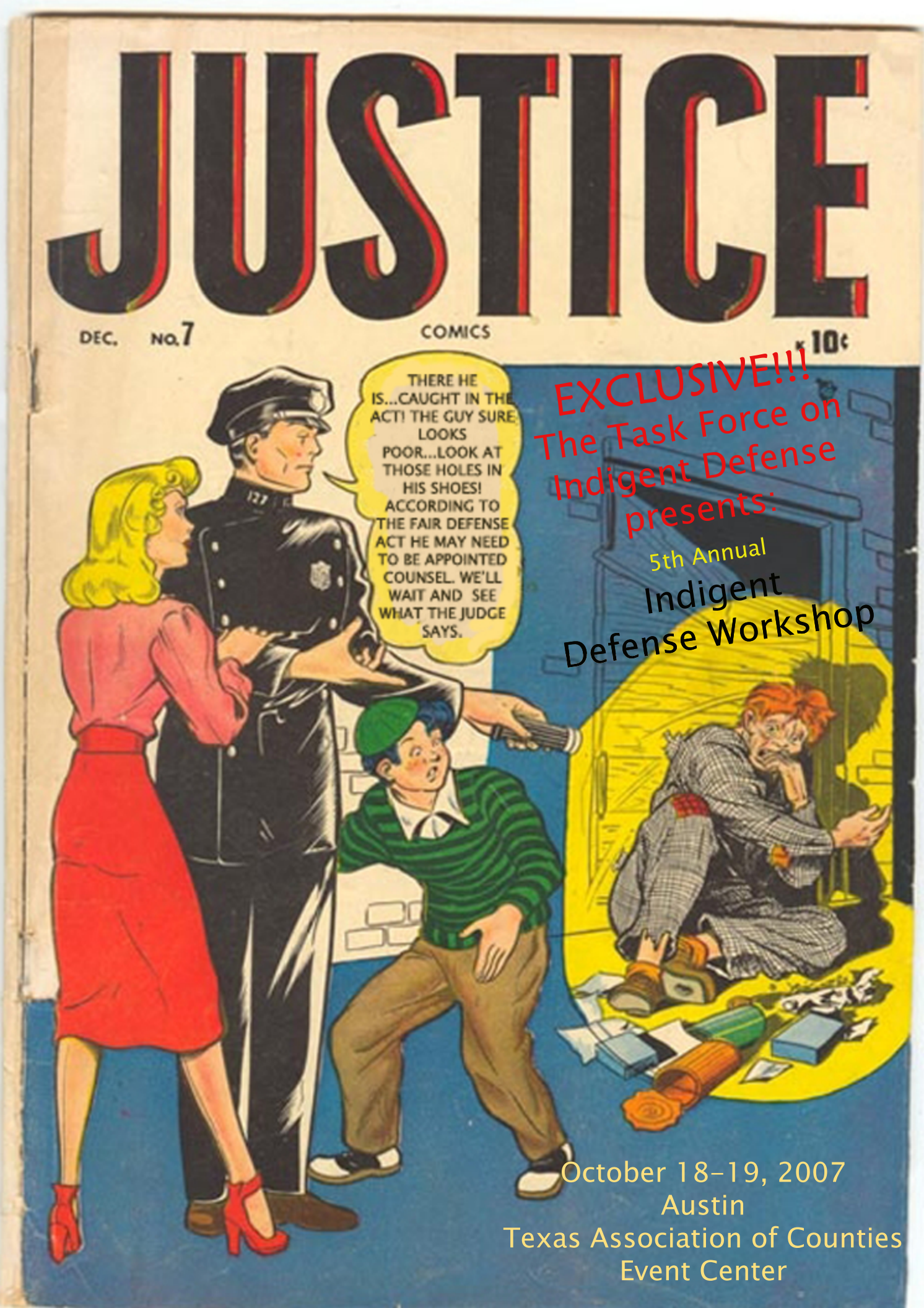
JUSTICE
DEC. No. 7
COMICS
10¢
THERE HE IS...CAUGHT IN THE ACT! THE GUY SURE LOOKS POOR...LOOK AT THOSE HOLES IN HIS SHOES! ACCORDING TO THE FAIR DEFENSE ACT HE MAY NEED TO BE APPOINTED COUNSEL. WE'LL WAIT AND SEE WHAT THE JUDGE SAYS.
EXCLUSIVE!!!
The Task Force on Indigent Defense presents:
5th Annual
Indigent Defense Workshop
October 18-19, 2007
Austin
Texas Association of Counties
Event Center

INDIGENT DEFENSE WORKSHOP
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TO PARTICIPANT BOOK
October 18-19, 2007

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Texas Task Force on Indigent Defense
2007 Indigent Defense Workshop

Please see back for location, parking instructions

Establishing Effective Defense Delivery Systems

Agenda

Day One: Thursday – Oct 18th 9-5

Welcoming Remarks Sharon Keller, Presiding Judge, Court of Criminal Appeals, Chair of the Task Force Carl Reynolds, Administrative Director, Office of Court Administration Jim Allison, General Counsel, County Judges and Commissioners Association	9:00-9:15
Keynote: State of the State-Indigent Defense Nationally (.5 CLE) Bob Spangenberg, The Spangenberg Group	9:15-9:45
Legislative Update (.5 CLE) Jim Bethke, Director, Task Force on Indigent Defense Shannon Edmonds, Texas District and County Attorneys Association	9:45-10:15
Break	10:15-10:30
Around the State: What's Working Bexar County - Angela Moore, Chief Appellate Public Defender Val Verde County - David Hall , Executive Director, Texas RioGrande Legal Aid Williamson County - John Bradley, District Attorney	10:30-noon
Lunch Please see back of agenda for area restaurants	noon-1:30
Public Interest Groups as Partners (.5 CLE including .25 ethics) Andrea Marsh, Texas Fair Defense Project Dominic Gonzales, Texas Criminal Justice Coalition	1:30-2:00
Providing Effective Representation (.5 CLE including .25 ethics) Don Hase, Criminal Defense Attorney, Tarrant County	2:00-2:30
Break	2:30-2:45
Determining Indigence and Verification (.5 CLE) Jim Bethke, Jim Allison, Jamie Dickson, Task Force UT-Law Intern	2:45-3:15
Setting up a Public Defender Office Tony Odiorne, Chief Public Defender, Wichita County Panel: Jim Bethke, David Hall and David Slayton Director of Court Administration, Lubbock County	3:15-3:45
Break	3:45-4:00
Question and Answer Marshall Shelsy, Jim Bethke, Jim Allison	4:00-5:00

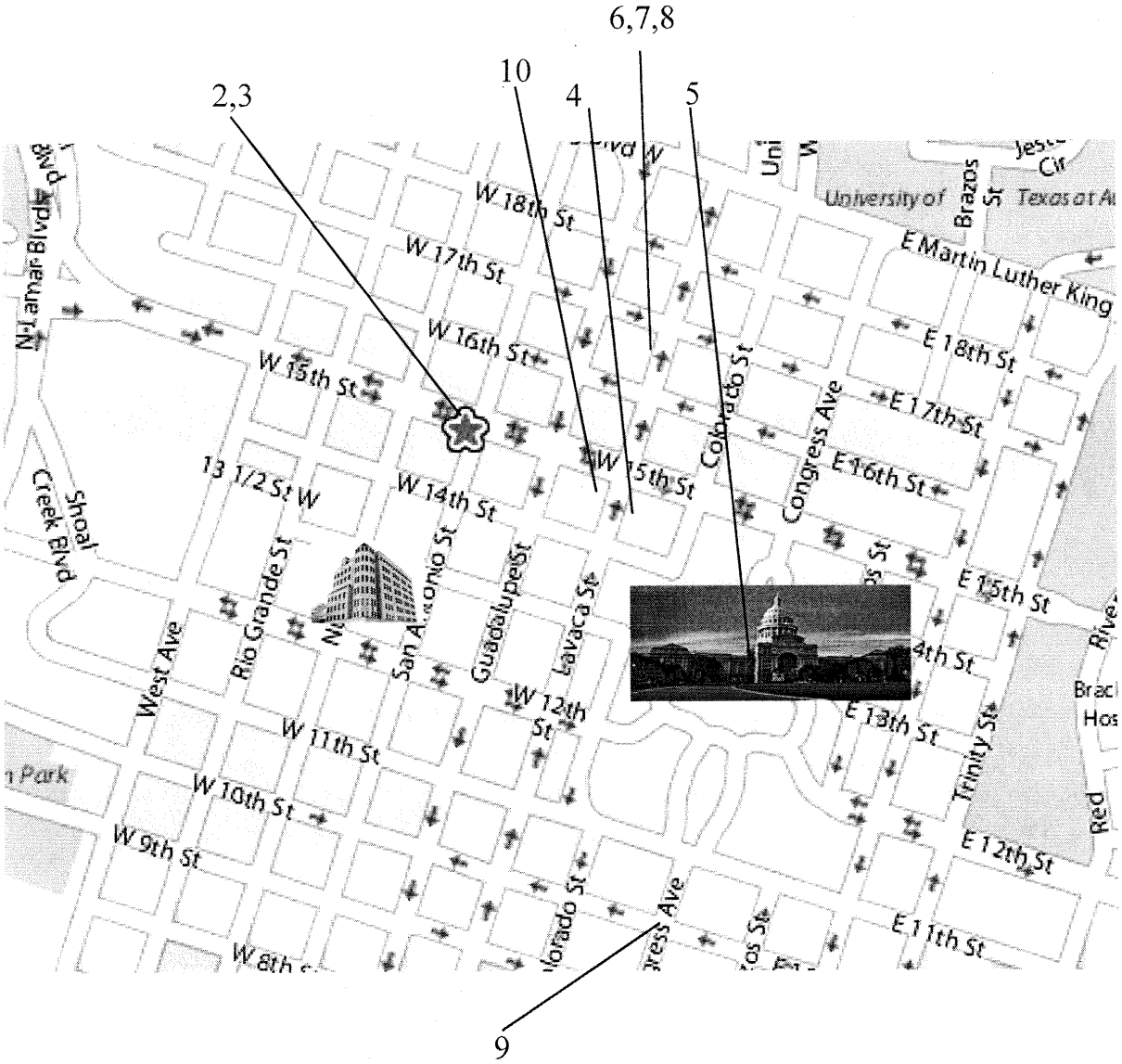
*Following day-one of the workshop, those wanting to do so, will informally gather at a nearby restaurant

Location of workshop and parking and contact instructions:

Texas Association of Counties (TAC) building: corner of 13th and San Antonio (1210 San Antonio); if you park the code to the garage is *3720 (be sure to push asterik first); from the lobby or the garage you will go to the 4th floor where the Events Center is located. Contact information for Task Force staff on days of this workshop: Terri Tuttle or Jim Bethke; contact cell: 512-585-6027; also for more information concerning the workshop, please email terri.tuttle@courts.state.tx.us.

Nearby restaurants (within walking distance) and map

1. Subway (downstairs in TAC Building lobby)
2. Texadelphia
3. Starbucks
4. Texas Chili Parlour
5. Capitol Grill (in the Extension)
6. Chicken Bowl (rice bowls, TexMex)
7. Thundercloud (subs, salads, soups)
8. Hog Island Italian Deli
9. Congress Avenue (various)
10. 15th Street Cafe @ Doubletree



The Texas Task Force on Indigent Defense
2007 Indigent Defense Workshop

Please see back of day-one agenda for location, parking instructions

Establishing Effective Defense Delivery Systems

Agenda

Day Two: Friday - Oct 19th 8:30-3

Welcome back Jim Bethke, Marshall Shelsy	8:30-8:45
Evidence-based practices/measures and tools (studies, website) you can use Jim Bethke, Whitney Stark, Grants Administrator for the Task Force Darby Johnson, Project Supervisor, Public Policy Research Institute Jim VanBeek, Senior IT Manager, Public Policy Research Institute	8:45-9:15
Case Management/Integration Bob Wessels, Court Administrator, Harris County Courts	9:15-9:45
Introduction and objectives of workgroups Jim Bethke, Marshall Shelsy	9:45-10:00
Break (close airwalls) and settle into workgroups See the back of this sheet for workgroups and location of workgroup	10:00-10:15
Workgroups: Similar-sized counties and interests See the back of this sheet for workgroups and location of workgroup	10:15-11:30
Lunch Please see map on back of day-one agenda for nearby restaurants	11:30-1:00
Workgroups: continue	1:00-2:00
Break (open airwalls) and workgroup participants return	2:00-2:15
Debrief: Report on action plans Marshall Shelsy	2:15-3:00

Before leaving, please leave your evaluation with Terri and recieve your certificate of attendance.

The Task Force on Indigent Defense has received accreditation for continuing education credits from the following agencies, organizations or associations for 2 hours (including .5 hours of ethics): State Bar of Texas and Texas Center for the Judiciary. To seek credit from the State Bar of Texas, please submit your credit hours online at www.texasbar.com or ask for a form from Terri. The MCLE Course number is 900031470; Texas Center for the Judiciary will automatically download from Bar.

Workgroup Assignments, Locations, Instructions

Agenda item for Friday at 10:15 a.m.:

There are 6 groups of 27 counties grouped by size and topics of interest with approximately 10-15 participants in each of the 6 workgroups.

The purpose of the workgroups is for counties to brainstorm and share experiences with regards to process challenges. Counties will come away with proficiency improvement tips and other solutions on how the other counties have handled similiar situations. The end result of the work-groups is indidualized action plans for each will be presented by county at 2:15 on Friday. The ultimate goal of the workgroups is for counties to take the knowledge learned and the 90-day action plans back to their counties and increase proficiencies in processes. Facilitators will guide the workgroups towards acheiving this goal.

GROUP 1 mid-sized; theme is mixed but with regards to proficiencies re attorney appointment systems, determining indigence, and electronic integrated justice filing systems
Counties: Brazos, Lubbock, McLennan, Montgomery, Taylor
Facilitators: David Slayton, Holly Webb
location: TAC Events Center South Room

GROUP 2 small-sized; theme is mixed but with regards to proficiencies, determining indigence, appointment issues
Counties: Bastrop, Brooks, Freestone, Jones, Limestone, Parker, San Saba
Facilitators: Marshall Shelsy, Andrea Marsh
location: TAC Events Center Central Room

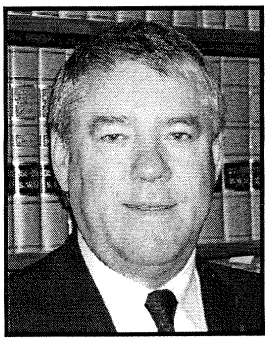
GROUP 3 South Texas; theme is proficiencies; streamline and centralize processes
Counties: Cameron, Hidalgo, Val Verde, Webb
Facilitators: David Hall, Jerry Wesevich
location: TAC Events Center North Room

GROUP 4 large-sized; theme is mixed; proficiencies; determining indigence
Counties: Collin, Dallas, Fort Bend, Williamson
Facilitators: Jim Bethke, Shannon Edmonds
location: TAC Board Room, 4th floor

GROUP 5 large-sized; theme is proficiencies, determining indigence, and how to set up a public defender program
Counties: Bexar, Nueces, Travis
Facilitators: Bob Spangenberg, Angela Moore
location: Texas Center for the Judiciary Training Room, 8th floor

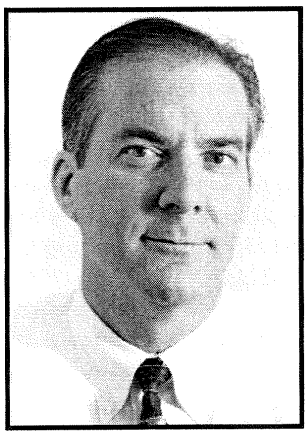
GROUP 6 small-mid sized; theme is how to set up a public defender office
Counties: Anderson, Austin, Nacogdoches, Wichita
Facilitators: Tony Odiorne, Dominic Gonzales
location: Texas Center for the Judiciary Board Room, 8th floor

Presenters



James P. Allison
General Counsel of the County Judges and Commissioners Association of Texas
Law Practice - Allison, Bass & Associates, Attorneys at Law
Email: j.allison@allison-bass.com

James P. Allison was born in Paris, Texas, and reared in Delta County, Texas. He received a Bachelor's Degree in 1967 and a Master's Degree in 1968 in Government from East Texas State University. In September, 1968, Allison was selected as a Texas Legislative Intern, a Ford Foundation-sponsored program, and served as a staff assistant for the Senate State Affairs Committee. In 1970, Allison served as Research Director of the Senate Interim Committee on Urban Affairs. In this capacity, he was responsible for supervising a research staff, scheduling public hearings in several areas of the state, and preparing a committee report discussing urban problems and evaluating solutions to these problems. In 1971, Allison directed the staff of Senator Barbara Jordan. In addition to reviewing other proposed legislation, Allison drafted and coordinated the support for several bills concerning state and urban problems, including legislation creating the Texas Department of Community Affairs. In 1971, Allison received his Doctor of Jurisprudence Degree from the University of Texas School of Law. He returned to Delta County and was elected County Attorney in 1972. While practicing law in Cooper, Texas, he served three terms on the State Democratic Executive Committee, two terms as president of the local Chamber of Commerce and six years on the board of directors of the local community action agency. In 1979, Attorney General Mark White appointed Allison to serve as Chief of the County and Local Government Section in the Office of the Attorney General. In this position, he represented state and local officials in litigation before the state and federal courts. In 1982, he successfully defended the state resign-to-run rule (Art. XVI, Sec. 65, Texas Const.) before the U.S. Supreme Court in the case of Clements v. Fashing. While in the Attorney General's office, Allison also advised local officials on legal questions and prepared Opinions of the Attorney General on local government issues. In 1983, Allison returned to the private practice of law in Austin, Texas. His clients include several counties and special districts. He is licensed to appear in the state courts, all federal district courts in Texas, the Fifth and Eleventh Circuit Courts of Appeals and the U. S. Supreme Court. In addition to his litigation experience, Mr. Allison has served as Chairman of an arbitration panel in the United States District Court and as an administrative law judge for state agencies. He has lectured at seminars for local government officials at the LBJ School of Public Affairs and the V. G. Young Institute of County Government. He has authored several articles for county publications. The firm of Allison, Bass & Associates, L.L.P. is actively involved in governmental representation at all levels and currently represents county officials in matters before state and federal courts. Allison currently serves as General Counsel of the County Judges and Commissioners Association of Texas. He is a member of the Travis County Bar Association, The Texas Bar Association, the Bar Association of the Fifth Circuit Court of Appeals, the Federal Bar Association, and the American Bar Association.



