

Screening can be beneficial for almost every jurisdiction. It helps to weed out those defendants who can afford counsel from the ones that cannot, allowing counties to meet constitutional demands while avoiding the “risk [of] stretching their resources so thin that they are forced [to] provide substandard counsel to everyone—a reality that is both constitutionally impermissible and bad public policy.”⁸ Screening not only makes sense for counties, but defense attorneys may also be in favor of the process. It can help control a public defender’s workload, preserve resources, and lets the defense attorney devote his or her efforts to clients who otherwise would not have counsel.

The first requirement of any screening process is that it be uniform. Tex Code Crim. Proc. art. 26.04(a) requires county courts, statutory county courts, and district courts to “adopt and publish written countywide procedures for timely and fairly appointing counsel for an indigent defendant. . . .”⁹ Uniformity across a jurisdiction has concrete benefits for those providing services. “Consistent screening methods allow states, counties, and public defenders to forecast their future resource and budgetary needs.”¹⁰ Judges and court personnel may prefer a uniform rule and form because it helps to foster consistency amongst defendants and fellow judges.¹¹ In Texas, counties may develop their own procedures, provided that they are uniform across the county and apply to a defendant whether he or she is in custody or has been released on bail.¹² A standardized rule applied consistently can help bring greater uniformity and reliability to indigency appointments.¹³

Definitions of Indigence

The procedures that counties use to determine indigence fall into two major categories: Article 26.04(m) factors and a bright-line asset/income test combined with other factors that may prove a defendant’s indigence. The Article 26.04(m) factors include: the defendant’s income, source of income, assets, property owned, outstanding obligations, necessary

⁷ Elizabeth Neely & Alan Tomkins, *Evaluating Court Processes for Determining Indigency*, 43 COURT REVIEW 4, 9 (2007).

⁸ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 4 (2007).

⁹ TEX. CODE CRIM. PROC. ANN. art. 26.04 (a) (Lexis 2007).

¹⁰ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 5 (2007).

¹¹ Neely & Tomkins, *supra* note 7, at 8.

¹² TEX. CODE CRIM. PROC. ANN. art. 26.04 (1) (Lexis 2007).

¹³ Elizabeth Neely & Alan Tomkins, *Evaluating Court Processes for Determining Indigency*, 43 COURT REVIEW 4, 10 (2007).

expenses, the number and ages of dependents, and spousal income.¹⁴ Approximately 60% of counties in Texas use these factors to determine indigence.¹⁵

Counties utilizing a bright-line rule use 100% (38 counties), 125% (54 counties), and 150% (6 counties)¹⁶ of the latest federal poverty guidelines, as established by the Department of Health and Human Services, to determine the income cut-off.¹⁷ Galveston County's plan includes a standard that is typical for counties using a bright-line rule. A defendant is found to be indigent if his or her income does not exceed 125% of the federal poverty guidelines and if the person's combined non-exempt assets and property does not exceed \$2,500; does not exceed \$5,000 if the person's household includes a person over the age of 60, disabled or institutionalized; or "does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged."¹⁸

Using bright-line guidelines can "provide a convenient shortcut for quickly determining that some defendants are eligible for counsel, obviating the need to screen them further."¹⁹ The federal poverty guidelines are based on the cost of providing food and other essentials to families of different sizes. If someone's income falls below them, this indicates that the defendant cannot afford counsel without extreme hardship. The Justice Program advises that jurisdictions use the guidelines but also recommends that counties use a multiplier of the guidelines.²⁰ They suggest a multiplier for two reasons: the guidelines set the poverty level very low (making it impossible for people with income substantially above the cut-off to afford private counsel) and the costs of living and of retaining counsel are substantially higher in some parts of the country (or state) than in others.²¹ Jurisdictions should never use the guidelines as the sole criterion for determining indigence, and factors such as cost of counsel and unusual expenses should be taken into account.²²

Additional Qualifiers

Counties may include factors other than asset and income levels. A person may be found indigent if on public assistance (in 45 counties) or if institutionalized (in prison, custody, or a mental health facility) (in 37 counties).²³ If a defendant cannot retain private counsel without "substantial hardship," the judge should make a finding of indigence (in 44 counties).²⁴ This last qualifier is important because, while practice varies across states and within the state, the ultimate goal is to provide people who cannot afford counsel with an attorney. The Justice Program Report notes, "As the Supreme Court has warned, defendants

¹⁴ TEX. CODE CRIM. PROC. ANN. art. 26.04 (m) (Lexis 2007).

¹⁵ See Appendix A, Indigence Standards in Criminal Cases.

¹⁶ *Id.*

¹⁷ The 2007 HHS Poverty Guidelines, <http://aspe.hhs.gov/poverty/07poverty.shtml> (last visited June 21, 2007).

¹⁸ 2005 BIENNIAL AMENDED GALVESTON ADULT PLAN 7-8, <http://tfid.tamu.edu/CountyDocuments/Galveston/2005Biennial> Amended Galveston Adult Plan.pdf (last visited June 21, 2007).

¹⁹ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 17 (2007).

²⁰ *Id.*

²¹ *Id.* at 17-18.

²² *Id.* at 18.

²³ See Appendix B, Indigence Standards in Criminal Cases: Additional Factors.

²⁴ See Appendix B.

who do not fulfill the criteria for indigency used by a particular jurisdiction, but nonetheless cannot afford counsel, are constitutionally entitled to counsel.”²⁵

Factors not to be considered include a defendant’s posting of bail or ability to post bail (except to the extent that it reflects the defendant’s financial circumstances under 26.04(m)) and resources available to friends or relatives of the defendant.²⁶ The Justice Program warns against denying counsel based on the ability to post bond because those who can bond out *or* afford private counsel, but not both, will remain in jail at county expense.²⁷ It also makes defendants less able to participate in their defense, which may result in longer sentences and avoidable appeals, increasing costs to taxpayers.²⁸

Exempt and Non-Exempt Assets

Tex. Code Crim. Proc. art 26.04(m) lists the following factors which may be used to determine indigence: the defendant’s income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and age of dependants, and spousal income that is available to the defendant.²⁹ The statute only allows for income and assets available to the defendant to be considered. The model guidelines of the ABA, NLADA, and State Bar³⁰ agree that liquid assets should not include things necessary for daily living, such as a house and a vehicle. If a jurisdiction chooses to consider these assets, it should take into account whether the individual has any equity in the property. Defendants may report property such as a car or house, but the amount of equity they have in those assets should factor into a county’s decision whether or not to appoint counsel.