John Bradley
Williamson County District Attorney

John Bradley has been a prosecutor since 1987 and thinks there is no law other than criminal law since he graduated from University of Houston Law Center in 1985. He currently serves as the elected District Attorney in Williamson County, Texas.
After graduating from law school, Mr. Bradley worked for Judge Charles Campbell at the Texas Court of Criminal Appeals. He read records of trials, researched the law and drafted opinions for a couple of years, then became a prosecutor in the Harris County District Attorney' Office. In 1989, he moved to Georgetown and began working

as a felony prosecutor in the Williamson County District Attorney's Office, eventually serving as the First Assistant District Attorney for five years.
In December 2001, Governor Rick Perry appointed Bradley as the District Attorney for Williamson County. Mr. Bradley subsequently ran a contested race and was elected to the office. He has since been re-elected in an uncontested race.
Mr. Bradley also has worked for the Texas Legislature. He helped rewrite the Penal Code in 1993 as a staff member for the Punishment Standards Commission and subsequently served as general counsel for the Senate Criminal Justice Committee under the direction of Senator John Whitmire. In 1996, he served on then Governor George W. Bush's Committee to Rewrite the Code of Criminal Procedure. He remains active in the legislative process.
Mr. Bradley speaks regularly at continuing legal education seminars in Texas and is frequently invited to speak throughout the United States. He also has spoken in Canada and Bermuda on legal issues. Both the Texas District and County Attorneys Association and National College of District Attorneys have publicly recognized him for his service through legal education. Mr. Bradley also has published numerous articles on criminal law and is the author or co-author of several criminal law books.
Mr. Bradley has appeared on Court TV, the Jim Lehrer New Hour, and National Public Radio and is a frequent contributor to legal magazines and newspapers. He also loves Apple computers and spends way too much time posting comments in legal discussions on the Internet. Mr. Bradley has been married since 1982 and has three children.

Shannon Edmonds
is the Director of Governmental Relations for the Texas District and County Attorneys Association (TDCAA), the largest statewide association of prosecutors in the nation. Mr. Edmonds serves as a liaison between prosecutors and the Texas Legislature on criminal, juvenile, and civil justice issues. Upon the conclusion of each legislative session, he authors TDCAA's popular Legislative Update book, a comprehensive analysis of legislative changes that affect the Texas criminal justice system.
Between legislative sessions, Mr. Edmonds provides training, education, and legal assistance to members of TDCAA and the general public. He has written articles and given presentations on a variety of topics, including the legislative process, capital punishment, probation and sentencing law, search and seizure law, ethics, DWI law, and mental health issues in the criminal justice system. He has also been interviewed about Texas legal issues by print, radio, and television news media from across the nation, including Time Magazine, New York Times, Chicago Tribune, Los Angeles Times, Washington Times, National Law Journal, National Public Radio (NPR), Texas Law Journal, and every major daily newspaper in the state of Texas.
Mr. Edmonds graduated from the University of Texas and the University of Texas School of Law. He served as a prosecutor in Travis County, Texas, from 1993 to 2000. He was also an assistant general counsel to Governor George W. Bush and a policy advisor to Lt. Governor Bill Ratliff before joining TDCAA in 2002, where he has worked for the past three legislative sessions.

For more information about Mr. Edmonds or TDCAA, please visit www.tdcaa.com.

Dominic Gonzales
Texas Criminal Justice Coalition
Dominic Gonzales is originally from Lubbock, Texas. He began working on indigent defense issues in 1999 when he helped to coordinate the research compiled for the Fair Defense Report (2000). Mr. Gonzales has served as the director of the Texas Criminal Justice Coalition's (TCJC) indigent defense project since August 2004. He has served on the Discretionary Grant Review team for Fiscal Year 2007 and Fiscal Year 2008. BA from Santa Clara University in 1999.

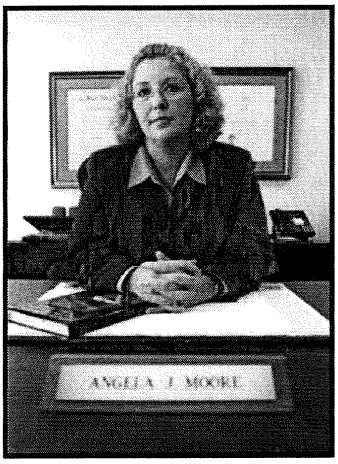
David Hall
Executive Director, Texas RioGrande Legal Aid Inc
University of Texas School of Law
J.D. - 1969
University of Texas at Austin
B.A., Government - 1964
Employment
Texas RioGrande Legal Aid, Inc. (formerly Texas Rural Legal Aid, Inc.)
Executive Director
April 1975 - present
American Civil Liberties Union Foundation
Director, South Texas Project
December 1972 - April 1975
United Farm Workers Organizing Committee, AFL-CIO
National Farm Workers Service Center, Inc.
Staff Attorney
November 1969 - December 1972
Peace Corps Volunteer
Community Development - Venezuela
February 1966 - June 1968
Special Recognition and Awards
Mid-West Association of Farm Worker Organization, 2007 Recognition award for service and dedication to the migrant and seasonal farm worker community
Legal Legend: A Century of Texas Law and Lawyering. *Texas Lawyer* magazine's recognition as one of 100 Texas lawyers who shaped the state's legal history in the 20th century, June 2000
United Farm Workers of America, AFL-CIO, 1996. Recognition award presented by President Cesar Chavez for outstanding service to farm workers
Mexican American Legal Defense and Educational Fund, 1994. Award to an individual who has made a significant contribution to the Mexican-American community in Texas
John Minor Wisdom Public Service and Professionalism Award, American Bar Association, Section on Litigation, 1993
State Bar of Texas Legal Services Award, 1978

Don Hase
Criminal Defense Attorney
Ball & Hase
Arlington, TX
Law degree from Texas Tech University School of Law 1981
Assistant District Attorney, Tarrant County 1981-87
Partner: Ball, Hase & Wisch 1987-1994
Partner: Ball & Hase 1987-present
Board Certified Criminal Law, Texas Board of Legal Specialization 1986
Past president, Tarrant County Criminal Defense Lawyers Association
Member: Texas Criminal Defense Lawyers Association; Tarrant County Bar Association; Arlington Bar Association

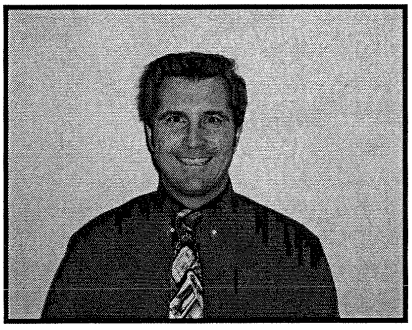
Andrea Marsh
Executive Director, Texas Fair Defense Project
Ms. Marsh worked to improve the delivery of indigent defense services in Texas as an Arthur Liman Public Interest Fellow at Texas Rural Legal Aid before founding TFDP in 2004. She also has served as a Wasserstein Public Interest Fellow at Harvard

Law School and is a member of the Oversight Board for the West Texas Regional Public Defender for Capital Murder Cases and the State Bar of Texas's Committee on the Provision of Legal Services to the Poor in Criminal Matters.

Ms. Marsh received her J.D. from Yale Law School and her B.A. from Tulane University. She was a law clerk to the Hon. Keith P. Ellison in the U.S. District Court for the Southern District of Texas.

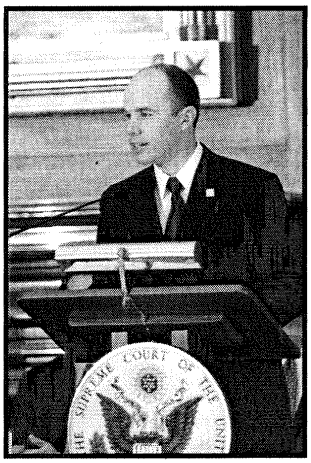


Angela Moore
Chief Appellate Public Defender
Bexar County
Graduated San Angelo Central High School, San Angelo, Texas in 1981. Angelo State University, BA 1985 St. Mary's University School of Law 1988
Licensed to practice law in Texas 1988, Federal District Court for the Western District 1990, Fifth Circuit 1998.
Board Certified in Criminal Law since 1995
Employment:
4Briefing Attorney for Senior Judge W.C. Davis, Court of Criminal Appeals 1988-1989
Assoc. Attorney, Booth and Newsom, P.C., Austin, Texas 1989-1990
Assistant Criminal District Attorney, Bexar County, 1990-1998
Assistant United States Attorney 1998-2002
Partner, Law Office of Moore & Moore 2002-2003
Court of Criminal Appeals Chief Staff Attorney 2003-2004
First Assistant County Attorney, Kendall County 2004-2005
Chief, Appellate Public Defender Office, Bexar County 2005-present
Adjunct Professor at St. Mary's School of Law, legal research and writing
Wm Sessions Inn of Court, 1998-present

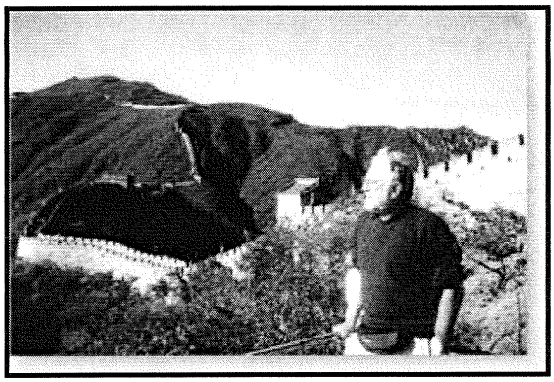


Mr. Tony Odiorne
First Assistant Public Defender
Wichita County
Board Member, Task Force on Indigent Defense
Email: Anthony.odiorne@co.wichita.tx.us
He started with the Wichita County Public Defender Office in 1997 after graduating Cum Laude from Southern Methodist University School of Law. He became 1st Assistant in 2003. While at the Public Defender's office, Tony has represented indigent persons in thousands of cases including several murder and attempted capital murder trials. He has handled numerous appeals, including oral argument at the Court of Criminal Appeals. In addition to his legal duties, he was the primary author of a new agreement reestablishing the Public Defender's Office with Wichita County in accordance with the Fair Defense Act guidelines. He is currently overseeing the development of a formalized training manual and program to further the professional development of the attorneys and office staff. He is also a regular guest speaker at the pre-parole "Changes" classes at the Allred Prison Unit. Tony grew up in the Dallas-Fort Worth area and received his B.B.A. from the University of Texas, Arlington. Prior to attending law school, Tony spent several years in the insurance and finance industries in Texas, Missouri and California. Tony is a member of TCDLA. He is married and has a daughter and a son.

Marshall A. Shelsy
Staff Attorney
Harris County Criminal Courts at Law
Email: marshall_shelsy@ccl.hctx.net
General Practice of Law, Percely, Shelsy & Associates (1981-1986)
Harris County District Attorney's Office (1979—1981)
J. D. 1980, South Texas College of Law, Houston, Texas
B. A., (Journalism) 1972, New York University, New York City, N.Y.
Member, Texas Board of Legal Specialization,Criminal Law Exam Commission, (2001–Present)
Houston Bar Association: Chairperson, Criminal Law and Procedure Section, 1992
Member, Continuing Legal Education Committee, 1993—Present
Chair, Inter-professional Relations/Physicians Committee, 1995
Texas District and County Attorneys Association (Associate Member)
Member, North American Delegation to 2006 International Probation Conference, Mielno, Poland
Teaching activities:
Texas Center for the Judiciary, Inc.
Texas Municipal Court Education Center
State Bar of Texas
Texas Association of Counties
Adjunct Professor, Sam Houston State University, Huntsville, Texas,
United State Drug Enforcement Administration
Texas Department of Public Safety
Texas Task Force On Indigent Defense



David Slayton
Director of Court Administration
Lubbock County District Courts & County Courts-at-Law
David W. Slayton is the Director of Court Administration for the Lubbock County, Texas, District Courts and County Courts at Law. He has served in that role since 2004 and has been employed by the judicial branch in various roles for nine years. Previously, he served as Court Services Supervisor for the United States District Court, Northern District of Texas, in Dallas, Texas, and as a trial court coordinator for the 99th District Court in Lubbock County. David earned a Bachelor's Degree in Political Science from Texas Tech University and a Master's Degree in Public Administration from Troy University. He is a 2007 Graduate Fellow of the Institute for Court Management, where he was chosen to deliver the commencement address on behalf of his class in the United States Supreme Court. He currently serves as the Urban Court Director on the National Association for Court Management's Board of Directors. He also serves on the Board of Directors for the Texas Association for Drug Court Professionals. David is a member of the Texas Association for Court Administration, the National Association for Drug Court Professionals, the American Judicature Society and the Lubbock Lions Club.



Robert L. Spangenberg
President, The Spangenberg Group
W. Newton, MA
Education
LL.B., Boston University School of Law, Editor-in-Chief, 1961, Law Review
B.S., Business Administration, Boston University School of Business, 1955
President (1985-present), The Spangenberg Group. Provide technical assistance, program evaluation, research and other consultant services on legal and court-related topics to government agencies (both state and local) and private organizations.
Project Director, responsible for the administration, management and research of the following projects:
Mr. Spangenberg has been conducting research and providing technical assistance on civil and criminal justice system-related topics for over 20 years. Mr. Spangenberg began his legal career as a trial attorney, handling civil and criminal cases in state and federal courts. Subsequently, he directed a neighborhood legal services program, the Boston Legal Assistance Project, for eight and a half years before joining Abt Associates as Deputy Director of its Law and Justice Division in Cambridge, Massachusetts. Widely regarded as a national expert on justice delivery systems to the poor, Mr. Spangenberg left Abt Associates to form his own research and consulting company in 1985. The Spangenberg Group's other staff consists of a small team of professionals who specialize in the study of legal services programs for the poor.

Holly Webb
Criminal Court Support Manager
Tarrant County
Email: hwebb@tarrantcounty.com
Holly Webb has been employed by Tarrant County since 1995. She worked six years for the Staff Attorney in the District Attorney's Office. She is currently the Criminal Court Support Manager for the nineteen District and County Criminal Courts of Tarrant County. In her role with indigent defense, she has applied for and been granted two discretionary awards to Tarrant County: Indigent Defense On-Line and the Centralized Magistration Project.

Bob Wessels
Courts Administrator
Harris County Criminal Courts at Law

James D. Bethke, Director of the Task Force
Email: Jim.bethke@courts.state.tx.us
Ph: (512)936-6994

In June of 2005, Governor Perry appointed Bethke as an Ex-Officio member of the Criminal Justice Advisory Council. The bipartisan panel,

with representation from all geographical sectors in Texas, will advise the Governor on how the state can improve its criminal justice system.

For the past five years, Bethke has served as director of the State Task Force on Indigent Defense charged with implementing a statewide system of standards, financing and other resources for criminal defendants unable to hire attorneys.

He is responsible for distributing and accounting for approximately $13 million in state funds yearly to county government. His office also collects, reviews, and maintains all county expenditure data and plan information relating to county indigent defense services for each of the 254 counties.

Prior to his current position he served four years as special counsel to Texas trial courts, where he lead the efforts to negotiate a contract providing low-cost computer research for Texas judges and prosecutors, credited with saving as much as $1.3 million in research fees for courts in its first six months.

Bethke, a U.S. Army veteran from the 101st Airborne Division, is a graduate of the University of Texas at Tyler and the Texas Tech University law school and joined the Office of Court Administration in 1998 after serving as general counsel for the Texas Municipal Courts Education Center. Before that he was chief prosecutor for the Lubbock City Attorney's Office.

He is a past-chair of the Juvenile Law Section of the State Bar of Texas and Juvenile Law Exam Commission for the Texas Board of Legal Specialization.

2007 FAIR DEFENSE LAW

Prepared by the Task Force on Indigent Defense

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CODE OF CRIMINAL PROCEDURE

CODE OF CRIMINAL PROCEDURE

CHAPTER ONE: GENERAL PROVISIONS

Art. 1.051. Right to representation by counsel

(a) A defendant in a criminal matter is entitled to be represented by counsel in an adversarial judicial proceeding. The right to be represented by counsel includes the right to consult in private with counsel sufficiently in advance of a proceeding to allow adequate preparation for the proceeding.

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

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

(d) An eligible indigent defendant is entitled to have the trial court appoint an attorney to represent him in the following appellate and post-conviction habeas corpus matters:

(1) an appeal to a court of appeals;

(2) an appeal to the Court of Criminal Appeals if the appeal is made directly from the trial court of if a petition for discretionary review has been granted;

(3) a habeas corpus proceeding if the court concludes that the interests of justice require representation; and

(4) any other appellate proceeding if the court concludes that the interests of justice require representation.

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

(f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

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

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

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

(A) has been given a reasonable opportunity to retain and has failed to retain private counsel; or
(B) waives or has waived the opportunity to retain private counsel.

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

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

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

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

"I have been advised this _____ day of _____, 2 ~~19~~___, by the (name of court) Court of my right to representation by counsel in the case ~~trial of the charge~~ pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of ~~the~~ defendant)"

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

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

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

(k) A court or the courts' designee may without unnecessary delay appoint new counsel to represent

an indigent defendant for whom counsel is appointed under Subsection (c) or (i) if:

(1) the defendant is subsequently charged in the case with an offense different from the offense with which the defendant was initially charged; and

(2) good cause to appoint new counsel is stated on the record as required by Article 26.04(j)(2).

Amendments to (e), (f), and (g) and addition of (f-1) and (f-2) effective Sept. 1, 2007 (HB 1178, §1). Section 3 of HB 1178 provides: "(a) The change in law made by this Act to Article 1.051(e), Code of Criminal Procedure, applies only to a proceeding at which an indigent defendant appears without counsel after having refused appointed counsel if the proceeding occurs on or after the effective date of this Act. A proceeding at which an indigent defendant appears without counsel after having refused appointed counsel that occurs before the effective date of this Act is covered by the law in effect at the time of the proceeding, and the former law is continued in effect for that purpose.

"(b) The change in law made by this Act to Article 1.051(f), Code of Criminal Procedure, applies only to a waiver of counsel or a communication with a defendant that occurs on or after the effective date of this Act. A waiver of counsel or a communication with a defendant that occurred before the effective date of this Act is covered by the law in effect at the time the waiver or communication occurred, and the former law is continued in effect for that purpose."

2007 Legislative Note

With the passage of H.B. 1178, the 80th Texas Legislature promulgated new procedures that judges and prosecutors must follow when obtaining waivers of the right to counsel from defendants charged with a felony or Class A or B misdemeanor. H.B. 1178 takes effect on September 1, 2007. Waivers obtained after September 1, 2007, will be presumed invalid if they are obtained in violation of the procedures specified in the bill.

Commentary

A defendant's right to counsel under Art. 1.051(c) and the Sixth Amendment to the U.S. Constitution must be affirmatively waived and no waiver may be implied from a defendant's failure to request counsel. Failing either a relinquishment or an abandonment of the right, the judge may not conduct any adversary judicial proceedings with respect to formal criminal charges until the accused is represented by an attorney. *Oliver v. State*, 872 S.W.2d 713, 715 (Tex.Crim.App. 1994).

The primary goal of the ten-day preparation time afforded counsel by Art. 1.051(e) is to ensure the indigent defendant receives appointed counsel who is prepared for the proceeding. The ten-day preparation time is a mandatory provision that may be waived only with written consent or on the record in open court. If the defendant is represented by more than one attorney, Art. 1.051(e) is in compliance as long as at least one is afforded the 10 day period. However, an appointed attorney who replaces the originally appointed attorney must be afforded 10 days preparation time to comply with the statute. *Marin v. State*, 891 S.W.2d 267 (Tex.Crim.App. 1994); *Roney v. State*, 632 S.W.2d 598, 601 (Tex.Crim.App. 1982);

In contempt proceedings, defendant must be informed of his or her right to representation, and if found indigent, his or her right to appointment of counsel. A defendant has the right to representation by counsel during contempt proceeding, considering that proceeding may result in deprivation of liberty. *Ex parte Gonzales*, 945 S.W.2d 830, 836-837 (Tex.Crim.App. 1997).

The right to counsel guaranteed by the Sixth Amendment to the U.S. Constitution and Art. 1.051 does not attach prior to the initiation of adversarial judicial proceedings. *United States v. Gouveia*, 467 U.S. 180, 187 (1984); *Kirby v. Illinois*, 406 U.S. 682, 689 (1972); see also *Moore v. Illinois*, 434 U.S. 220, 228 (1977).

Caselaw in Texas is somewhat indeterminate on the question of what events may serve to initiate adversarial judicial proceedings for Sixth Amendment purposes. *Green v. State*, 872 S.W.2d 717, 720 (Tex.Crim.App. 1994). There is some authority that seems to support the proposition that adversarial judicial proceedings do not commence in a felony prosecution until the filing of an indictment. *DeBlanc v. State*, 799 S.W.2d 701, 706 (Tex.Crim.App. 1990). On the other hand, though it is clear that an arrest alone does not trigger adversarial judicial proceedings, with or without a warrant, nor does an Article 15.17 warning, a two judge panel opinion has held that the filing of a felony complaint does. *Dunn v. State*, 696 S.W.2d 561 (Tex.Crim.App. 1985); *Wyatt v. State*, 566 S.W.2d 597, 600 (Tex.Crim.App. 1978); *Barnhill v. State*, 657 S.W.2d 131, 132 (Tex.Crim.App. 1983). See also *Moore v. Illinois*, supra; *Brewer v. Williams*, 430 U.S. 387, 399 (1977); *Michigan v. Jackson*, 475 U.S. 625 (1986). With regard to misdemeanor charges, the right attaches when the state files a misdemeanor complaint. *State v. Frye*, 897 S.W.2d 324, 328 (Tex.Crim.App. 1995).

Even after the initiation of adversarial judicial proceedings the right to counsel attaches only at a "critical stage." *Forte v. State*, 707 S.W.2d 89, 92 (Tex.Crim.App. 1986); *Green v. State*, supra. In assessing whether a particular stage of the pre-trial proceedings is a "critical" one, the test utilized by the Supreme Court is to examine the event in order to

determine whether the accused required aid to deal with the legal problems or assistance in meeting his adversary. *United States v. Ash*, 413 U.S. 300, 309-313 (1973); *Green v. State*, supra. In *Green*, a preliminary initial appearance was held not to be a "critical stage" requiring representation by counsel because: (1) a plea was neither requested nor required; (2) the probable cause determination was non-adversarial; (3) an examining trial was neither held at, nor precluded by, the PIA; (4) bail was not set; and (5) nothing else happened at the PIA which required the aid of counsel to cope with any legal problems or assist in meeting the prosecutorial adversary. *Id.* at 721-22.

The right to counsel extends to the appellate process. *Webb v. State*, 533 S.W.2d 780, 783 (Tex.Crim.App. 1976). A trial court is not obligated to search for an attorney who meets with the approval of the accused. *Id.* at 784. Furthermore, the accused carries the burden of proving that he is entitled to a change of counsel. *Id.*

It is the defendant's decision whether to accept assistance of counsel or to conduct his own defense, and his choice must be honored when the benefits of the assistance of counsel are understood and voluntarily relinquished with an informed awareness of the dangers and disadvantages of self-representation, as evidenced by the record. *Faretta v. California*, 422 U.S. 806 (1975). Neither the defendant's technical legal training nor his ability to conduct an adequate defense are prerequisites for self-representation. *Burton v. State*, 634 S.W.2d 692, 694 (Tex.Crim.App. 1982); see also *Faretta v. California*, supra; *Renfro v. State*, 586 S.W.2d 496 (Tex.Crim.App. 1979); *Trevino v. State*, 555 S.W.2d 750 (Tex.Crim.App. 1977).

Where the defendant is adequately admonished as to dangers and disadvantages of self-representation, an assertion of the right to self-representation by defendant implies a valid waiver of right to appointed counsel. *Burgess v. State*, 816 S.W.2d 424, 427-28 (Tex.Crim.App. 1991).

It is unlikely that a court would invalidate Art. 1.051(c) on equal protection grounds because the distinction between indigents in populous and less populous counties is subject only to a rational basis test, and the legislature could have reasonably decided that more populous counties have more attorneys and other resources necessary to allow the appointment of counsel for an indigent criminal defendant in a shorter period of time than less populous counties with fewer resources. *Op. Tex. Att'y Gen.* JC-0549 (2002).

It is unlikely that a court would find the Art. 1.051 indigency standard, because of its relative flexibility from one county to the next, violative on its face of the state and federal guarantees of equal protection because the indigency standard will necessarily vary in different counties due to varying incomes and cost of living measures in the counties. *Id.*

CHAPTER FOURTEEN: ARREST WITHOUT WARRANT

Art. 14.06. Must take offender before magistrate

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

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

(c) If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate of this state as described by Subsection (a), the name and address of the person charged, and the offense charged.

(d) Subsection (c) applies only to a person charged with committing an offense under:

(1) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1) or (2) of that section;

(2) Section 28.03, Penal Code, if the offense is punishable under Subsection (b)(2) of that section;

(3) Section 28.08, Penal Code, if the offense is punishable under Subsection (b)(1) of that section;

(4) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(2)(A) of that section;

(5) Section 31.04, Penal Code, if the offense is punishable under Subsection (e)(2) of that section;

(6) Section 38.114, Penal Code, if the offense is punishable as a Class B misdemeanor; or

(7) Section 521.457, Transportation Code.

Amendments to (a) and addition of (c) and (d) effective Sept. 1, 2007 (HB 2391, §1). Section 3 of HB 2391 provides: "The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date."

2007 Legislative Note

HB 2391 adds subsections (c) and (d) and makes a non-substantive, conforming change to subsection (a). In response to overcrowding in Texas jails, (c) was added to authorize peace officers to merely issue a citation to persons charged with certain Class A and B misdemeanors, provided that the person charged resides in the county in which the offense is committed and the citation contains written notice of the time and place to appear before a magistrate, the name and address of the person charged, and the offense charged. Subsection (d) lists the Class A and B misdemeanors to which this section applies, including possession of marijuana, criminal mischief, graffiti, theft, contraband in a correctional facility, and driving without a license. Under prior law, police officers were required to arrest persons who allegedly violated any Class A or Class B misdemeanor.

Commentary

The Fourth Amendment requires a prompt judicial determination of probable cause as a prerequisite to extended restraint on liberty following arrest without warrant. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975). Generally, states must make such determination within 48 hours of arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991).

An unreasonable delay in presenting an arrestee before a magistrate will not vitiate an otherwise voluntary confession if the arrestee was properly advised of his *Miranda* rights. *Boyd v. State*, 811 S.W.2d 105 (Tex.Crim.App. 1991). The burden is upon the defendant to show that under Texas law a delay in the arraignment process renders the confession acquired during the delay inadmissible as a matter of law. *Webb v. Beto*, 415 F.2d 433 (5th Cir. 1969), cert. denied, 396 U.S. 1019 (1970).

Failure to comply with provisions of Art. 14.06 will not vitiate a search made incident to a lawful arrest because the purpose of the statute is for the magistrate to give Art. 15.17 warnings to the accused which are not prerequisite to the search of the accused. *Corbin v. State*, 426 S.W.2d 238 (Tex.Crim.App. 1968).

CHAPTER FIFTEEN: ARREST UNDER WARRANT

Art. 15.17. Duties of arresting officer and magistrate

(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's

right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the person arrested is indigent and requests appointment of counsel and if the magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the county, the magistrate shall appoint counsel in accordance with Article 1.051. If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. The magistrate shall also inform the person arrested that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall allow the person arrested reasonable time and opportunity to consult counsel and shall, after determining whether the person is currently on bail for a separate criminal offense, admit the person arrested to bail if allowed by law. A recording of the communication between the arrested person and the magistrate shall be made. The recording shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the recording is made if the person is charged with a misdemeanor or the 120th day after the date on which the recording is made if the person is charged with a felony. The counsel for the defendant may obtain a copy of the recording on payment of a reasonable amount to cover costs of reproduction. For purposes of this subsection, "electronic broadcast system" means a two-way electronic communication of image and sound between the arrested person and the magistrate and includes secure internet videoconferencing.

(b) After an accused charged with a misdemeanor punishable by fine only is taken before a magistrate under Subsection (a) of this article and the magistrate has identified the accused with certainty, the magistrate may release the accused without bond and order the accused to appear at a later date for arraignment in the county court or statutory county court. The order must state in writing the time, date, and place of the arraignment, and the magistrate must sign the order. The accused shall receive a copy of the order on release. If an accused fails to appear as required by the order, the judge of the court in which the accused is required to appear shall issue a warrant for the arrest of the accused. If the accused is arrested and brought before the judge, the judge may admit the accused to bail, and in admitting the accused to bail, the judge should set as the amount of bail an amount double that generally set for the offense for which the accused was arrested. This subsection does not apply to an accused who has previously been convicted of a felony or a misdemeanor other than a misdemeanor punishable by fine only.

(c) When a deaf accused is taken before a magistrate under this article or Article 14.06 of this Code, an interpreter appointed by the magistrate qualified and sworn as provided in Article 38.31 of this Code shall interpret the warning required by those articles in a language that the accused can understand, including but not limited to sign language.

(d) If a magistrate determines that a person brought before the magistrate after an arrest authorized by Article 14.051 of this code was arrested unlawfully, the magistrate shall release the person from custody. If the magistrate determines that the arrest was lawful, the person arrested is considered a fugitive from justice for the purposes of Article 51.13 of this code, and the disposition of the person is controlled by that article.

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

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

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

(3) whether the person requested appointment of counsel.

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

(g) If a person charged with an offense punishable as a misdemeanor appears before a magistrate in compliance with a citation issued under Article 14.06(b) or (c), the magistrate shall perform the

duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performs the duties imposed by this article, the magistrate except for good cause shown may release the person on personal bond. If a person who was issued a citation under Article 14.06(c) fails to appear as required by that citation, the magistrate before which the person is required to appear shall issue a warrant for the arrest of the accused.

Amendment adding (g) effective Sept. 1, 2007 (HB 2391, §2). See effective note following Art. 14.06.

2007 Legislative Note

HB 2391 adds subsection (g) which requires a magistrate before whom a person is required to appear in compliance with a citation issued under Art. 14.06(b) or (c) to perform the duties imposed by this article in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. Subsection (g) also authorizes a magistrate to release such a person on personal bond, except where good cause is shown otherwise. Finally, subsection (g) requires a magistrate before whom a person is required to appear in compliance with a citation issued under Art. 14.06(c) but fails to so appear to issue a warrant for that person's arrest.

Commentary

See generally, commentary under Art. 14.06, above.

Procedures normally attendant to arrest of an accused person and the preliminary proceedings which follow, such as the specific requirements of Art. 15.17, do not apply in same manner to a person charged with a community supervision violation. *Yates v. State*, 941 S.W.2d 357, 362 (Tex.App.—Waco 1997, pet. ref'd).

When error is asserted based on violation of a statute such as Art. 15.17, the harm analysis of Tex. R. App. P. 44.2(b) must be applied, and errors that do not affect substantial rights disregarded. *Hinds v. State*, 970 S.W.3d 33, 35 (Tex.App.—Dallas 1998, no pet.). If the error has no substantial or injurious effect on the verdict, then it must be disregarded. *Morales v. State*, 32 S.W.3d 862 (Tex.Crim.App. 2000).

Taking an accused before a magistrate for his article 15.17 warnings does not constitute an "arraignment" for which right to assistance of counsel attaches. *Franks v. State*, 90 S.W.3d 771, 789 (Tex.App.—Fort Worth 2002, no pet.).

Where an accused expressly requests appointment of an attorney at Art. 15.17 warning hearing and adversarial proceedings have been initiated, a written waiver is insufficient to justify police-initiated interrogations. *Nehman v. State*, 721 S.W.2d 319 (Tex.Crim.App. 1986); *Michigan v. Jackson*, 475 U.S. 625 (1986); *Edwards v. Arizona*, 451 U.S. 477 (1981).