Under the statute, jurisdictions have some flexibility in determining exempt and non-exempt assets. However, jurisdictions have little flexibility in considering factors other than income and assets. An individual’s credit rating or ability to borrow funds is not necessarily either an asset or a form of income. Likewise, the average income and assets of the zip code in which an individual lives is not available as funds to the individual. Standards of indigence or verification systems relying on these factors do not seem to comport with Article 26.04(m).

II. SCREENING

The Task Force observed screening processes in Tarrant County and Travis County. The Task Force visited Tarrant County to document the screening and verification processes and observed Travis County, which uses a pretrial services division to screen, but does not verify the information. In addition, the Task Force interviewed Collin County Indigent Defense Coordinator Erik Engen on the processes used to verify in that county. The diagram below shows how the screening process works, from arrest through appointment of counsel.

²⁵ JUSTICE PROGRAM, *supra* note 19, at 10.

²⁶ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 14-15 (2007).

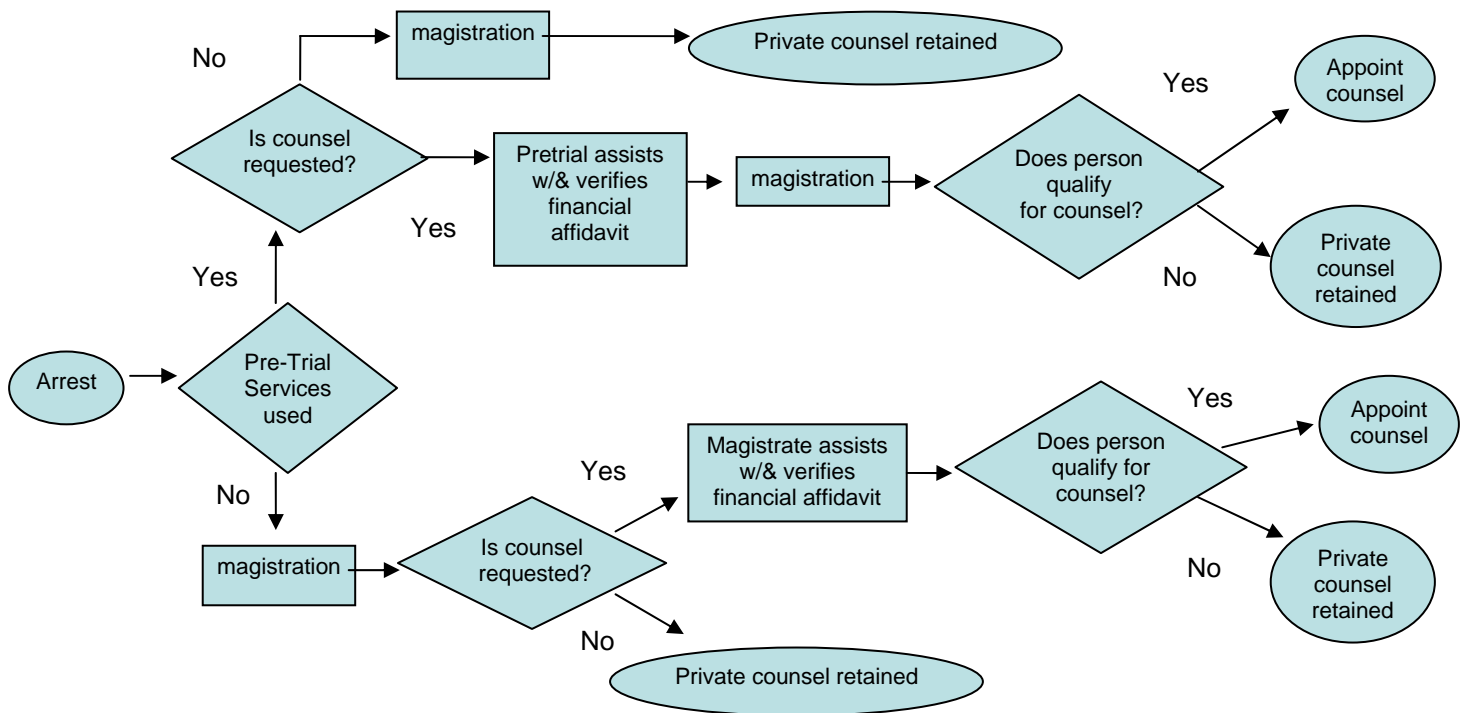
²⁷ *Id.* at 14.

²⁸ *Id.*

²⁹ TEX. CODE CRIM. PROC. ANN. art. 26.04 (m) (Lexis 2007).

³⁰ See Appendix C, State Bar of Texas Standing Committee on Legal Services to the Poor in Criminal Matter, **Standard for Determining Financial Eligibility for Appointed Counsel**, which provides a workable and fair standard that counties can use.

Screening Process



Who Should Screen

Screening by a third party can be a cost-effective and sound means of making eligibility determinations.³¹ As the Justice Program notes, “It can help avoid conflict of interest and fairness problems, can sometimes be done at little cost, and can be done by professionals who develop expertise and specialized knowledge.”³² Ideally, screening should be conducted by neutral third parties without potential conflict to the legal proceedings or the financial considerations of the county. This can include a pretrial services agency, another government agency, or an external agency with a government contract.³³ However, it should be noted that having an external agency conduct the screenings may limit access to Texas Workforce Commission records, while using a government entity does not.