Art. 15.18. Arrest for Out-of-County Offense

(a) A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate shall:

(1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or

(2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

(b) Before the 11th business day after the date a magistrate accepts a written plea of guilty or nolo contendere in a case under Subsection (a)(2), the magistrate shall, if without jurisdiction, transmit to the court having jurisdiction of the offense:

(1) the written plea;

(2) any orders entered in the case; and

(3) any fine or costs collected in the case.

(c) The arrested person may be taken before a magistrate by means of an electronic broadcast system as provided by and subject to the requirements of Article 15.17.

(d) This article does not apply to an arrest made pursuant to a capias pro fine issued under Chapter 43 or Article 45.045.

Amendment adding (d) effective Sept. 1, 2007 (HB 3060, §1). Section 23 of HB 3060 provides: "The change in law made by this Act applies only to a fee imposed for the execution or processing of a warrant or capias issued for an offense committed on or after the effective date of this Act. A fee imposed for the execution or processing of a warrant or capias issued for an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense

is committed before the effective date of this Act if any element of the offense occurs before that date."

2007 Legislative Note

HB 3060 adds subsection (d) which provides that this article does not apply to an arrest made pursuant to a capias pro fine issued under Chapter 43 (Execution of Judgment) or Art. 45.045 (Capias Pro Fine). A capias pro fine is a writ ordering the arrest of a criminal defendant who has failed to pay court-ordered fines, fees, etc.

CHAPTER SEVENTEEN: BAIL

Art. 17.032. Release on Personal Bond of Certain Mentally Ill Defendants

(a) In this article, "violent offense" means an offense under the following sections of the Penal Code:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.03 (kidnapping);

(4) Section 20.04 (aggravated kidnapping);

(5) Section 21.11 (indecency with a child);

(6) Section 22.01(a)(1) (assault);

(7) Section 22.011 (sexual assault);

(8) Section 22.02 (aggravated assault);

(9) Section 22.021 (aggravated sexual assault);

(10) Section 22.04 (injury to a child, elderly individual, or disabled individual); ~~or~~

(11) Section 29.03 (aggravated robbery); or

(12) Section 21.02 (continuous sexual abuse of young child or children).

(b) A magistrate shall release a defendant on personal bond unless good cause is shown otherwise if the:

(1) defendant is not charged with and has not been previously convicted of a violent offense;

(2) defendant is examined by the local mental health or mental retardation authority or another mental health expert under Article 16.22 of this code;

(3) examining expert, in a report submitted to the magistrate under Article 16.22 :

(A) concludes that the defendant has a mental illness or is a person with mental retardation and is nonetheless competent to stand trial; and

(B) recommends mental health treatment for the defendant; and

(4) magistrate determines, in consultation with the local mental health or mental retardation authority, that appropriate community-based mental health or mental retardation services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health or mental retardation service provider.

(c) The magistrate, unless good cause is shown for not requiring treatment, shall require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health or mental retardation treatment as recommended by the local mental health or mental retardation authority if the defendant's:

(1) mental illness or mental retardation is chronic in nature; or

(2) ability to function independently will continue to deteriorate if the defendant is not treated.

(d) In addition to a condition of release imposed under Subsection (c) of this article, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.

(e) In this article, a person is considered to have been convicted of an offense if:

(1) a sentence is imposed;

(2) the person is placed on community supervision or receives deferred adjudication; or

(3) the court defers final disposition of the case.

Amendment adding (a)(12) effective Sept. 1, 2007 (HB 8, §3.09). See effective note following Art. 14.06.

2007 Legislative Note

HB 8 adds subsection (a)(12) to include section 21.02 among the sections listed in the Penal Code under which an offense constitutes a "violent offense" per this article.

Art. 17.033. Release on bond of certain persons arrested without a warrant

(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to

believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed $10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a) or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(c) The time limits imposed by Subsections (a) and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a) and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

CHAPTER TWENTY-SIX: ARRAIGNMENT

Art. 26.01. Arraignment

In all felony cases, after indictment, and all misdemeanor cases punishable by imprisonment, there shall be an arraignment.

Art. 26.011. Waiver of arraignment

An attorney representing a defendant may present a waiver of arraignment, and the clerk of the court may not require the presence of the defendant as a condition of accepting the waiver.

Art. 26.02. Purpose of arraignment

An arraignment takes place for the purpose of fixing his identity and hearing his plea

Art. 26.03. Time of arraignment

No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail.

Art. 26.04. Procedures for appointing counsel

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

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

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

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

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

(4) require appointments for defendants in capital cases in which the death penalty is sought to comply with the requirements under Article 26.052;

(5) ensure that each attorney appointed from a public appointment list to represent an indigent

defendant perform the attorney's duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and applicable rules of ethics; and

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

(c) Whenever a court or the courts' designee authorized under Subsection (b) to appoint counsel for indigent defendants in the county determines that a defendant charged with a felony or a misdemeanor punishable by confinement is indigent or that the interests of justice require representation of a defendant in a criminal proceeding, the court or the courts' designee shall appoint one or more practicing attorneys to defend the defendant in accordance with this subsection and the procedures adopted under Subsection (a). If the court or 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 shall make an effort to appoint an attorney who is capable of communicating in a language understood by the defendant .

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

(1) applies to be included on the list;

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

(3) meets any applicable qualifications specified by the Task Force on Indigent Defense; and

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

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

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

(A) shall:

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

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

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications; and

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

(A) shall:

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

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

(B) may establish, if determined by the judges to be appropriate, more than one appointment list graduated according to the degree of seriousness of the offense and the attorneys' qualifications.

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

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

(1) the alternative program may:

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

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

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

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

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in misdemeanor cases punishable by confinement; and

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

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

(i) meet specified objective qualifications, which may be graduated according to the degree of seriousness of the offense, for providing representation in felony cases; and

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

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

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

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

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

(j) An attorney appointed under this article shall:

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

(2) represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause is entered on the record.

(k) A court may replace an attorney who violates Subsection (j)(1) with other counsel. A majority of the judges of the county courts and statutory county courts or the district courts, as appropriate, trying criminal cases in the county may remove from consideration for appointment an attorney who intentionally or repeatedly violates Subsection (j)(1).

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

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

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

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

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

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

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

right to representation by counsel in 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)"

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

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

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

Commentary

See generally, commentary under Art. 1.051, above.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to assistance of counsel before he can validly be convicted and punished by imprisonment. *Blankenship v. State*, 673 S.W.2d 578 (Tex. Crim. App. 1984).

The Sixth Amendment guarantees both the right to counsel and the corresponding right to self-representation. *Faretta v. California*, 422 U.S. 806, 819 (1975). The record must adequately reflect that a defendant waived his right to self-representation after asserting it, but proof of such waiver is not subject to as stringent a standard as proof of waiver of the right to counsel. *Funderburg v. State*, 717 S.W.2d 637, 642 (Tex.Crim.App. 1986). It is enough if record sufficiently demonstrates that defendant abandoned his initial request to represent himself, although mere acquiescence to a trial court's unmistakable denial of his request to represent himself is not a waiver of a defendant's right to self-representation. *Id.* See also, *Brown v. Wainwright*, 665 F.2d 607, 611-12 (5th Cir. 1982).

There is no duty imposed on the trial court under Art. 26.04 to appoint counsel until the defendant shows that he is indigent. *Gray v. Robinson*, 744 S.W.2d 604, 607 (Tex.Crim.App. 1988). In order to make its determination of indigency, the trial court is authorized to conduct an evidentiary hearing. *Id.*

Once a court has appointed an attorney to represent an indigent defendant, the defendant has been afforded protections provided under Sixth and Fourteenth Amendments and Art. 26.04, Code of Criminal Procedure, regarding counsel. A defendant has the burden of proof to show he is entitled to a change of counsel. *Carroll v. State*, 176 S.W.3d 249, 255 (Tex.App.—Houston [1st Dist.] 2004, pet. ref'd).

Once established, the attorney-client relationship between an accused and his attorney should be protected by the courts without distinction as to whether the attorney is retained or appointed. *Stearnes v. Clinton*, 780 S.W.2d 216, 221-22 (Tex.Crim.App. 1989).

The trial court retains responsibility for relieving an *appointed attorney* of his duties. Similarly, the trial court retains the responsibility for *appointing* new counsel to represent an indigent appellant. *Bonner v. State*, 29 S.W.3d 360, 361 (Tex.App.—Waco 2000, pet. ref'd) (emphasis in original).

Where counsel is not *replaced*, a magistrate does not err in permitting an attorney to *substitute* for counsel of record where the defendant agrees to the substitution and the attorney of record does not object. *Roberson v. State*, 879 S.W.2d 250, 252 (Tex.App.—Dallas 1994, pet. ref'd) (emphasis in original) (citing *Buntion v. Harmon*, infra).

Appointed counsel remains as defendant's counsel for all purposes until he is expressly permitted to withdraw or the appeal is finished. *Ward v. State*, 740 S.W.2d 794, 798 (Tex.Crim.App. 1987).

Trial counsel, retained or appointed, has the duty to consult with and fully to advise his client concerning the meaning and effect of the judgment rendered by the court, his right to appeal from that judgment, and the necessity of giving notice of appeal and taking other steps to pursue an appeal. Counsel should also discuss possible grounds for appeal and their merit, and delineate the advantages and disadvantages of appeal. *Axel v. State*, 757 S.W.2d 369, 374 (Tex. Cr. App. 1998). On appeal, a defendant has the burden to demonstrate from the record that he was unable to file a motion for new trial because he was not represented by counsel. *Burnett v. State*, 959 S.W.2d 652, 659 (Tex.App.—Houston [1st Dist.] 1997, pet. ref'd).

When defendant's trial counsel does not withdraw from representation after sentencing and is not replaced by new counsel, a rebuttable presumption

exists that trial counsel continued to effectively represent him during time for filing a motion for new trial. *Smith v. State*, 17 S.W.3d 660, 662 (Tex.Crim.App. 2000). Where defendant has been deprived of meaningful appeal because of ineffective assistance of counsel, defendant is entitled to relief. *Evitts v. Lucey*, 469 U.S. 387, 397 (1985).

A trial court has no authority to *sua sponte* remove appointed counsel, over defendant's and counsel's objections, absent some principled reason apparent from the face of the record. *Buntion v. Harmon*, 827 S.W.2d 945, 949 (Tex.Crim.App. 1992).

We have articulated a two-step process for determining whether a defendant is indigent for the purpose of obtaining a free record on appeal: (1) the defendant must make a *prima facie* showing of indigence, and (2) when the *prima facie* showing is made, the burden shifts to the State to show that the defendant is not in fact indigent. *Snoke v. State*, 780 S.W.2d 210, 213 (Tex.Crim.App. 1989). The Court of Criminal Appeals implied that the two-step process should also be used to determine whether to appoint counsel for appeal. *Id.*, at 210; *see also Whitehead v. State*, 130 S.W.3d 866, 874 (Tex.Crim.App. 2004). While these inquiries generally involve the same factors, it is possible for a defendant to be indigent in one context but not the other, depending principally on the respective costs of each. *Whitehead v. State*, supra at 878; *Castillo v. State*, 595 S.W.2d 552 (Tex.Crim.App. 1980).

The trial court is not completely free to disbelieve the defendant's allegations concerning his own financial status when determining indigency, but the trial court may disbelieve an allegation if there is a reasonable, articulable basis for doing so, either because there is conflicting evidence or because the evidence submitted is in some manner suspect or determined by the court to be inadequate. *Whitehead v. State*, supra at 875.

Submitting an "income and expense summary" and a "net worth statement," along with a signed affidavit attesting to the truth of these documents, served the same purpose as answering a written questionnaire and thus sufficed to meet the requirements of Art. 26.04(n)(1). *Whitehead v. State*, supra.

An individual's negative net worth does not necessarily translate into indigence; the real question is whether the defendant is capable of paying for legal counsel and for the appellate record. *Whitehead v. State*, supra at 878.

A person may not transfer his assets while awaiting trial, after alleging indigency, so that he may make receive appointment of counsel, a free transcript, and free statement of facts. *Cardona v. Marshall*, 635 S.W.2d 741, 743 (Tex.Crim.App. 1982). A defendant, however, should not be denied appointment of counsel solely because other members of his family have assets and income. *Id.*, at 743; *United States v. Rubinson*, 543 F.2d 951 (2nd Cir.), cert. denied, *Chester v. United States*, 429 U.S. 850 (1976).

Art. 26.044. Public Defender

(a) In this chapter:

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

(2) "Public defender" means a governmental entity or nonprofit corporation:

(A) operating under a written agreement with a governmental entity, other than an individual judge or court;

(B) using public funds; and

(C) providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

(b) The commissioners court of any county, on written approval of a judge of a county court, statutory county court, or district court trying criminal cases in the county, may appoint a governmental entity or nonprofit corporation to serve as a public defender. The commissioners courts of two or more counties may enter into a written agreement to jointly appoint and fund a regional public defender. In appointing a public defender under this subsection, the commissioners court shall specify or the commissioners courts shall jointly specify, if appointing a regional public defender:

(1) the duties of the public defender;

(2) the types of cases to which the public defender may be appointed under Article 26.04(f) and the courts in which the public defender may be required to appear;

(3) whether the public defender is appointed to serve a term or serve at the pleasure of the commissioners court or the commissioners courts; and

(4) if the public defender is appointed to serve a term, the term of appointment and the procedures for removing the public defender.

(c) Before appointing a public defender under Subsection (b), the commissioners court or commissioners courts shall solicit proposals for the public defender. A proposal must include:

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

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

(3) the maximum allowable caseloads for each attorney employed by the proponent;

(4) provisions for personnel training;

(5) a description of anticipated overhead costs for the public defender; and

(6) policies regarding the use of licensed investigators and expert witnesses by the proponent.

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

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

(f) To be eligible for appointment as a public defender, the governmental entity or nonprofit corporation must be directed by a chief public defender who:

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

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

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

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

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

(i) Except as authorized by this article, the chief public defender or an attorney employed by a public defender may not:

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

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

(j) A public defender may refuse an appointment under Article 26.04(f) if:

(1) a conflict of interest exists;

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

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

(4) the public defender shows other good cause for refusing the appointment.

(k) The judge may remove a public defender who violates a provision of Subsection (i) .

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

(m) If it is necessary that an attorney other than a public defender be appointed, the attorney is entitled to the compensation provided by Article 26.05 of this code.

Commentary

After the commissioners court has established a public defender's office pursuant to Art. 26.044, Code of Criminal Procedure, it remains obligated to pay attorneys appointed by trial courts to represent indigent defendants and must direct payment of the full amount of attorney fees ordered by a court under Art. 26.05 unless it can show that the trial court's award is so unreasonable as to amount to an abuse of discretion. *Op. Tex. Att'y Gen.* LO-063 (1997).

Art. 26.05. Compensation of counsel appointed to defend

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

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

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

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

(4) preparation of a motion for rehearing.

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

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

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

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

(f) All payments made under this article shall be paid from the general fund of the county in which the prosecution was instituted or habeas corpus hearing held and may be included as costs of court.

(g) 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 any 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.

(h) Reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under Chapter 1702, Occupations Code, or to an expert witness in the manner designated by appointed counsel and approved by the court.

(i) The indigent defense representation fund is a separate account in the general revenue fund. The fund:

(1) consists of criminal fees collected under Section 133.107, Local Government Code; and

(2) may be used only for the purposes for which the fair defense account established under Section 71.058, Government Code, may be used, including compensating appointed counsel in accordance with this code.

Amendment to (c) and addition of (i) effective Sept. 1, 2007 (HB 1267, §1). Section 8 of HB 1267 provides: "The change in law made by this Act to Article 26.05(c), Code of Criminal Procedure, applies only to a request for payment submitted under Article 26.05(c) on or after the effective date of this Act."

2007 Legislative Note

HB 1267 amends subsection (c) to grant indigent defense attorneys whose request for payment had not been answered after 60 days a right of appeal to the presiding judge of the administrative judicial region. Under prior law, indigent defense attorneys were authorized to appeal a disapproval of a request for payment, but situations where a judge had failed to act on a request for payment were not addressed. Subsection (i) was added to explain the Indigent Defense Representation Fund created by HB 1267 with the addition of Secs. 133.107(a) and (b) of the Local Government Code and to provide that it consists of criminal fees and may be used only for the purposes for which the Fair Defense Account may be used.

Commentary

An order entered by the court under authority of Art. 26.05 is presumed to be reasonable and must be allowed unless the Commissioners Court can show that the order is so unreasonable, arbitrary, or capricious as to amount to an abuse of discretion. *Gray County v. Warner & Finney*, 727 S.W.2d 633, 636 (Tex.App.—Amarillo 1987, no writ).

State funded attorney fees cannot be awarded for services rendered prior to the date counsel is formally appointed to represent an indigent. *Gray v. Robinson*, 744 S.W.2d 604, 607 (Tex.Crim.App. 1988).

Appointment of an expert witness under Art. 26.05 rests within sound discretion of trial court. Absent a showing of harm, no abuse of that discretion will be found. *Quin v. State, 608 S.W.2d 937, 938 (Tex. Crim. App. 1980)*. In order to obtain prior approval of the trial court for reasonable expenses connected with expert testimony, a defendant must demonstrate to the trial court a specific need for the testimony. *Ventura v. State*, 801 S.W.2d 225, 227 (Tex.App.—San Antonio 1990, no pet.).

It is not an inherent violation of due process for the State, pursuant to Art. 26.05(g), to take reasonable steps to collect on expenditures made on behalf of those who have the ability to off-set the State's expenses. *Curry v. Wilson*, 853 S.W.2d 40, 46 (Tex.Crim.App. 1993).

The trial court has discretion in determining the proper value of legal fees it orders a defendant to pay under Art. 26.05(g), but due process considerations require evidence in the record to provide a factual basis for the amount set. *Hester v. State*, 859 S.W.2d 95, 97 (Tex.App.—Dallas 1993, no pet.) (citing *Barker v. State*, 662 S.W.2d 640, 642 (Tex.App.—Houston [14th Dist.] 1983, no pet.)).

An indigent's court-appointed attorney for a civil contempt proceeding may not be paid from the general fund of a county under the authority of Art. 26.04. *Op. Tex. Att'y Gen.* JM-403 (1985).

Counsel appointed to represent indigent defendant was not entitled to compensation for expenses in filing petition for discretionary review which was not "appeal" for which indigent was entitled to court appointed counsel. *Peterson v. Jones*, 894 S.W.2d 370, 373 (Tex.Crim.App. 1995).

Art. 26.051. Indigent inmate defense

(a) In this article:

(1) "Board" means the Texas Board of Criminal Justice.

(2) "Correctional institutions ~~Institutional~~ division" means the correctional institutions ~~institutional~~ division of the Texas Department of Criminal Justice.

~~(b) This article applies only to the appointment of attorneys for indigent inmate defendants made on or after August 1, 1990.~~

~~(c) A county in which a facility of the institutional division or a correctional facility authorized by Section 495.001, Government Code, is located shall, except as provided by Subsection (f) of this article, pay from its general fund the total costs of the aggregate sum allowed and awarded by the court for~~

~~attorney's fees under Article 26.05 of this code for an attorney appointed by the court, other than an attorney provided by the board in Subsection (e) of this article, to defend an indigent inmate~~.

(d) A court shall:

(1) ~~may~~ notify the board if it determines that a defendant before the court is indigent and is an inmate charged with an offense committed while in the custody of the correctional institutions ~~institutional~~ division or a correctional facility authorized by Section 495.001, Government Code; and

(2) request that the board provide legal representation for the inmate.

(e) The board shall provide legal representation for inmates described by Subsection (d) of this section. The board may employ attorneys, support staff, and any other personnel required to provide legal representation for those inmates. All personnel employed under this article are directly responsible to the board in the performance of their duties. The board shall pay all fees and costs associated with providing legal representation for those inmates.

(f) Repealed by Acts 1993, 73rd Leg., ch. 988, Sec. 7.02, eff. Sept. 1, 1993.

(g) The court shall appoint an attorney other than an attorney provided by the board if the court determines for any of the following reasons that a conflict of interest could arise from the use of an attorney provided by the board under Subsection (e) of this article:

(1) the case involves more than one inmate and the representation of more than one inmate could impair the attorney's effectiveness;

(2) the case is appealed and the court is satisfied that conflict of interest would prevent the presentation of a good faith allegation of ineffective assistance of counsel by a trial attorney provided by the board; or

(3) any conflict of interest exists under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas that precludes representation by an attorney appointed by the board.

(h) When the court appoints an attorney other than an attorney provided by the board:

(1) except as otherwise provided by this article, the inmate's legal defense is subject to Articles 1.051, 26.04, 26.05, and 26.052, as applicable; and

(2) the county in which a facility of the correctional institutions division or a correctional facility authorized by Section 495.001, Government Code, is located shall pay from its general fund the total costs of the aggregate amount allowed and awarded by the court for attorney compensation and expenses under Article 26.05 or 26.052, as applicable ~~the county shall pay from its general fund the first $250.00 of the aggregate sum allowed and awarded by the court for the attorney fees under Article 26.05 of this code. If the fees awarded for a court-appointed attorney in a case described by this subsection exceed $250.00, the court shall certify the amount in excess of $250.00 to the board. On request of the board, the comptroller shall issue a warrant to the court-appointed attorney in the amount certified to the board by the court.~~

(i) The state shall reimburse a county for attorney compensation and expenses awarded under Subsection (h). A court seeking reimbursement for a county shall certify to the comptroller of public accounts the amount of compensation and expenses for which the county is entitled to be reimbursed under this article. Not later than the 60th day after the date the comptroller receives from the court the request for reimbursement, the comptroller shall issue a warrant to the county in the amount certified by the court.

Amendments to (a)(2), (d), and (h), addition of (i), and repeal of (b) and (c) effective Sept. 1, 2007 (HB 1267, §§2, 3, and 7). Section 9 of HB 1267 provides: "The change in law made by this Act to Article 26.051, Code of Criminal Procedure, applies to compensation and expenses owed on or after the effective date of this Act to an attorney appointed under Article 26.051, Code of Criminal Procedure, regardless of whether the attorney was appointed before, on, or after the effective date of this Act."

2007 Legislative Note

HB 1267 amends subsection (a)(2) to define "correctional institutions division" to mean the correctional institutions division of the Texas Department of Criminal Justice (TDCJ). Subsections (b) and (c) are repealed.

HB 1267 amends subsection (d) to require a court to notify the Texas Board of Criminal Justice (board) when a defendant before the court is an indigent inmate and request that the board provide legal representation for the inmate. Sub-section (e) requires the board to bear the cost of providing legal representation for indigent inmate defendants, absent an exception under subsection (g). Under prior law, courts were authorized but not required to make said notification and request.

HB 1267 amends subsection (h) to list the other articles in the code of criminal procedure to which an

inmate's legal defense is subject when the court appoints an attorney other than an attorney provided by the board.

HB 1267 further amends subsection (h) and adds subsection (i) to streamline the process whereby amounts awarded by the court for attorney compensation are paid when the court appoints an attorney for indigent inmate defense other than an attorney provided by the board. To subject indigent inmate defense claims to the same safeguards enacted by the Fair Defense Act as other indigent defense claims, counties are required to pay fees and expenses awarded by the court upfront, and the state must reimburse the county within 60 days. Under prior law, payments to attorneys in indigent inmate defense cases could take many months due to a multi-layered approval process.

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

(a) Notwithstanding any other provision of this chapter, this article establishes procedures in death penalty cases for appointment and payment of counsel to represent indigent defendants at trial and on direct appeal and to apply for writ of certiorari in the United States Supreme Court.

(b) If a county is served by a public defender's office, trial counsel and counsel for direct appeal or to apply for a writ of certiorari may be appointed as provided by the guidelines established by the public defender's office. In all other cases in which the death penalty is sought, counsel shall be appointed as provided by this article.

(c) A local selection committee is created in each administrative judicial region created under Section 74.042, Government Code. The administrative judge of the judicial region shall appoint the members of the committee. A committee shall have not less than four members, including:

(1) the administrative judge of the judicial region;

(2) at least one district judge;

(3) a representative from the local bar association; and

(4) at least one practitioner who is board certified by the State Bar of Texas in criminal law.

(d) (1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought .

(2) The standards must require that a trial attorney appointed as lead counsel to a capital case or an attorney appointed as lead appellate counsel in the direct appeal of a capital case:

(A) be a member of the State Bar of Texas;

(B) exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have not been found by a federal or state court to have rendered ineffective assistance of counsel during the trial or appeal of any capital case

(D) have at least five years of experience in criminal litigation;

(E) have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as second or first degree felonies or capital felonies;

(F) have trial experience in:

(i) the use of and challenges to mental health or forensic expert witnesses; and

(ii) investigating and presenting mitigating evidence at the penalty phase of a death penalty trial; and

(G) have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases.

(3) The committee shall prominently post the standards in each district clerk's office in the region with a list of attorneys qualified for appointment.

(4) Not later than the second anniversary of the date an attorney is placed on the list of attorneys qualified for appointment in death penalty cases and each year following the second anniversary, the attorney must present proof to the committee that the attorney has successfully completed the minimum continuing legal education requirements of the State Bar of Texas, including a course or other form of training relating to the defense of death penalty cases. The committee shall remove the attorney's name from the list of qualified attorneys if the attorney fails to provide the committee with proof of completion of the continuing legal education requirements.

(e) The presiding judge of the district court in which a capital felony case is filed shall appoint two attorneys, at least one of whom must be qualified under this chapter, to represent an indigent

defendant as soon as practicable after charges are filed, unless the state gives notice in writing that the state will not seek the death penalty .

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

(1) the type of investigation to be conducted;

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

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

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

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

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

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

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

(i) If the indigent defendant is convicted of a capital felony and sentenced to death, the defendant is entitled to be represented by competent counsel on appeal and to apply for a writ of certiorari to the United States Supreme Court.

(j) As soon as practicable after a death sentence is imposed in a capital felony case, the presiding judge of the convicting court shall appoint counsel to represent an indigent defendant on appeal and to apply for a writ of certiorari, if appropriate.

(k) The court may not appoint an attorney as counsel on appeal if the attorney represented the defendant at trial, unless:

(1) the defendant and the attorney request the appointment on the record; and

(2) the court finds good cause to make the appointment.

(l) An attorney appointed under this article to represent a defendant at trial or on direct appeal is compensated as provided by Article 26.05 from county funds. Advance payment of expenses anticipated or reimbursement of expenses incurred for purposes of investigation or expert testimony may be paid directly to a private investigator licensed under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), Vernon's Texas Civil Statutes) or to an expert witness in the manner designated by appointed counsel and approved by the court.

(m) The local selection committee shall annually review the list of attorneys posted under Subsection (d) to ensure that each listed attorney satisfies the requirements under this chapter.

~~Art. 26.055. Contribution from state for defense of indigent inmates~~

~~Sec. 1.~~

~~(a) This article applies only to an attorney appointed under Article 26.05 of this code to defend an indigent inmate before August 1, 1990.~~

~~(b) A county in which a facility of the institutional division of the Texas Department of Criminal Justice, or a correctional facility authorized by Section 494.001, Government Code, is located shall pay from its general fund only the first $250 of the aggregate sum allowed and awarded by the court for attorneys' fees under Article 26.05 toward defending an inmate committed to that facility who is being prosecuted for an offense committed in that county while in the custody of the department if the inmate was originally committed for an offense committed in another county.~~

~~Sec. 2.~~

~~If the fees awarded for court-appointed counsel in a case covered by Section 1 of this article exceed $250, the court shall certify the amount in excess of $250 to the Texas Board of Criminal Justice. On request of the board, the comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the board by the court.~~

~~Sec. 3.~~

~~(a) In the defense of a prosecution of an offense committed while the actor was an inmate in the custody of the institutional division of the Texas Department of Criminal Justice, the state shall reimburse a counsel appointed to defend the actor for expenses incurred by the counsel, in an amount that the court determines to be reasonable, for payment of:~~

~~(1) salaries and expenses of foreign language interpreters and interpreters for deaf persons whose services are necessary to the defense;~~

~~(2) consultation fees of experts whose assistance is directly related to the defense;~~

~~(3) travel expenses for witnesses;~~

~~(4) compensation of witnesses;~~

~~(5) the cost of preparation of a statement of facts and a transcript of the trial for purposes of appeal; and~~

~~(6) food, lodging, and travel expenses incurred by the defense counsel and staff during travel essential to the defense, calculated on the same basis as expenses incurred by the prosecutor's staff related to essential travel are calculated.~~

~~(b) The trial court shall certify the amount of reimbursement for expenses under this section to the Texas Board of Criminal Justice. On request of the board, the comptroller shall issue a warrant in that amount to the defense counsel or, if the board determines that the amount certified by the trial court is unreasonable, in an amount that the board determines to be reasonable.~~

~~(c) Notwithstanding anything to the contrary contained in this Act, the reimbursement for expenses submitted by the defense counsel shall not exceed the amount the county would pay for the same activity or service, if that activity or service was not reimbursed by the state. The trial judge shall certify compliance with this paragraph on request by the Texas Board of Criminal Justice.~~

Repeal of Art. 26.055 effective Sept. 1, 2007 (HB 1267, §7).

2007 Legislative Note

HB 1267 repeals Art. 26.055 in conjunction with the amendments to Art. 26.051 (*above*) designed to streamline the payment process for court appointed attorneys and make this article applicable to all appointments of attorneys for indigent inmate defendants regardless of date of appointment.

Art. 26.056. Contribution from state in certain counties

Sec. 1.

A county in which a state training school for delinquent children is located shall pay from its general fund the first $250 of fees awarded for court-appointed counsel under Article 26.05 toward defending a child committed to the school from another county who is being prosecuted for a felony or misdemeanor in the county where the training school is located.

Sec. 2.

If the fees awarded for counsel compensation are in excess of $250, the court shall certify the amount in excess of $250 to the Comptroller of Public Accounts of the State of Texas. The Comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court.

Art. 26.057. Cost of employment of counsel for certain minors

If a juvenile has been transferred to a criminal court under Section 54.02, Family Code, and if a court appoints counsel for the juvenile under Article 26.04 of this code, the county that pays for the counsel has a cause of action against a parent or other person who is responsible for the support of the juvenile and is financially able to employ counsel for the juvenile but refuses to do so. The county may recover its cost of payment to the appointed counsel and may recover attorney's fees necessary to prosecute the cause of action against the parent or other person.

Art. 26.06. Elected officials not to be appointed

No court may appoint an elected county, district or state official to represent a person accused of crime, unless the official has notified the court of his availability for appointment. If an official has notified the court of his availability and is appointed as counsel, he may decline the appointment if he determines that it is in the best interest of his office to do so. Nothing in this Code shall modify any statutory provision for legislative continuance.

Art. 26.07. Name as stated in indictment

When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

Art. 26.08. If defendant suggests different name

If the defendant, or his counsel for him, suggests that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself or his counsel for him, the style of the case changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment.

Art. 26.09. If accused refuses to give his real name

If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the

indictment were true; and the defendant shall not be allowed to contradict the same by way of defense.

Art. 26.10. Where name is unknown

A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

Art. 26.11. Indictment read

The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding Articles, be made, or being made is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged.

Art. 26.12. Plea of not guilty entered

If the defendant answers that he is not guilty, such plea shall be entered upon the minutes of the court; if he refuses to answer, the plea of not guilty shall in like manner be entered.

Art. 26.13. Plea of guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(1) the range of the punishment attached to the offense;

(2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere;

(3) the fact that if the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, the trial court must give its permission to the defendant before he may prosecute an appeal on any matter in the case except for those matters raised by written motions filed prior to trial;

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law; ~~and~~

(5) the fact that the defendant will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter; and

(6) the fact that it is unlawful for the defendant to possess or transfer a firearm or ammunition if the defendant is convicted of a misdemeanor involving family violence, as defined by Section 71.004, Family Code.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

(d) The court may make the admonitions required by this article either orally or in writing. If the court makes the admonitions in writing, it must receive a statement signed by the defendant and the defendant's attorney that he understands the admonitions and is aware of the consequences of his plea. If the defendant is unable or refuses to sign the statement, the court shall make the admonitions orally.

(e) Before accepting a plea of guilty or a plea of nolo contendere, the court shall inquire as to whether a victim impact statement has been returned to the attorney representing the state and ask for a copy of the statement if one has been returned.

(f) The court must substantially comply with Subsection (e) of this article. The failure of the court to comply with Subsection (e) of this article is not grounds for the defendant to set aside the conviction, sentence, or plea.

(g) Before accepting a plea of guilty or a plea of nolo contendere and on the request of a victim of the offense, the court may assist the victim and the defendant in participating in a victim-offender mediation program.

(h) The court must substantially comply with Subsection (a)(5). The failure of the court to comply with Subsection (a)(5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

(i) Notwithstanding this article, a court shall not order the state or any of its prosecuting attorneys to participate in mediation, dispute resolution, arbitration, or other similar procedures in relation to a criminal prosecution unless upon written consent of the state.

Amendment adding (a)(6) effective Sept. 1, 2007 (SB 1470, §1).

2007 Legislative Note

SB 1470 amends Article 26.13(a) by adding (a)(6) requiring the court, prior to accepting a plea of guilty or a plea of nolo contendere, to admonish the defendant that it is unlawful for the defendant to possess or transfer a firearm or ammunition if the defendant is convicted of a misdemeanor involving family violence, as defined by Section 71.004, Family Code.