Having a third party screen can “increase fairness and consistency by providing a more uniform and accurate assessment of the defendant’s financial information.”³⁴ Judges in one study reported that they did not obtain nearly as much information on their own as third party screeners.³⁵ Having a third party screen can also decrease the amount of time that judges, prosecutors, public defenders, and other criminal justice personnel spend on the issue of determining indigence during a court appearance.³⁶ This can help with docket control and increase the efficiency of the courts. In smaller counties without the resources for a pretrial services division, having court personnel do the screening may be the most feasible option.

³¹ JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO IS ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 7 (2007).

³² *Id.*

³³ *Id.*

³⁴ Elizabeth Neely & Alan Tomkins, *Evaluating Court Processes for Determining Indigency*, 43 COURT REVIEW 4, 8 (2007).

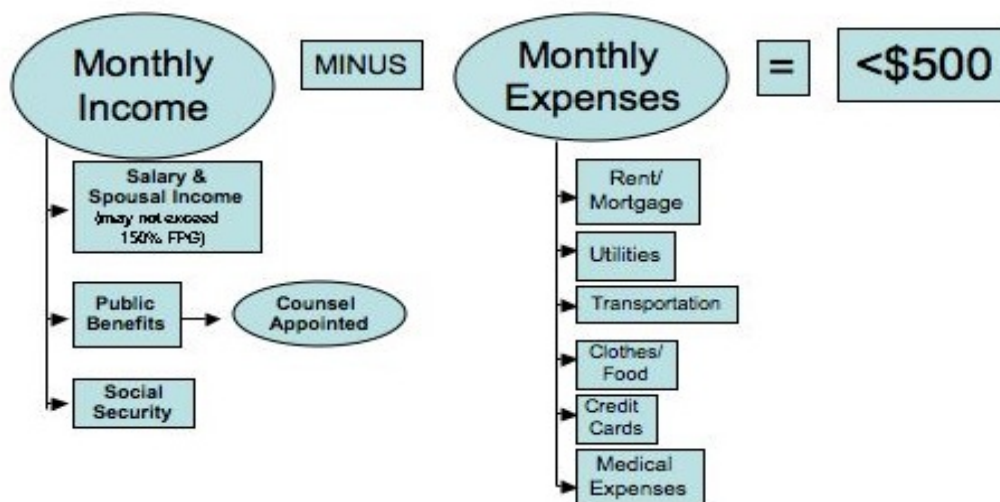
³⁵ *Id.*

³⁶ *Id.*

Methods of collecting financial information from those seeking appointed counsel vary across Texas. Bexar and Travis Counties use a pretrial services department as a function of the county. Tarrant County uses Financial Information Officers, under the Indigent Defense Coordinator, as a function of the courts. Financial Information Officers receive extensive training on various benefits in order to understand and accurately collect information from defendants. In contrast, some counties have jailers assist in filling out the affidavit of indigence, but this can often lead to incomplete or inaccurate forms and information. Jail staff may have no training in assisting people with filling out affidavits and probably have no incentive to assist with affidavits. As noted throughout this report, pretrial services or court personnel can take a methodical approach to questioning the individual and can quickly obtain more detailed information about the individual's income and assets.

Travis County Model

Travis County Indigence Determination



**Determined Indigent if Difference less than \$500
& Household Income is Less than 150% of FPG**

Travis County is an example of a county that uses a pretrial services agency to conduct indigence screening of defendants with no external verification. However, defendants completing the indigence form, which determines their qualification for a court appointed attorney, are required to sign a sworn statement that the information they provided is true and correct. Following arrest, defendants are booked centrally into the Travis County Jail. Shortly thereafter, a representative from pretrial services interviews defendants in the jail, handling personal bond and indigence screening.

The intake is essentially a computerized version of Travis County's Indigence Form.³⁷ It first asks questions on monthly income, which includes public benefits, salary, spousal salary, and social security. Next, the officer questions the arrestee on his or her necessary monthly living expenses. This includes rent, utilities, transportation, clothes/food, child

³⁷ See Appendix D, Travis County Indigence Form.

support, medical expenses, and credit cards. Subtracting expenses from income, if the difference (net income) is less than \$500, and the person (or household) is below 150% of the Federal Poverty Guidelines, a person will be considered indigent.

The Travis County Indigence Determination Application (TCIDA) automates the process, using these numbers to make a determination (Yes, No, or Undetermined) that is then transmitted to Criminal Court Administration, where appointments are made. Travis County's Indigence Form is considered a model due to its succinctness. Counties looking to simplify the screening process may want to utilize their own version of this form. Travis County is an example of a jurisdiction utilizing a streamlined screening process that is still detailed enough to provide confidence in appointments while spending a minimum amount of time deciphering and documenting a defendant's financial information.

III. SCREENING & VERIFICATION

Tarrant and Collin Counties used three programs to verify the information on the affidavit. The first program used was Texas Workforce Commission information on job/wage history. The information goes back three to four quarters. LexisNexis Accurint was also used by the Financial Information Officers (FIOs) to verify information such as vehicles, houses, boats, and the last address of the defendant. Local appraisal records were also used to verify a defendant's property and houses. One unexpected benefit of using the verification programs was that officers would warn defendants who they thought were lying that they could run their answers through the programs. This would often encourage defendants to give more truthful or detailed answers. This section of the report focuses on the verification processes used by jurisdictions and not on the underlying standards for determining indigence.

LexisNexis Accurint Access

Use of LexisNexis Accurint, which can provide access to varied databases, is provided to counties at a discount. Government agencies can search four or five pre-specified databases at \$1 to \$3 per search, which would cost between \$3 and \$5.50 for private entities. Counties would be free to negotiate their own contract with Lexis based on expected annual number of searches, extent of detail required, quality of the database, and how broad a sweep over available databases the search requires.

Tarrant County has access to LexisNexis "Law Enforcement Solutions" through its constable, which already has a contract with Lexis. Financial Information Officers performed the verification for the study. First, they accessed the "Find a Person" function and then input the defendant's social security number or name and date of birth. This gave access to "Address Summaries," "Licenses," "Judgments/Liens," "Potential Relatives," and "Associated Entities." Under "Address Summaries," "Household Members" was an available function, which gives the "Head of Household," how old that person is, how much he or she brings home, and the house value. Tarrant County FIOs estimated that the information was six months or more behind but used Accurint to verify the defendant's social security number. Collin County reported that they used LexisNexis to look at residence, licenses, and property. TWC requires a social security number to access wage information, so both Collin and Tarrant Counties used Lexis access for this purpose.