Art. 26.14. Jury on plea of guilty

Where a defendant in a case of felony persists in pleading guilty or in entering a plea of nolo contendere, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment and evidence may be heard to enable them to decide thereupon, unless the defendant in accordance with Articles 1.13 or 37.07 shall have waived his right to trial by jury.

Art. 26.15. Correcting name

In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases.

CHAPTER THIRTY-EIGHT: EVIDENCE IN CRIMINAL ACTIONS

Art. 38.30. Interpreter

(a) When a motion for appointment of an interpreter is filed by any party or on motion of the court, in any criminal proceeding, it is determined that a person charged or a witness does not understand and speak the English language, an interpreter must be sworn to interpret for the person charged or the witness. Any person may be subpoenaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties as are provided for witnesses. In the event that the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or the interpreter is not familiar with use of slang, the person charged or witness may be permitted by the court to nominate another person to act as intermediary between the person charged or witness and the appointed interpreter during the proceedings.

(a-1) A qualified telephone interpreter may be sworn to interpret for the person in the trial of a class C misdemeanor or a proceeding before a magistrate if an interpreter is not available to appear in person before the court of if the only available interpreter is not considered to possess adequate interpreting skills for the particular situation or is unfamiliar with the use of slang. In this subsection, "qualified telephone interpreter" means a telephone service that employs:

(1) licensed court interpreters as defined by Section 57.001, Government Code; or

(2) federally certified court interpreters.

(b) Except as provided by Subsection (c) of this article, interpreters appointed under the terms of this article will receive from the general fund of the county for their services a sum not to exceed $100 a day as follows: interpreters shall be paid not less than $15 nor more than $100 a day at the discretion of the judge presiding, and when travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case the interpreter is appointed to serve shall be paid at the same rate applicable to state employees.

(c) A county commissioners court may set a payment schedule and expend funds for the services of interpreters in excess of the daily amount of not less than $15 or more than $100 established by Subsection (b) of this article.

Art. 38.31. Interpreters for deaf persons

(a) If the court is notified by a party that the defendant is deaf and will be present at an arraignment, hearing, examining trial, or trial, or that a witness is deaf and will be called at a hearing, examining trial, or trial, the court shall appoint a qualified interpreter to interpret the proceedings in any language that the deaf person can understand, including but not limited to sign language. On the court's motion or the motion of a party, the court may order testimony of a deaf witness and the interpretation of that testimony by the interpreter visually, electronically recorded for use in verification of the transcription of the reporter's notes. The clerk of the court shall include that recording in the

appellate record if requested by a party under Article 40.09 of this Code.

(b) Following the filing of an indictment, information, or complaint against a deaf defendant, the court on the motion of the defendant shall appoint a qualified interpreter to interpret in a language that the defendant can understand, including but not limited to sign language, communications concerning the case between the defendant and defense counsel. The interpreter may not disclose a communication between the defendant and defense counsel or a fact that came to the attention of the interpreter while interpreting those communications if defense counsel may not disclose that communication or fact.

(c) In all cases where the mental condition of a person is being considered and where such person may be committed to a mental institution, and where such person is deaf, all of the court proceedings pertaining to him shall be interpreted by a qualified interpreter appointed by the court.

(d) A proceeding for which an interpreter is required to be appointed under this Article may not commence until the appointed interpreter is in a position not exceeding ten feet from and in full view of the deaf person.

(e) The interpreter appointed under the terms of this Article shall be required to take an oath that he will make a true interpretation to the person accused or being examined, which person is deaf, of all the proceedings of his case in a language that he understands; and that he will repeat said deaf person's answer to questions to counsel, court, or jury, in the English language, in his best skill and judgment.

(f) Interpreters appointed under this Article are entitled to a reasonable fee determined by the court after considering the recommendations of the Texas Commission for the Deaf and Hard of Hearing. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(g) In this Code:

(1) "Deaf person" means a person who has a hearing impairment, regardless of whether the person also has a speech impairment, that inhibits the person's comprehension of the proceedings or communication with others.

(2) "Qualified interpreter" means an interpreter for the deaf who holds a current legal certificate issued by the National Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive or Rehabilitative Services.

Art. 42.12. Community Supervision

Sec. 21. Violation of Community Supervision: Detention and Hearing

(a) At any time during the period of community supervision the judge may issue a warrant for violation of any of the conditions of the community supervision and cause a defendant convicted under Section 43.02, Penal Code, or under Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code, or placed on deferred adjudication after being charged with one of those offenses, to be subject to the control measures of Section 81.083, Health and Safety Code, and to the court-ordered-management provisions of Subchapter G, Chapter 81, Health and Safety Code.

(b) At any time during the period of community supervision the judge may issue a warrant for violation of any of the conditions of the community supervision and cause the defendant to be arrested. Any supervision officer, police officer or other officer with power of arrest may arrest such defendant with or without a warrant upon the order of the judge to be noted on the docket of the court. A defendant so arrested may be detained in the county jail or other appropriate place of confinement until he can be taken before the judge. Such officer shall forthwith report such arrest and detention to such judge. If the defendant has not been released on bail, on motion by the defendant the judge shall cause the defendant to be brought before the judge for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the community supervision. A judge may revoke the community supervision of a defendant who is imprisoned in a penal institution without a hearing if the defendant in writing before a court of record in the jurisdiction where imprisoned waives his right to a hearing and to counsel, affirms that he has nothing to say as to why sentence should not be pronounced against him, and requests the judge to revoke community supervision and to pronounce sentence. In a felony case, the state may amend the motion to revoke community supervision any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the

state amend the motion after the commencement of taking evidence at the hearing. The judge may continue the hearing for good cause shown by either the defendant or the state.

(c) In a community supervision revocation hearing at which it is alleged only that the defendant violated the conditions of community supervision by failing to pay compensation paid to appointed counsel, community supervision fees, or court costs, ~~restitution, or reparations,~~ the state must prove by a preponderance of the evidence that ~~inability of~~ the defendant was able to pay and did not pay as ordered by the judge ~~is an affirmative defense to revocation, which the defendant must prove by a preponderance of evidence~~. The court may order a community supervision and corrections department to obtain information pertaining to the factors listed under Article 42.037(h) of this code and include that information in the report required under Section 9(a) of this article or a separate report, as the court directs.

(d) A defendant has a right to counsel at a hearing under this section.

(e) A court retains jurisdiction to hold a hearing under Subsection (b) and to revoke, continue, or modify community supervision, regardless of whether the period of community supervision imposed on the defendant has expired, if before the expiration the attorney representing the state files a motion to revoke, continue, or modify community supervision and a capias is issued for the arrest of the defendant.

Amendment to (c) effective Sept. 1, 2007 (HB 312, §1). Section 2 of HB 312 provides: "The change in law made by this Act applies only to a community supervision revocation hearing held on or after the effective date of this Act.

2007 Legislative Note

HB 312 amends subsection (c) to require that state to prove by a preponderance of the evidence that a defendant was able to but did not pay community supervision fees or court costs ordered. Previous law required the defendant to raise inability to pay as an affirmative defense. The amendment also allows the probation department to obtain financial information related to his ability to pay.

Commentary

If probationer at revocation hearing is indigent and has not waived the right to counsel, counsel must be appointed. *Mempa v. Rhay*, 389 U.S. 128 (1967).

FAMILY CODE

CHAPTER FIFTY-ONE: GENERAL PROVISIONS

Sec. 51.10. Right to Assistance of Attorney; Compensation

(a) A child may be represented by an attorney at every stage of proceedings under this title, including:

(1) the detention hearing required by Section 54.01 of this code;

(2) the hearing to consider transfer to criminal court required by Section 54.02 of this code;

(3) the adjudication hearing required by Section 54.03 of this code;

(4) the disposition hearing required by Section 54.04 of this code;

(5) the hearing to modify disposition required by Section 54.05 of this code;

(6) hearings required by Chapter 55 of this code;

(7) habeas corpus proceedings challenging the legality of detention resulting from action under this title; and

(8) proceedings in a court of civil appeals or the Texas Supreme Court reviewing proceedings under this title.

(b) The child's right to representation by an attorney shall not be waived in:

(1) a hearing to consider transfer to criminal court as required by Section 54.02 of this code;

(2) an adjudication hearing as required by Section 54.03 of this code;

(3) a disposition hearing as required by Section 54.04 of this code;

(4) a hearing prior to commitment to the Texas Youth Commission as a modified disposition in accordance with Section 54.05(f) of this code; or

(5) hearings required by Chapter 55 of this code.

(c) If the child was not represented by an attorney at the detention hearing required by Section 54.01 of this code and a determination was made to detain

the child, the child shall immediately be entitled to representation by an attorney. The court shall order the retention of an attorney according to Subsection (d) or appoint an attorney according to Subsection (f).

(d) The court shall order a child's parent or other person responsible for support of the child to employ an attorney to represent the child, if:

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

(2) after giving the appropriate parties an opportunity to be heard, the court determines that the parent or other person responsible for support of the child is financially able 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.

(e) The court may enforce orders under Subsection (d) by proceedings under Section 54.07 or by appointing counsel and ordering the parent or other person responsible for support of the child to pay a reasonable attorney's fee set by the court. The order may be enforced under Section 54.07.

(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.

(h) Any attorney representing a child in proceedings under this title is entitled to 10 days to prepare for any adjudication or transfer hearing under this title.

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

(j) The juvenile board of a county may make available to the public the list of attorneys eligible for appointment to represent children in proceedings under this title as provided in the plan adopted under Section 51.102. The list of attorneys must indicate the level of case for which each attorney is eligible for appointment under Section 51.102(b)(2).

(k) Subject to Chapter 61, the juvenile court may order the parent or other person responsible for support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under Subsection (f) or (g). The court may:

(1) order payment for each attorney who has represented the child at any hearing, including a detention hearing, discretionary transfer hearing, adjudication hearing, disposition hearing, or modification of disposition hearing;
(2) include amounts paid to or on behalf of the attorney by the county for preparation time and investigative and expert witness costs; and

(3) require full or partial reimbursement to the county.

(l) The court may not order payments under Subsection (k) that exceed the financial ability of the parent or other person responsible for support of the child to meet the payment schedule ordered by the court.

Commentary
Miranda warning requirements apply to juveniles as well as adults. *In re Gault*, 387 U.S. 1 (1967).

Sec. 51.101. Appointment of Attorney and Continuation of Representation

(a) If an attorney is appointed at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.
(b) If there is an initial detention hearing without an attorney and the child is detained, the attorney appointed under Section 51.10(c) shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.
(c) The juvenile court shall determine, on the filing of a petition, whether the child's family is indigent if: (1) the child is released by intake; (2) the child is released at the initial detention hearing; or (3) the case was referred to the court without the child in custody.

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

Sec. 51.102. Appointment of Counsel Plan

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

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

(2) establishes the procedures for:

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

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

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

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

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

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

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

(A) the allegation is:

(i) conduct indicating a need for supervision or delinquent conduct, and commitment to the Texas Youth Commission is not an authorized disposition; or
(ii) delinquent conduct, and commitment to the Texas Youth Commission without a determinate sentence is an authorized disposition; or

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

GOVERNMENT CODE

CHAPTER SEVENTY-ONE: GENERAL PROVISIONS

Sec. 71.001. Definitions

In this chapter:

(1) "Assigned ~~Ad hoc assigned~~ counsel program" means a system under which private attorneys, acting as independent contractors and compensated with public funds, are individually appointed to provide legal representation and services to a particular indigent defendant accused of a crime or juvenile offense.

(2) "Chair" means chair of the council.

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

(4) "Council" means the Texas Judicial Council.

(5) "Crime" means:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(6) "Defendant" means a person accused of a crime or a juvenile offense.

(7) "Indigent defense support services" means criminal defense services that:

(A) are provided by licensed investigators, experts, or other similar specialists, including forensic experts and mental health experts; and

(B) are reasonable and necessary for appointed counsel to provide adequate representation to indigent defendants.

(8) "Juvenile offense" means conduct committed by a person while younger than 17 years of age that constitutes:

(A) a misdemeanor punishable by confinement; or

(B) a felony.

(9) "Public defender" has the meaning assigned by Article 26.044(a), Code of Criminal Procedure.

Amendment to (1) effective Sept. 1, 2007 (HB 1265, §1).

2007 Legislative Note
HB 1265 amends Section 71.001(1) by changing the defined term from "ad hoc assigned counsel program" to simply "assigned counsel program." The definition provided in the statute is for assigned counsel programs generally, while "ad hoc" appointment system is specific type of assigned counsel program that denotes a random system of attorney appointment. Therefore, the amendment removes the improper use of the term "ad hoc".

Sec. 71.0351. Indigent Defense Information

(a) In each county, not later than November 1 of each odd- numbered year and in the form and manner prescribed by the Task Force on Indigent Defense, the following information shall be prepared and provided to the Office of Court Administration of the Texas Judicial System:

(1) a copy of all formal and informal rules and forms that describe the procedures used in the county to provide indigent defendants with counsel in accordance with the Code of Criminal Procedure, including the schedule of fees required under Article 26.05 of that code;

(2) any revisions to rules or forms previously submitted to the Office of Court Administration under this section; or

(3) verification that rules and forms previously submitted to the Office of Court Administration under this section still remain in effect.

(b) Except as provided by Subsection (c):

(1) the local administrative district judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the district courts trying felony cases in the count; and

(2) the local administrative statutory county court judge in each county, or the person designated by the judge, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the judges of the county courts and statutory county courts trying misdemeanor cases in the county.

(c) If the judges of two or more levels of courts described by Subsection (b) adopt the same formal

and informal rules and forms the local administrative judge serving the courts having jurisdiction over offenses with the highest classification of punishment, or the person designated by the judge, shall perform the action required by Subsection (a).

(d) The chair of the juvenile board in each county, or the person designated by the chair, shall perform the action required by Subsection (a) with respect to all rules and forms adopted by the juvenile board.

(e) In each county, the county auditor, or the person designated by the commissioners court if the county does not have a county auditor, shall prepare and send to the Office of Court Administration of the Texas Judicial System in the form and manner prescribed by the Task Force on Indigent Defense and on a monthly, quarterly, or annual basis, with respect to legal services provided in the county to indigent defendants during each fiscal year, information showing the total amount expended by the county to provide indigent defense services and an analysis of the amount expended by the county:

(1) in each district, county, statutory county, and appellate court;

(2) in cases for which a private attorney is appointed for an indigent defendant;

(3) in cases for which a public defender is appointed for an indigent defendant;

(4) in cases for which counsel is appointed for an indigent juvenile under Section 51.10(f), Family Code; and

(5) for investigation expenses, expert witness expenses, or other litigation expenses.

(f) As a duty of office, each district and county clerk shall cooperate with the county auditor or the person designated by the commissioners court and the commissioners court in retrieving information required to be sent to the Office of Court Administration of the Texas Judicial System under this section and under a reporting plan developed by the Task Force on Indigent Defense under Section 71.061(a).

Sec. 71.051. Establishment of Task Force; Composition

The Task Force on Indigent Defense is established as a standing committee of the council and is composed of eight ex officio members and five appointive members.

Sec. 71.052. Ex Officio Members

The ex officio members are:

(1) the following six members of the council:

(A) the chief justice of the supreme court;

(B) the presiding judge of the court of criminal appeals;

(C) one of the members of the senate serving on the council who is designated by the lieutenant governor to serve on the Task Force on Indigent Defense;

(D) the member of the house of representatives appointed by the speaker of the house;

(E) one of the courts of appeals justices serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense; and

(F) one of the county court or statutory county court judges serving on the council who is designated by the governor to serve on the Task Force on Indigent Defense or, if a county court or statutory county court judge is not serving on the council, one of the statutory probate court judges serving on the council who is designated by the governor to serve on the task force;

(2) one other member of the senate appointed by the lieutenant governor; and

(3) the chair of the House Criminal Jurisprudence Committee.

Sec. 71.053. Appointments

(a) The governor shall appoint with the advice and consent of the senate five members of the Task Force on Indigent Defense as follows:

(1) one member who is a district judge serving as a presiding judge of an administrative judicial region;

(2) one member who is a judge of a constitutional county court or who is a county commissioner;

(3) one member who is a practicing criminal defense attorney;

(4) one member who is a public defender or who is employed by a public defender; and

(5) one member who is a judge of a constitutional county court or who is a county commissioner of a county with a population of 250,000 or more.

(b) The members serve staggered terms of two years, with two members' terms expiring February 1 of each odd-numbered year and three members' terms expiring February 1 of each even-numbered year.

(c) In making appointments to the Task Force on Indigent Defense, the governor shall attempt to reflect the geographic and demographic diversity of the state.

(d) A person may not be appointed to the Task Force on Indigent Defense if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the task force or the council.

Sec. 71.054. Vacancies
A vacancy on the Task Force on Indigent Defense must be filled for the unexpired term in the same manner as the original appointment. An appointment to fill a vacancy shall be made not later than the 90th day after the date the vacancy occurs.

(a) The Task Force on Indigent Defense shall meet at least quarterly and at such other times as it deems necessary or convenient to perform its duties.

(b) Six members of the Task Force on Indigent Defense constitute a quorum for purposes of transacting task force business. The task force may act only on the concurrence of five task force members or a majority of the task force members present, whichever number is greater. The task force may develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) A Task Force on Indigent Defense member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Sec. 71.055. Meetings; Quorum; Voting

(a) The Task Force on Indigent Defense shall meet at least four times each year ~~quarterly~~ and at such other times as it deems necessary or convenient to perform its duties.

(b) Six members of the Task Force on Indigent Defense constitute a quorum for purposes of transacting task force business. The task force may act only on the concurrence of five task force members or a majority of the task force members present, whichever number is greater. The task force may develop policies and standards under Section 71.060 only on the concurrence of seven task force members.

(c) A Task Force on Indigent Defense member is entitled to vote on any matter before the task force, except as otherwise provided by rules adopted by the task force and ratified by the council.

Amendment to (a) effective Sept. 1, 2007 (HB 1265, §2).

2007 Legislative Note
HB 1265 amends subsection (a) to allow the task force to meet at least four times a year instead of quarterly. Under prior law, the schedule of issuing grants and adopting policies and standards sometimes required the task force to compress meeting dates where two meetings fall in one quarter. This change allows the task force to set meetings at appropriate times for the greatest efficiency.

Sec. 71.056. Compensation
A Task Force on Indigent Defense member may not receive compensation for services on the task force but is entitled to be reimbursed for actual and necessary expenses incurred in discharging the member's duties as a task force member. The expenses are paid from funds appropriated to the task force.

Sec. 71.057. Budget

(a) The Task Force on Indigent Defense budget shall be a part of the budget for the council. In preparing a budget and presenting the budget to the legislature, the task force shall consult with the executive director of the Office of Court Administration of the Texas Judicial System.

(b) The Task Force on Indigent Defense budget may include funds for personnel who are employees

of the council but who are assigned to assist the task force in performing its duties.

(c) The executive director of the Office of Court Administration of the Texas Judicial System may not reduce or modify the Task Force on Indigent Defense budget or use funds appropriated to the task force without the approval of the task force.

Sec. 71.058. Fair Defense Account

The fair defense account is an account in the general revenue fund that may be appropriated only to the Task Force on Indigent Defense for the purpose of implementing this subchapter.

Sec. 71.059. Acceptance of gifts, grants, and other funds; State Grants Team

(a) The Task Force on Indigent Defense may accept gifts, grants, and other funds from any public or private source to pay expenses incurred in performing its duties under this subchapter.

(b) The State Grants Team of the Governor's Office of Budget, Planning, and Policy may assist the Task Force on Indigent Defense in identifying grants and other resources available for use by the task force in performing its duties under this subchapter.

Sec. 71.060. Policies and Standards

(a) The Task Force on Indigent Defense shall develop policies and standards for providing legal representation and other defense services to indigent defendants at trial, on appeal, and in post-conviction proceedings. The policies and standards may include:

(1) performance standards for counsel appointed to represent indigent defendants;

(2) qualification standards under which attorneys may qualify for appointment to represent indigent defendants, including:

(A) qualifications commensurate with the seriousness of the nature of the proceeding;

(B) qualifications appropriate for representation of mentally ill defendants and non-citizen defendants;

(C) successful completion of relevant continuing legal education programs approved by the council; and

(D) testing and certification standards;

(3) standards for ensuring appropriate appointed caseloads for counsel appointed to represent indigent defendants;

(4) standards for determining whether a person accused of a crime or juvenile offense is indigent;

(5) policies and standards governing the organization and operation of an ~~ad hoc~~ assigned counsel program;

(6) policies and standards governing the organization and operation of a public defender consistent with recognized national policies and standards;

(7) standards for providing indigent defense services under a contract defender program consistent with recognized national policies and standards;

(8) standards governing the reasonable compensation of counsel appointed to represent indigent defendants;

(9) standards governing the availability and reasonable compensation of providers of indigent defense support services for counsel appointed to represent indigent defendants;

(10) standards governing the operation of a legal clinic or program that provides legal services to indigent defendants and is sponsored by a law school approved by the supreme court;

(11) policies and standards governing the appointment of attorneys to represent children in proceedings under Title 3, Family Code; and

(12) other policies and standards for providing indigent defense services as determined by the task force to be appropriate.

(b) The Task Force on Indigent Defense shall submit policies and standards developed under Subsection (a) to the council for ratification

(c) Any qualification standards adopted by the Task Force on Indigent Defense under Subsection (a) that relate to the appointment of counsel in a death penalty case must be consistent with the standards

specified under Article 26.052(d), Code of Criminal Procedure. An attorney who is identified by the task force as not satisfying performance or qualification standards adopted by the task force under Subsection (a) may not accept an appointment in a capital case.

Amendment to (a) effective Sept. 1, 2007 (HB 1265, §3).

2007 Legislative Note
HB 1265 amends Sec. 71.060(a)(5) to conform to a change of definition in Sec. 71.001(1).

Sec. 71.061. County reporting plan; Task Force reports

(a) The Task Force on Indigent Defense shall develop a plan that establishes statewide requirements for counties relating to reporting indigent defense information. The plan must include provisions designed to reduce redundant reporting by counties and provisions that take into consideration the costs to counties of implementing the plan statewide. The task force shall use the information reported by a county to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense. The task force may revise the plan as necessary to improve monitoring of indigent defense policies, standards, and procedures in this state.

(b) The Task Force on Indigent Defense shall annually submit to the governor, lieutenant governor, speaker of the house of representatives, and council and shall publish in written and electronic form a report:

(1) containing the information submitted under Section 71.0351
(2) regarding:

(A) the quality of legal representation provided by counsel appointed to represent indigent defendants;

(B) current indigent defense practices in the state as compared to state and national standards;

(C) efforts made by the task force to improve indigent defense practices in the state; and

(D) recommendations made by the task force for improving indigent defense practices in the state.

(c) The Task Force on Indigent Defense shall annually submit to the Legislative Budget Board and council and shall publish in written and electronic form a detailed report of all expenditures made under this subchapter, including distributions under Section 71.062.

(d) The Task Force on Indigent Defense may issue other reports relating to indigent defense as determined to be appropriate by the task force.

Sec. 71.062. Technical support; Grants

(a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; and

(B) promote compliance by counties with the requirements of state law relating to indigent defense;

(2) direct the comptroller to distribute funds, including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(b) The Task Force on Indigent Defense shall direct the comptroller to distribute funds as required by Subsection (a)(2) based on a county's compliance with standards developed by the task force and the county's demonstrated commitment to compliance with the requirements of state law relating to indigent defense.

(c) The Task Force on Indigent Defense shall develop policies to ensure that funds under Subsection (a)(2) are allocated and distributed to counties in a fair manner.

(d) A county may not reduce the amount of funds provided for indigent defense services in the county because of funds provided by the Task Force on Indigent Defense under this section.

Sec. 71.063. Immunity from liability

The Task Force on Indigent Defense or a member of the task force performing duties on behalf of the task force is not liable for damages arising from an act or omission within the scope of the duties of the task force.

LOCAL GOVERNMENT CODE

CHAPTER ONE HUNDRED THIRTY-THREE: CRIMINAL AND CIVIL FEES PAYABLE TO THE COMPTROLLER

Sec. 133.102. Consolidated Fees on Conviction

(a) A person convicted of an offense shall pay as a court cost, in addition to all other costs:

(1) $133 on conviction of a felony;

(2) $83 on conviction of a Class A or Class B misdemeanor; or

(3) $40 on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal ordinance, other than a conviction of an offense relating to a pedestrian or the parking of a motor vehicle.

(b) The court costs under Subsection (a) shall be collected and remitted to the comptroller in the manner provided by Subchapter B.

(c) The money collected under this section as court costs imposed on offenses committed on or after January 1, 2004, shall be allocated according to the percentages provided in Subsection (e).

(d) The money collected as court costs imposed on offenses committed before January 1, 2004, shall be distributed using historical data so that each account or fund receives the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately.

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

(1) abused children's counseling 0.0088 percent;

(2) crime stoppers assistance 0.2581 percent;

(3) breath alcohol testing 0.5507 percent;

(4) Bill Blackwood Law Enforcement Management Institute 2.1683 percent;

(5) law enforcement officers standards and education 5.0034 percent;

(6) comprehensive rehabilitation 5.3218 percent;

(7) operator's and chauffeur's license 11.1426 percent;

(8) criminal justice planning 12.5537 percent;

(9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 1.2090 percent;

(10) compensation to victims of crime fund 37.6338 percent;

(11) fugitive apprehension account 12.0904 percent;

(12) judicial and court personnel training fund 4.8362 percent;

(13) an account in the state treasury to be used for the establishment and operation of the Correctional Management Institute of Texas and Criminal Justice Center Account 1.2090 percent; and

(14) fair defense account 6.0143 percent.

(f) Of each dollar credited to the law enforcement officers standards and education account under Subsection (e)(5):

(1) 33.3 cents may be used only to pay administrative expenses; and

(2) the remainder may be used only to pay expenses related to continuing education for

persons licensed under Chapter 1701, Occupations Code.

Sec. 133.107. Fee for Support of Indigent Defense Representation

(a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to other costs, a fee of $2 to be used to fund indigent defense representation through the fair defense account established under Section 71.058, Government Code.

(b) The treasurer shall remit a fee collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall credit the remitted fees to the credit of the fair defense account established under Section 71.058, Government Code.

Amendment adding Section 133.107(a) and (b) effective Sept. 1, 2007 (HB 1267, §6). Section 10 of HB 1267 provides: "The imposition of a cost of court under Section 133.107, Local Government Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act." See effective note following Art. 14.06.

2007 Legislative Note

HB 1267 adds Sec. 133.107(a) and (b) to create a new General Revenue-Dedicated Account for Indigent Defense Representation. The account may only be appropriated to the Task Force on Indigent Defense or for compensating appointed counsel. The new account is funded with a $2 court cost on criminal convictions, other than pedestrian or parking offenses.

Appendix – Changes After 2007 Legislative Session

Changes listed by Statute

CODE OF CRIMINAL PROCEDURE

Statute	Topic	Changes
Art. 1.051	Right to Representation by Counsel	Amended by HB 1178
Art. 14.06	Must Take Offender Before Magistrate	Amended by HB 2391
Art. 15.17	Duties of Arresting Officer and Magistrate	Amended by HB 2391
Art. 15.18	Arrest for Out-of-County Offense	Amended by HB 3060
Art. 17.032	Release on Personal Bond of Certain Mentally Ill Defendants	Amended by HB 8
Art. 17.033	Release on Bond of Certain Persons Arrested without a Warrant	None
Art. 26.01	Arraignment	None
Art. 26.011	Waiver of Arraignment	None
Art. 26.02	Purpose of Arraignment	None
Art. 26.03	Time of Arraignment	None
Art. 26.04	Procedures for Appointing Counsel	None
Art. 26.044	Public Defender in County with Four County Courts and Four District Courts	None
Art. 26.05	Compensation of Counsel Appointed to Defend	Amended by HB 1267
Art. 26.051	Indigent Inmate Defense	Amended by HB 1267
Art. 26.052	Appointment of Counsel in Death Penalty Case; Reimbursement of Investigative Expenses	None
Art. 26.055	Contribution from State for Defense of Indigent Inmates	None
Art. 26.056	Contribution from State in Certain Counties	None
Art. 26.057	Cost of Employment of Counsel for Certain Minors	None
Art. 26.06	Elected Officials not to be Appointed	None
Art. 26.07	Name as Stated in Indictment	None
Art. 26.08	If Defendant Suggests Different Name	None
Art. 26.09	If Accused Refuses to Give his Real Name	None
Art. 26.10	Where Name is Unknown	None
Art. 26.11	Indictment Read	None
Art. 26.12	Plea of Not Guilty Entered	None
Art. 26.13	Plea of Guilty	Amended by SB 1470
Art. 26.14	Jury on Plea of Guilty	None
Art. 26.15	Correcting Name	None
Art. 38.30	Interpreter	None
Art. 38.31	Interpreters for Deaf Persons	None

FAMILY CODE

Statute	Topic	Changes
Sec. 51.10	Right to Assistance of Attorney;	None

	Compensation	
Sec. 51.101	Appointment of Attorney and Continuation of Representation	None
Sec. 51.102	Appointment of Counsel Plan	None

GOVERNMENT CODE

Statute	Topic	Changes
Sec. 71.001	Definitions	Amended by HB 1265
Sec. 71.0351	Indigent Defense Information	None
Sec. 71.051	Establishment of Task Force; Composition	None
Sec. 71.052	Ex Officio Members	None
Sec. 71.053	Appointments	None
Sec. 71.054	Vacancies	None
Sec. 71.055	Meetings; Quorum; Voting	Amended by HB 1265
Sec. 71.056	Compensation	None
Sec. 71.057	Budget	None
Sec. 71.058	Fair Defense Account	None
Sec. 71.059	Acceptance of Gifts, Grants, and Other Funds; State Grants Team	None
Sec. 71.060	Policies and Standards	Amended by HB 1265
Sec. 71.061	County Reporting Plan; Task Force Reports	None
Sec. 71.062	Technical Support; Grants	None
Sec. 71.063	Immunity from Liability	None

LOCAL GOVERNMENT CODE

Statute	Topic	Changes
Sec. 133.102	Consolidated Fees on Conviction	None
Sec. 133.107	Fee for Support of Indigent Defense Representation	Added by HB 1267

Bexar County is in the forefront...county officials, judges, and others in its criminal justice community, in collaboration with the Task Force, established the first stand-alone county appellate public defender office in the State.

Before. Appeals in Bexar County were brought before the Fourth Court of Appeals, which covers 32 counties in Texas, with Bexar being the largest. Prior to the establishment of the Bexar County Appellate Defender Office, the Fourth Court of Appeals raised concerns with the quality of some appellate briefs being filed. Other concerns included the fact that most of the caseload fell on a small group of lawyers who were qualified in this highly specialized area of the law, which caused serious appellate delay, with attorneys asking for two to three extensions on every brief filed due to overload. The criminal district court administrator, whose office oversees court-appointments, saw a need to address the appearance of impropriety and appellate delay. The system was suffering in a quagmire of appellate cases not moving forward.

After. A grant application was submitted and the Task Force made a $370,076 grant to establish an appellate defender office in Bexar County. By September 1, 2005 the office was fully functional. Four highly trained and experienced appellate attorneys, headed by Chief Appellate Public Defender Angela Moore, in one shop, are now handling the briefs more efficiently and with lower cost...$115,000 in county expenditures for services provided by private assigned counsel in the first year compared to $350,000 in the previous year. Ms. Moore had a vision and mission: to provide high quality representation for indigent appellants by ensuring appellants consistent, accountable, highly qualified professional representation. The 100th brief filed milestone was reached in fall of 2006 demonstrating record achievement. The APDO handles juvenile, misdemeanor, felony and capital appeals, but does not take civil appeals including habeas corpus appeals. The APDO is responsible for filing briefs in the Fourth Court of Appeals and for death penalty cases in which the appeal is filed directly with the Texas Court of Criminal Appeals. The current budget for the APDO is $468,000 (which includes rental on building, salaries, benefits, etc.). Each year of the four-year grant, Bexar County is expected to cover more of the expenses for the office. Bexar County is required to reapply for continuing grant funding each year with the grant paying for 60 percent of expenses next year, and a 20 percent reduction each year thereafter. In addition the office is serving as a resource and clearinghouse of information for the private bar, much like the services provided by the appellate section of the District Attorney's office provided for their trial attorneys. Based on evaluations and data gathered, combined with general comments from the oversight committee and other Bexar County officials, the office is a success. The Bexar County criminal justice community should be proud of its efforts to implement an innovative way to handle indigent appeals in a cost-effective manner and with qualitative improvement. To view the online data concerning this grant application and program narrative, go to: http://tfid.tamu.edu/DiscretionaryGrantProgram/ViewApplication.asp.

Bexar's major results: The county and courts had excellent coordination and implementation. The program accepted its first appointment on 8/1/2005. The program filed 343 briefs in fiscal year 2006, a jump from 127 assigned counsel filings in 2005. Cost per filing fell from $2,410/case to $1,545/case in 2006.