Texas Work Force Commission Access

Collin County (and Tarrant County for the study) used online access to Texas Workforce Commission records on defendants' wages. Financial Information Officers input a defendant's social security number (which the Officer could get from the county database or on LexisNexis) and pulled up wages listed by quarter and year. The Officer would then scroll down to find the most recent quarters, which gives the entire wage history of a defendant for that quarter. Officers in Tarrant County noted that the wage information was usually one to two quarters behind. Another drawback was that the system was often unavailable when screeners wanted to verify data.

Collin County uses the last two quarters available on TWC to annualize the income of a defendant. Then, a defendant's self-reported current earnings are annualized as a projection of current earning capacity. If the defendant has not been employed at his or her current job for very long, the county will give larger weight to the highest base period of the two incomes as an indication of the defendant's "economic state." Additionally, Collin County finds the TWC information useful for identifying spousal income and parental income (for juveniles), which is difficult to discern from the affidavit and interview.

If interested in facilitating a contract with TWC, the county agency or official must agree to maintain the confidentiality of the information obtained from the Texas Workforce Commission and must make the request in writing on official letterhead.³⁸ The request must identify the requester as a public official and must include a statement that the information requested is necessary for the administration or enforcement of a law. The requester must also sign a confidentiality agreement.³⁹ Both Collin and Tarrant Counties entered into contracts with TWC to facilitate continued online access to TWC records. Below are the costs associated with a contract, based on the number of transactions a county performs per month:

RATE SCHEDULE FOR TWC ONLINE ACCESS	
Number of Monthly Transactions	Cost
1-10k	\$125.00
10-25k	\$320.00
25-50k	\$630.00
50-75k	\$950.00
75-100k	\$1,250.00
100-150k	\$2,000.00
150-300k	\$3,800.00
300-500	\$6,300.00
500-750k	\$9,400.00

A contract with TWC is inexpensive and can provide counties with recent wage information, which may prove useful in supplementing a defendant's reporting of current income information. Combining this information with a defendant's self-reported information and data

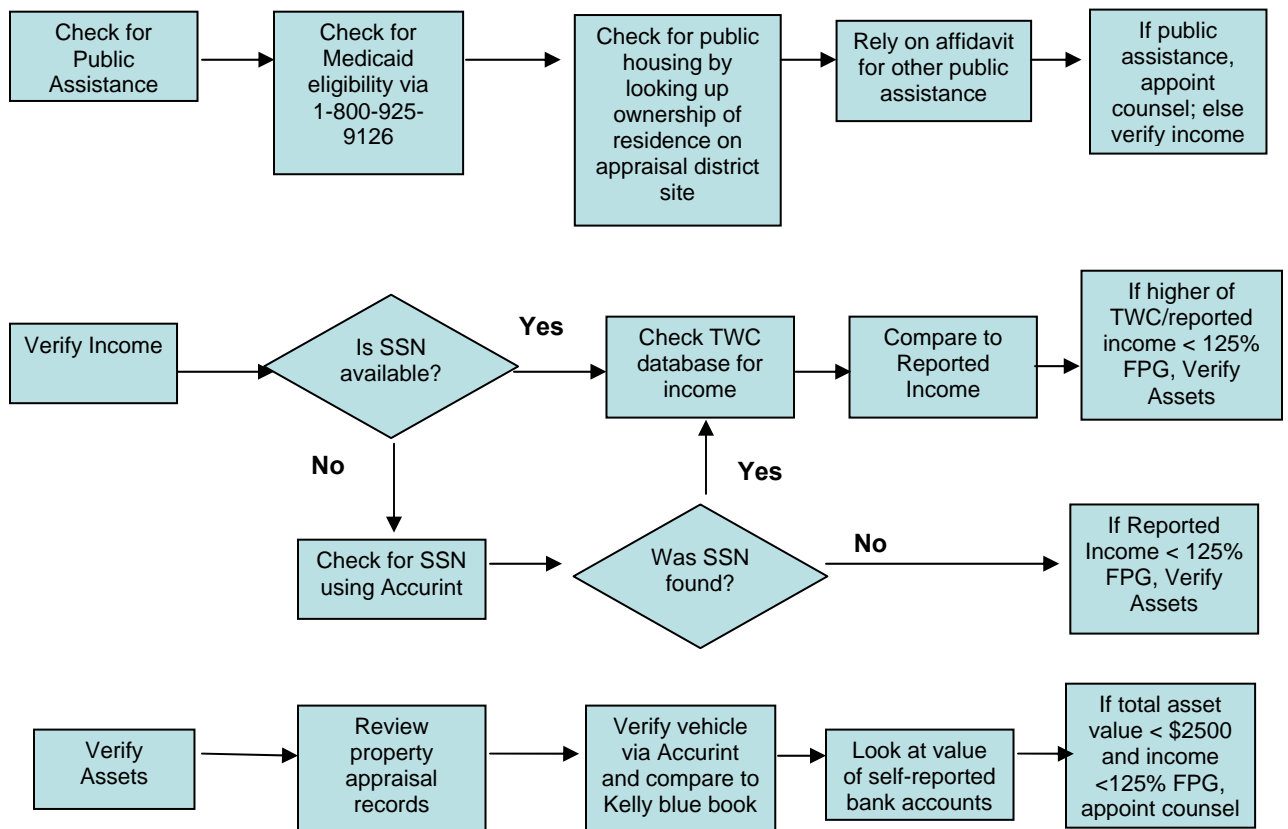
³⁸ See Appendix E, Information Required to Initiate a Contract.

³⁹ See Appendix E, Confidentiality Agreement.

from LexisNexis may help a county wishing to verify get a more complete picture of defendants' resources in order to determine indigence

Collin County Verification Process

Below is Collin County's verification process. Collin County uses a fairly in-depth method, including verifying public assistance, income, and assets through various sources.⁴⁰ As shown below, when checking for public assistance, those verifying can call Medicaid, check for public housing on the appraisal district site, and rely on the defendant's affidavit. When verifying income, Accurant, TWC, and a defendant's self-reported income are all used. When verifying assets, the county again relies on appraisal records, Accurant, and the defendant's self-reported information.



Collin County's process, while extensive, has been simplified into three parts. Counties wishing to verify may use the simplified process tested in Tarrant County or may want to supplement that process with the sources and steps that Collin County uses.

⁴⁰ See Appendix F.

Conclusion

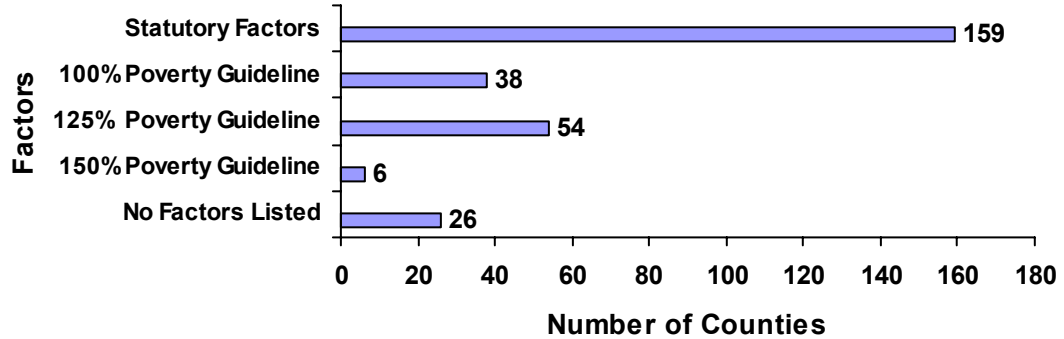
The process of determining whether a defendant is indigent is one of the most important decisions the courts will make in resolving the issue of representation.⁴¹ There are many options available to counties for screening defendants for indigence, from Travis County's streamlined screening process with no verification to Collin County's in-depth verification process. Using LexisNexis, TWC and county appraisal records can give counties a recent picture of a defendant's assets and income and encourage defendants to be forthright in their reporting. Counties that verify may also find that it adds a sense of fairness to the system by allowing those paying for court appointed counsel to feel that defendants are not receiving government services to which they are not entitled.⁴²

⁴¹ ALLAN K. BUTCHER & MICHAEL K. MOORE, MUTING GIDEON'S TRUMPET: THE CRISIS IN INDIGENT CRIMINAL DEFENSE IN TEXAS 10 (2000).

⁴² Elizabeth Neely & Alan Tomkins, *Evaluating Court Processes for Determining Indigency*, 43 COURT REVIEW 4, 9 (2007).

Appendix A

Indigence Standards in Criminal Cases



Standard	No./% of District/County Plans Using Method	District/County Names
Statutory Factors for determining indigence ★	159	Anderson, Andrews, Aransas, Archer, Atascosa, Bailey, Bandera, Baylor, Bee, Borden, Bosque, Bowie, Brazoria, Brewster, Briscoe, Brooks, Caldwell, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crane, Crockett, Culberson, Dallam, Dallas, Denton, Dickens, Donley, Ector, Edwards, Ellis, Falls, Fisher, Floyd, Foard, Frio, Gaines, Galveston, Garza District, Gillespie, Glasscock, Gonzales, Gray, Grimes, Guadalupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Haskell, Hays District, Henderson, Hill, Hood, Houston, Howard, Hudspeth, Hunt, Jasper, Jefferson, Jeff Davis, Jim Wells, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Knox, La Salle, Lavaca, Leon, Liberty, Live Oak, Loving, Lynn, Madison, Marion, Martin, Mason, Matagorda, McCulloch, McClennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Newton, Nolan, Nueces District, Orange, Panola, Parker, Parmer, Pecos, Polk, Presidio, Randall, Reagan, Real, Reeves, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Shackelford, Schleicher, Scurry, Shelby, Sherman, Stephens, Sterling, Stonewall, Sutton, Taylor, Throckmorton, Titus, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Walker, Waller, Ward, Wichita, Wilbarger, Wilson, Winkler, Wood, Young
100% Poverty Guideline *	38	Anderson, Austin, Bailey, Bexar, Borden, Calhoun, Castro, Childress, Crockett, Deaf Smith, Denton, DeWitt, Edwards, Fayette, Gaines, Garza District, Hale, Hood, Johnson, Kinney, Lynn, McLennan, Navarro, Nueces County, Oldham, Parmer, Pecos, Reagan, Refugio, Scurry, Somervell, Stephens, Sutton, Swisher, Terrell, Upton, Val Verde, Wharton
125% Poverty Guideline	54	Angelina, Armstrong, Bastrop, Bell, Blanco, Brazos, Brown, Burleson, Burnet, Callahan, Cochran, Coke, Coleman, Collin, Concho, Crosby, Dawson, Dimmit, Duval, Eastland, Fort Bend, Garza County, Hansford, Hays County, Hemphill, Hidalgo, Hockley, Hutchinson, Irion, Jack, Jim Hogg, Lampasas, Lee, Lipscomb, Llano, Lubbock, Maverick, Mills, Potter, Roberts, Runnels, Schleicher, Smith, Starr, Sterling, Tarrant, Tom Green, Waller, Washington, Wheeler, Williamson, Wise, Zapata, Zavala
150% Poverty Guideline	6	El Paso, Fisher, Mitchell, Nolan, Travis, Webb
No Standards or Statutory Factors Listed ■	26	Cameron, Delta, Erath, Fannin, Franklin, Freestone, Grayson, Goliad, Gregg, Hopkins, Jackson, Kenedy, Kleberg, Lamar, Lamb, Limestone, Montgomery, Nacogdoches, Ochiltree, Palo Pinto, Rains, Red River, Terry, Victoria, Willacy, Yoakum

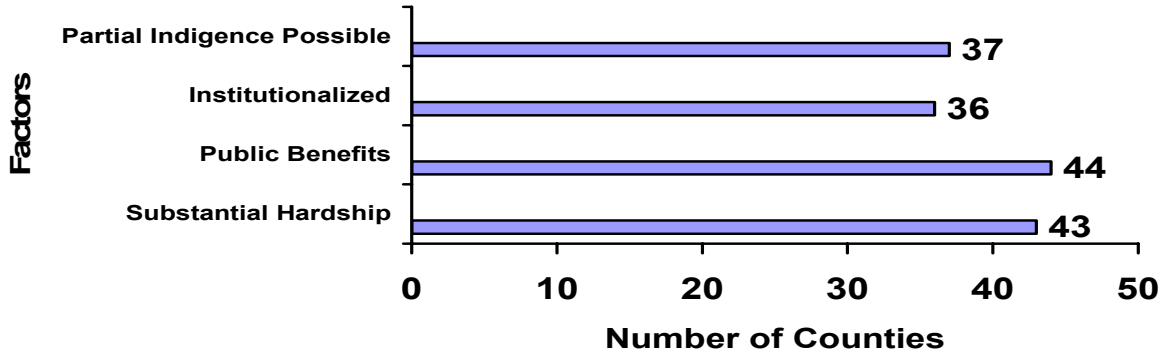
★ Statutory factors means the plan states the financial evidence that will be considered in determining whether a defendant is indigent. The factors include items such as defendant's income and assets, outstanding obligations, and necessary expenses [Texas Code of Criminal Procedure Article 26.04(m)]. Many counties that use poverty guidelines also calculate debts and/or assets but they are not included in this category if they do not include the specific language of the statute.

*Poverty guidelines are established annually by the United States Department of Health and Human Services. Defendant is deemed indigent if the net household income falls below the respective percentage of the poverty guidelines.

■No Standards Listed means that the county did not list either the federal poverty guidelines or the language of Texas Code of Criminal Procedure Article 26.04(m). This does not necessarily mean that the county does not use a calculation of assets and/or debts.

Appendix B

Indigence Standards in Criminal Cases: Additional Factors



Factor	No. of District/County Plans Using Method	District/County Names
Allowing Partial Indigence of 125%-175% Poverty Guideline*	37	Anderson, Armstrong, Bell, Blanco, Brazoria, Brown, Burleson, Burnet, Callahan, Cochran, Coleman, Collin, Coryell, Crosby, Dawson, Dimmit, Duval, Eastland, Galveston, Garza, Grayson, Hansford, Hays, Hemphill, Hidalgo, Hockley, Houston, Howard, Hutchinson, Jim Hogg, Lampasas, Lipscomb, Lubbock, Maverick, Mills, Starr District, Waller
Institutionalized	37	Anderson, Armstrong, Bailey, Bastrop, Bell, Blanco, Brazoria, Brazos, Burleson, Burnet, Callahan, Cochran, Coleman, Collin, Coryell, Crockett, Crosby, Dawson, Dimmit, Donley, Duval, Eastland, Edwards, Fisher, Galveston, Garza District, Grayson, Hansford, Hays County, Hemphill, Hidalgo, Hockley, Hutchinson, Lubbock, Mills, Nolan, Travis
Public Benefits	45	Anderson, Armstrong, Bailey, Bastrop, Bell, Blanco, Brazoria, Brazos, Brown, Burleson, Burnet, Callahan, Cochran, Coke, Coleman, Collin, Concho, Coryell, Crockett, Crosby, Dawson, Denton, Dimmit, Duval, Eastland, Edwards, El Paso, Fisher, Gaines, Galveston, Garza, Grayson, Hansford, Hays (Co. Only), Hemphill, Hidalgo, Hockley, Hood, Howard, Hutchinson, Lubbock, Mills, Nolan, Travis, Waller
Substantial Hardship Test	44	Anderson, Armstrong, Bailey, Bastrop, Bell, Blanco, Bowie, Brazos, Briscoe, Burleson, Burnet, Callahan, Childress, Cochran, Coke, Coleman, Collin, Concho, Crockett, Crosby, Dawson, Denton (Co. Only), Dickens, Dimmit, Duval, Eastland, Edwards, Fisher, Floyd, Galveston, Garza, Grayson, Hansford, Hays (Co. Only), Hemphill, Hidalgo, Hockley, Hood, Hutchinson, Lubbock, Mills, Nolan, Travis, Waller

*Defendant is deemed to be indigent if net household income falls below 125% of the Poverty Guideline. Defendant is deemed to be partially indigent if net household income falls between 125-175% of the Poverty Guidelines. Partially indigent defendants are typically required to pay a flat fee to the county, which represents a portion of the cost of appointed counsel in the case.

Appendix C

STATE BAR OF TEXAS
Standing Committee on
Legal Services to the Poor in Criminal Matters
Subcommittee on Indigence Standards

Standard for Determining Financial Eligibility for Appointed Counsel

The Committee recommends to the Task Force on Indigent Defense the following rule regarding eligibility for the assignment of counsel, consistent with Tex. Code Crim. Proc. art. 26.04(l) and Tex. Gov't Code § 71.060(a)(4):

A person accused of a criminal offense shall be presumed to be indigent, i.e., “a person who is not financially able to employ counsel,” Tex. Code Crim. Proc. art. 1.051(b), if any of the following conditions or factors are present:

1. The accused or a dependent of the accused has been determined to be eligible to receive public assistance, including, but not limited to, food stamps, Medicaid, Temporary Assistance to Needy Families, Supplemental Security Income, public or subsidized housing, or civil legal services;
2. The household income of the accused and any dependents is at or below 150% of the poverty guidelines published annually by the United States Department of Commerce;
3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is the subject of a proceeding in which admission or commitment to such a mental health facility is sought; or
4. The accused previously has been determined to be indigent and entitled to court-appointed counsel in the currently pending or related court proceedings.

When none of these presumptions applies, an accused shall nevertheless be eligible for assignment of counsel if the accused is unable to employ private counsel without substantial financial hardship to the accused or the accused's dependents. An accused shall not be presumed to be financially ineligible for appointment of counsel merely because the accused has posted bail. In determining financial eligibility for appointed counsel under this provision, the appointing authority shall consider the accused's income, assets, and liabilities, as set forth in article 26.04(m) of the Texas Code of Criminal Procedure; the seriousness and complexity of each charged offense; the anticipated cost of representation for the offense(s) charged; the social and economic conditions of the accused and any dependents; and any other extenuating circumstances affecting the ability of the accused to retain private counsel.

Appendix D

Travis County Indigence Form

Defendant's Name: _____ Date: _____ Cause # _____
(print)

DOB: _____ Special Needs _____

Booking No: _____

Indigence Form

To determine eligibility for Court Appointed Attorney, you must complete this form.

I will retain my own attorney: _____ *Date:* _____
Defendant's Signature

Do not continue filling out form if Defendant to retain own attorney

Size of family Unit (Members of immediate family that you support financially (List name, age & relationship))		
Name:	Age:	Relationship:

Does applicant have a parent or other close relative who is able to make a voluntary contribution toward attorney's fees? Explain. _____

Monthly Income		Necessary Mo. Living Expenses
Your Salary		Rent / Mortgage:
Spouse's Salary		Utilities (gas, electric, etc.)
SSI/SSDI		Transportation: Make: Model: Year:
AFDC		Clothes/Food
Social Security Check		Day Care / Child Care:
Child Support		Medical Expenses
Other Government Check		Credit Cards
Other Income		Court-Ordered Monies:
		Child Support:
TOTAL INCOME*		TOTAL NECESSARY EXPENSES*

STAFF USE ONLY:

Comments: _____

TOTAL MONTHLY INCOME:	
TOTAL MONTHLY EXPENSES:	-
DIFFERENCE (net income)	=

DEFENDANT MEETS ELIGIBILITY REQUIREMENTS	
_____ YES	_____ NO
_____ UNDETERMINED	

I have been advised 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. I swear that the above information is true and correct. The information I listed is accurate and I will immediately notify the court of any changes in my financial situation.

**All information is subject to verification. Falsification of information is a criminal offense.*

Signature of Defendant

Date

Appendix E

TWC Contract Information

Information Required to Initiate a Contract

Are you a governmental entity? Yes.

If a governmental entity, is the information needed for the administration or enforcement of a law? Yes.

Agency

Agency name:

Agency number Street Address:

State: Texas

ZIP:

Tax Number:

Authority to Contract: "The Interlocal Cooperation Act," Texas Government Code §791.001 *et. seq.*

Contact Person

Name of Contact Person:

Phone Number:

Street Address:

City:

State: Texas

ZIP:

Email:

Signatory (person who will sign the contract for your agency)

Name:

Title: County Judge

Phone Number:

Street Address:

City:

ZIP:

Email:

Brief statement of purpose for the contract:

The purpose of the contract is for the courts and county to review employment records to assist in determining whether a person requesting court appointed counsel in a criminal or juvenile court proceeding can afford to hire their own attorney. This process is governed by the Fair Defense Act (SB 7, 77th Legislature) and particularly Article 26.04(1)-(r), Code of Criminal Procedure.

Information you are seeking such as wage records, etc. If you require a particular data run, please clearly specify the data needed:

Wage records and unemployment insurance on individuals who are requesting court appointed counsel.

Maximum amount of contract per year:

Length of contract (usually 1 to 3 years): 1 year

Agreement to Protect the Confidentiality of Texas Workforce Commission Documents

Information and documentation maintained by the Texas Workforce Commission (the Agency) in its role as the state level administrator of the Unemployment Compensation (UC) program is confidential under state and federal law consistent with 20 CFR Part 603, as amended. The Agency's disclosure of information to the undersigned requester is made conditioned on the faithful adherence of the undersigned requester to the following terms and conditions:

1) _____(Requester) on behalf of _____affirms that he/she is a public official who has requested disclosure of records in the administration or enforcement of a law by that public official. Specifically the requester is requesting disclosure of information for the following purpose:_____

2) The following documents are subject to this Agreement:_____

3) Requester agrees to the following:

- (a) Requester shall not use the information for any purposes not specifically authorized under this Agreement.
- (b) The information shall be used only to the extent necessary to achieve the specific purpose listed in this Agreement.
- (c) Requester shall not share the data with any other person or entity without first obtaining written approval from the Agency.
- (d) Requester shall not copy, reproduce or transmit such data except as necessary to fulfill the purpose described in this Agreement.
- (e) Requester shall not transfer the authority and ability to access or maintain data under this Agreement to any other person or entity.
- (f) The information shall be stored in a place physically secure from access by unauthorized persons.
- (g) Information in electronic format, such as magnetic tapes or discs, shall be stored and processed in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal or other means.
- (h) Requester shall instruct all personnel with access to the information regarding the confidential nature of the information, the requirements of this Agreement, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this Agreement, and any other relevant State statutes. By signing this Agreement Requester acknowledges that all personnel having access to the disclosed information have been instructed regarding the confidential nature of the information, the requirements of this Agreement, and the sanctions specified in State unemployment compensation laws against unauthorized disclosure of information covered by this Agreement, and any other relevant State statutes.
- (i) Requester agrees to notify the Agency immediately if a security violation of this Agreement is detected, or if Requester suspects that the security or integrity of the Agency's data has been, or may be, compromised in any way.
- (j) Information obtained from the Agency shall be maintained and treated as confidential information under sections 552.101 and 552.352 of the Government Code. Requester agrees to submit any request made under Chapter 552 of the Government Code for information provided under this Agreement to the Office of the Attorney General for that agency's decision, and not to release the requested information except in conformity with such a decision.
- (k) Requestor agrees to notify the Agency if a subpoena is served upon Requestor, which requires the production of confidential UC information or appearance for testimony upon any matter concerning such information except where the request is from an official with subpoena authority, other than a clerk of the court on behalf of a litigant, with authority to

obtain such information by subpoena under State or Federal law consistent with 20 CFR Section 603.7.

- (l) If Requester is using the information provided by the Agency only for research purposes it will not include any individual names or data in any research report produced under this project. Requester shall not disclose any data obtained under this Agreement in a manner which could identify an individual to another person or entity.
- (m) Requester shall destroy all original data received from the Agency and shall remove such data from computers, after completion of the purpose authorized under this Agreement.
- (n) Requestor must maintain a system sufficient to allow an audit of compliance with the requirements of 20 CFR Part 603, and shall permit on-site inspections by the Agency to assure that the requirements of the State's law and the Agreement are met.
- (o) Requester, its employees, agents, contractors, and subcontractors agree to indemnify and hold harmless the Agency, the State of Texas, and their employees and officials for any loss, damages, judgements, and costs of liability arising from any acts or omissions or alleged acts or omissions of Requester or its employees, agents, contractors, and subcontractors, including the inappropriate release or use, by Requester, of the information provided by the Agency.
- (p) Requestor agrees to pay the Agency for the costs of furnishing the information as required by 20 CFR Section 603.8, including the cost of auditing for compliance with this Agreement.

If Requester or any official, employee or agent of Requester fails to comply with any provision of this Agreement, including timely payment of the Agency's costs billed to the Requester, this Agreement shall be suspended and further disclosure of information (including any disclosure being processed) to Requester shall be prohibited until Agency is satisfied that corrective action has been taken to assure that there will be no future breach. In the absence of prompt and satisfactory corrective action, this Agreement shall be cancelled and Requester shall surrender to Agency all information and copies thereof obtained under the Agreement which has not previously been returned to the Agency, and any other information relevant to the Agreement obtained under this Agreement. Cancellation of this Agreement shall not limit Agency from pursuing penalties provided under State law for the unauthorized disclosure of confidential information. Agency shall undertake any other action under the Agreement, or under any law of the State or of the United States, to enforce this Agreement and secure satisfactory corrective action or surrender of the information, and shall take other remedial actions permitted under State or Federal law to effect adherence to the requirements of this Agreement and 20 CFR Part 603 including seeking damages, penalties, and restitution as permitted under such law for all costs incurred by the Agency in pursuing the breach of this Agreement and enforcement the terms of this Agreement.

(signature)

(date)

(name of organization)

(revised 10-27-06)

Appendix F

Collin County Indigency Determination Processes

Affidavits of Indigency – Determination of Findings

Assets and Income

VERIFICATION OF INCOME

Income must be less than 125% of the Federal Poverty Level to be eligible.

Sources:

- Completed Affidavit of Indigency
- Jail Face Sheet
- Interview at Magistration

IF SSN is Available for Defendant (Source Face Sheet and/or Affidavit of Indigency).

- Check Texas Workforce Commission for Income
 - Use the last four most recently reported quarters (currently all 2005 quarters have been registered with TWC).
 - Add up all income.
- Compare TWC Income with Self Reported Income on Affidavit
 - Annualize Self Reported Income (eg. \$10/hour x 25 hours per week x 52 weeks = \$13,000).
- Income is determined based on the highest amount reported – TWC or Self Reported.
- If no income is found on TWC, confirm SSN using Accurint.

IF No SSN is Available for the Defendant (Confirm with Defendant at Magistration).

- Use Accurint to see if SSN can be found.
- If no SSN, use Self Reported Income from Affidavit (also verify at magistration interview).
- Annualize Self Reported Income.

IF Defendant is Under 19 years of Age or Married.

- Use Accurint to get SSN for parents or spouse. (Names usually listed on face sheet)
- Check TWC for Income
- Add income of parents or spouse to defendants.

Based on Total Income (Include Spouse or Parents if appropriate) and the number of dependants listed on the Affidavit, calculate federal poverty level.

If income is above 125% of the Federal Poverty Level, and they are not eligible for Medicaid, Food Stamps, of Social Security Disability, the defendant is determined not eligible.

VERIFICATION OF ASSETS

Total Assets must be less than \$2,500 to be eligible.

Sources:

- Completed Affidavit of Indigency
- Jail Face Sheet
- Interview at Magistration

Residence/Property Owned

- From Address(es) provided on Face Sheet and Affidavits determine if the defendant owns property.
- Ask defendant during magistration interview where they live and confirm ownership.
- Property Ownership can be checked at www.texascad.com for addresses in Texas. (Appraisal Records)
 - Look up ownership of residence by both name and address.
 - Check if Spouse or Parents of Defendant under the age of 19 years owns property.
- If defendant is out of state, use Accurint to see if property can be found.

Vehicles

- Check affidavit for self reported. If no vehicle is listed, ask how the defendant gets to work/school etc.
- Also check Accurint to see if an automobile is listed.
- Value automobile based on Kelly Blue Book Value (use base model).

Bank Accounts/etc.

- Use Self-Reported on Affidavit
- No verification method used.

VERIFICATION OF PUBLIC ASSISTANCE

If confirmation can be made that the Defendant (or legal Dependents) are eligible for a public program (Medicaid, Food Stamps, SSDI, Public Housing, or Collin County Indigent Health Care Program), they are automatically found eligible even if their income or assets do not meet Plan requirements.

Sources:

- Affidavit of Indigency (Primary Source)
- Face Sheet (for SSN)
- Magistration Interview

Medicaid

- If the Affidavit shows that the Defendant is eligible for Medicaid (follow-up with the Defendant to during the Magistration Interview to see who is on Medicaid (Self, or Dependant).
 - Confirmation of Medicaid in TX can be made by calling 1-800-925-9126. (Need SSN number, date of birth, and Medicaid Provider Number to access system).

Food Stamps, SSDI, Public Housing ,etc.

- No formal verification process, rely primarily on information provided by Defendant during Magistration Interview...
- Public Housing can sometime be verified by going to the Appraisal District site and determining ownership of residence. Building are sometimes identified as Section 8 housing which is a Public Housing Program.
- Collin County Indigent Health Care Program (Rarely) Call Collin County Health Care Services at 972-548-5500 to confirm.