The Val Verde Regional Public Defender Office funded by FY 2006 Discretionary Grant funds is extraordinary in a number of ways: The regional concept (it serves four counties: Val Verde, Edwards, Terrell and Kinney) was a first in Texas. With very few attorneys available to represent clients in this rural area covering over 9,000 square miles, the idea was a hit! It had a champion – Val Verde County Commissioner Ramon – because without his vision and support it could not have even begun. The community partnered with the State to receive $470,304 (80% of program cost in the first year) in multi-year Discretionary Grant funding in FY 2006 and contracted with a non-profit legal aid program (also a first in Texas). The multi-year grant program funds over four years at 80%, 60%, 40%, and 20%, respectively. On the state level, the Task Force grants administrator worked closely with the Commissioner and the non-profit legal program, Texas Rural Legal Aid (TRLA), to form its partnership and set-up the program. Notably, the program attracted a federal public defender, Joseph Cordova, to become its new Chief Public Defender. He felt strongly that this type of defense program was needed at the state court level. To demonstrate his commitment to service, his family sacrificed by him leaving his federal post and relocating. The district judge, Judge Tom Lee, was fully supportive of the program as well. The county did not heed those who said things could not be done in a certain timeframe. The office manager, Janie Ramon, had an amazing ability to get things done more efficiently because she was an inspirational and influential hometown public servant. Another aspect unique to the public defender office is that TRLA had a pre-existing civil legal aid department. The criminal public defender can now focus totally on criminal defense and whenever civil issues arise, as they often do, those are referred to the civil division. This program has received positive attention in numerous articles and publications due to these remarkable features and the way in which it was done. For further information about the office, please see the TRLA Fall 2006 newsletter at http://www.trla.org/pdf/nl_fl06.pdf.

"The new public defender office increases the efficiencies in the process by reducing the administrative time of appointing attorneys and reviewing payment vouchers. This allows me to focus on my judicial duties. The public defender office removes inefficiency by getting the job done correctly. It has no gain by putting extra costs that do not need to be there. I am also very encouraged by the fact that case flow is moving along very smoothly."

Judge Tom Lee, 63rd District Court Judge *Pictured right*
Val Verde

Williamson County, Texas
Direct Filing for the Small to Mid-Size County

Williamson County implemented a 'Direct Filing' process in January of 2006. A more efficient process for the filing of felony criminal charges and expediting the court dates and disposition of those cases was proposed by the Williamson County District Attorney's office and accepted by the District Judges and District Clerk.

The Challenge

Williamson County is a rapidly growing community of approximately 350,000 people. The criminal justice system includes 15 law enforcement agencies ranging in size from approximately 200 officers to as small as 2 officers. While crime remains relatively low compared to similarly sized counties, the growth has affected the number of felony cases filed each year. Due to Williamson County's proximity to Austin, this increase is expected to continue until Williamson County's population is comparable with some of the largest counties in Texas.

The Williamson County District Attorney's office is responsible for the filing and prosecution of all felony crimes in the county. There are three District Courts who have felony criminal jurisdiction. All of the felony cases are handled by a staff of 12 attorneys, 9 of whom are assigned to the courts. When the county was much smaller, a system of filing all of the new cases in a single court for a single grand jury term was manageable, but as the caseload increased, it became increasingly difficult to manage the flow of the cases and the resulting workload imbalances on the courts and in the DA's office. In addition, the defendants were not required to appear in court until after an indictment had issued, which ultimately delayed the final disposition of the charges by months.

The Solution

The District Attorney's office began to discuss with the District Judges and District Clerk three major changes to the system that was in place. All of theses changes would allow for earlier decision making about the proper charges to be filed and the distribution of those defendants between the district courts. The first change involved opening a file in the District Clerk's office as soon as an arrest was made. The second major change was to implement a random distribution of the cases between the three district

courts. The third change was to assign court dates at the time of filing so that felony defendants would be going to court beginning shortly after their case was filed, eliminating the delay involved in waiting for the grand jury to indict and providing an opportunity for the earlier resolution of cases.

A primary objective was to accommodate the growth in the county and to move the cases more quickly through the criminal justice system. By moving decisions about the proper charges to be filed to an earlier point in the review process, cases which needed to be diverted to the County Attorneys office or handled in other ways would be expedited. Objectives also included a more even distribution of the cases between the three courts, instead of the feast or famine of cases where 250 cases would be filed in a three-month period and then only a few cases would be filed in the following six month period. A random assignment of cases solved imbalances which arose under the old method.

The key to direct filing, however, is to open a file in the District Clerk's office and assign a cause number at an early stage in the process instead of waiting until after indictment. Previously there had been no place to file the sort of pretrial issues that come up after arrest involving bail amounts and bond conditions, competency and sanity issues, and other similar matters. Now not only is a cause number assigned immediately upon arrest, but everyone knows when the defendant will be expected to appear in court and in which court. The final objective of offering the opportunity for earlier case resolution was met by the setting of court dates before indictment. By having a defendant and their attorney appear in court and allowing the prosecutors to negotiate and offer plea agreements before indictment, all of the delay involved in waiting until after indictment has been removed.

The District Attorney's office visited two counties, Harris and Tarrant counties, and reviewed their system for filing cases. The solution for Williamson County was more closely modeled after Harris County's intake system, but modified substantially to fit a smaller county with more diverse law enforcement and multiple municipal jurisdictions. Several smaller changes were made in the time period leading up to January 2006, including the earlier of review by the District Attorney's office of cases at the jail prior to magistration. With the agreement and approval of the District Judges and the District Clerk, in January of 2006 the new Direct Filing system was implemented in Williamson County.

The Results

By the end of December 2006, the direct filing system was declared a complete success. Even those who were reticent about the changes seem to be satisfied with the new system. The balance of cases between the three district courts has greatly improved due to the random distribution of cases when the cases are opened in the District Clerk's office. The workload of both the courts and the District Attorney's office has evened out. The docket sizes are more evenly distributed in the courts. The availability of a case file in the District Clerk's office with a cause number has resolved problems by giving documents related to a felony a place to be filed.

Most importantly, the system has allowed for the earlier resolution of felony charges in Williamson County. This benefits not only the people involved in the criminal justice system, but the felony defendants as well. In the first six months, a significant number of cases were diverted to other agencies and charging decisions were made at an earlier stage than in the past. At the end of 2007, statistics showed that nearly one in every five defendants pled guilty and resolved their cases by plea agreement *before* the case was indicted by a grand jury.

It is our belief that by putting the Direct Filing system into place, we have positioned Williamson County to continue to gracefully handle the expected growth in the county. It has helped make all involved in the process more efficient by keeping the felony cases moving through the system and eliminating delays inherent in the old system. In addition, it is a process which could be implemented in any county across Texas or easily modified to fit the individual needs of smaller counties.

Williamson County
Mental Health Committee History

Williamson County's Commissioners Court heard from constituents and recognized that a crisis had developed in the mental health system within the State of Texas that was affecting our residents locally. Therefore, the Commissioners Court appointed a task force of dedicated professionals from the fields of mental health, social service, law enforcement and justice who were charged with researching the capacity, functioning, and gaps in our county's mental health system. The committee known as the Mental Health Committee met for the first time in September of 2003. The committee has met monthly since its formation and continues to expand the cooperation and collaboration that it began in 2003, in order to continue to improve the mental health delivery system in our county. Currently, the committee has active participation from two County Commissioners; the Sheriff; District Attorney; Assistant County Attorney; Williamson County Adult Probation Director; Williamson County Juvenile Services Director; Supervisors of the County's Mobile Outreach Team and the Crisis Intervention Team; the Chief Jail Administer of the Williamson County Jail; the Williamson Counties & Cities Health District; Bluebonnet Trails MHMR; a State Senator's Legislative Aide; Emergency Room Directors from local hospitals; administration from a local school district; Parent Advocate & NAMI representative; and our local Federally Qualified Health Clinic. We have also had invited guests attend from the Austin State Hospital to help reach solutions and to overcome difficulties that have arisen.

The committee upon initial gathering and analyzing data found serious gaps in the mental health delivery system. These gaps were exasperated by our county's rapid population growth, combined with restricted and decreased State appropriations for mental health. The committee identified a significant loss and restriction of Medicaid mental health benefits and State services. Twenty-two percent of Texas children had no health insurance (the highest rate in the nation). As a result of a difficult or inaccessible mental health system, the committee found that the public service and safety net system was being inundated and over-taxed with mental health concerns. EMS calls due to mental health had skyrocketed from 204 in 2002 to 606 in 2004; ER visits due to mental illness were up 43% resulting in millions of dollars of uncompensated care for our local hospitals; and 63% of individuals arrested due to mental illness had previous arrests in Williamson County, which in turn caused medical and pharmaceutical expenses to increase dramatically in our jail.

After analyzing the data, the Committee identified many problems and possible solutions. One recommendation was the creation of a jail liaison to help identify inmates with serious mental illness. The jail liaison was hired by Bluebonnet Trails MHMR and the liaison continues to use the State CARE data base and to work closely with jail personnel to ensure proper treatment plans and medication needs are met for the mentally ill. The Committee also suggested, and jail personnel enacted, a Mental Disability/Suicide Intake Screening form that is filled out when inmates are processed into the county jail. The form is printed on bright orange paper to ensure that all jail personnel can easily identify inmates with mental conditions, thereby allowing the inmate to receive proper treatment and to protect the safety of the staff and inmates.

Another recommendation of the Mental Health Committee was the funding and hiring of two licensed professional mental health counselors to serve the "unmet needs" of individuals who don't meet the restricted criteria for State funded services. The mission of the team (to be known as the Mobile Outreach Team) was to link people in crises with mental health, social service, or medical providers in order to prevent escalation or interaction with law enforcement and other "first responders". After considering the benefit to the community through a needed (but unmet)

public service, possible savings through diversions, and improved public safety, the Williamson County Commissioners Court on September 7, 2004 approved the funding and hiring for the Mobile Outreach Team (MOT) pilot program. The program was implemented on October 1st, 2004 with the hiring of two licensed Mobile Outreach Team members who specialized in crisis intervention. The MOT was given access to $50,000 in "flex funding" annually to be used for immediate needs such as food, clothing, psychiatric visits, psychotropic medications, motel vouchers, short-term counseling, or respite care.

The Committee expected that early intervention and treatment facilitated by the Mobile Outreach Team would help alleviate or avoid serious and costly situations that were created by allowing individuals to decompensate due to the lack of early prevention and available options for mental health crisis services. Detailed statistics were gathered and kept to identify the success of the pilot program. The Commissioners Court received quarterly written reports and Court presentations of the tremendous success of the MOT program. During the first year of operation (10/01/04 - 9/31/05) the MOT conservatively provided $375,730 of savings through diversions from State hospitals, local emergency rooms, jail and the justice system.

Due to the success of the program, the Commissioners Court approved allocations to fund the program for a second year. The savings from diversions continued and increased to $692,900 for the second year of the program. The third year of the MOT program began on October 1, 2006 with the Commissioners Court, with the assistance of a Community Development Block Grant (CDBG) HUD funding, increasing the size of the MOT from a two-person team to a four-person team. The Court also created the Williamson County Outreach Department with a full-time coordinator who acts as the supervisor and as an additional fifth member of the MOT.

Williamson County had for years provided law enforcement mental health services through our Precinct #1 Constable's Office. The Commissioners Court and the Mental Health Committee began investigating through the use of a sub-committee, the best and most appropriate staffing location of our County's mental health unit. The desire was for the County to provide an improved, complete and comprehensive coverage for our county's mental health needs. The sub-committee met, or consulted with: the County Justice of the Peaces and staff; the County Attorney's Office; the District Attorney's Office; Williamson County Schools of Leander, Liberty Hill, Round Rock, Georgetown, Granger, Hutto, Taylor, Cedar Park and Georgetown's alternative high school; Williamson County hospitals of Round Rock, Georgetown and Johns Community; consumers and mental health advocates; the County's MOT, and Travis Counties mental health team. On October 20th, 2005 the Williamson County's Commissioners Court transferred the mental health unit from the Precinct #1 Constable's Office to the Williamson County Sheriff's Office.

The transfer to the Sheriff's Office was the beginning of the Sheriff's Crisis Intervention Team (CIT). The CIT is a specialized eight-man unit that is staffed by well trained and certified mental health officers that deal exclusively with mental health calls. The CIT have a separate location from the regular Sheriff's officers, have unmarked cars and wear plain clothes in order to eliminate the stigma associated with mental illness. The CIT provide services to the county jail, confer with prosecutors to recommend possible jail diversion, collaborate and work closely with the MOT, Bluebonnet Trails and others. The Sheriff's Office and the CIT actively participate on the Mental Health Committee and have been instrumental in increasing the percent of Williamson County Sheriff patrol officers that have Mental Health Certification. In addition, they help educate and train the police departments of the local municipalities of the importance of recognizing mental illness and the importance of certification of their officers. At the present time, the Williamson County Sheriff's Department has an excess of 80% of its officers that have

obtained Mental Health Certification. Williamson County and the Sheriff's Office recognizes the importance of training to avoid tragedies, while providing protection to ensure a safe community and jail, and at the same time providing humane and appropriate treatment for those affected by mental illness. The CIT is also gathering statistics on diversion savings and from January 2006 through November 2006 have provided savings from 2,093 cases of $1,011,840. The Williamson County Commissioners Court also continues to provide allocated funding for this successful program. Through collaboration of members of the Mental Health Committee, Williamson County has established a successful jail diversion program for non-violent offenders with mental illnesses.

The Mental Health Committee with the assistance of the Williamson Counties and Cities Health District was also instrumental in the creation of the "Williamson County Community Resource Directory". This 350-page resource lists all services available in Williamson County and the surrounding counties alphabetically, by subject, and includes a cross reference. This resource was distributed to community clinics in each precinct, local hospitals, and non-profits such as Intervention Services. The County HELPLINE also has a directory, which means that residents of Williamson County can find resources over the phone.

The Williamson County Commissioners Court has also recognized the importance of uninsured individuals having a medical home for primary healthcare. Having affordable healthcare available helps individuals and families remain productive, active members of our communities. Basic healthcare is also an important component of helping individuals to remain mentally healthy, as well as reducing a burden on local hospital emergency rooms. Therefore, the Commissioners Court also established a partnership with a clinic in each of the County's four precincts and began the "Community Clinic Services" (CCS) grant program in October of 2003. This program remains active and successful today in providing quality healthcare to the uninsured, low and moderate income county residents that are ineligible for any other healthcare programs. The CCS program has expanded to include dental care and mental health services in some of the participating clinics.

Williamson County has achieved continued success through the Mental Health Committee and realizes the importance of cooperation and collaboration to help create a more seamless system with all aspects of the system working together. By forming a collaboration of various community stakeholders and increasing communication, Williamson County has helped reduce duplication of services. This collaboration allows more services to be provided economically and efficiently, to the residents of Williamson County.

Overview of H.B. 1178 Requirements

With the passage of H.B. 1178, the 80th Texas Legislature promulgated new procedures that judges and prosecutors must follow when obtaining waivers of the right to counsel from defendants charged with a felony or Class A or B misdemeanor. H.B. 1178 takes effect on September 1, 2007. Waivers obtained after September 1, 2007, will be presumed invalid if they are obtained in violation of the procedures specified in the bill.

This document sets forth procedures for obtaining counsel waivers in order to assist judges, prosecutors, and court staffs implement H.B. 1178.

Procedures for Obtaining Waivers of the Right to Counsel

Prior to the First Appearance

[The procedures below assume a request for counsel is pending. A defendant may withdraw a request for counsel; however the Code of Criminal Procedure as amended by HB 1178 does not specify what procedures judges and prosecutors may use to obtain counsel waivers from defendants who withdraw their requests for counsel. We will share with you any guidance on this issue that may be provided in the future by the courts or Task Force.]

- Rule on requests for counsel made prior to the first appearance setting (e.g., at the Article 15.17 hearing) and appoint counsel if the defendant is indigent.
  - If the person who requested counsel is in jail, appoint counsel no later than the end of the first (counties with populations of 250,000 or more) or third (counties under 250,000) working day after the date the appointing authority receives the request for counsel.
  - If the person who requested counsel is released on bail prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversary judicial proceedings are initiated, whichever comes first. Adversary judicial proceedings are initiated against a defendant by, among other things, the filing of an indictment or information

First Appearance

Defendants who appear without counsel at the first appearance setting will fall into two different categories. Judges should determine which category a defendant falls into and then follow the appropriate procedures.

Defendants who requested appointed counsel prior to first appearance

- Use magistration records to identify defendants who requested counsel prior to first appearance and who have not yet received rulings on their requests, and immediately rule on those requests for counsel. (See note related to withdrawals of counsel requests in above section). Because the court may not direct or encourage a defendant who has requested the appointment of counsel to communicate with the prosecutor, and the prosecutor may not communicate with the defendant, unless the court has denied the request, the court may not

treat the initial application as moot and require the defendant to initiate another request for appointed counsel.

- If the defendant's request for appointed counsel is denied, the court should follow the procedures applicable to defendants who request counsel at first appearance and whose requests are denied (see below).

All other defendants who appear at first appearance without counsel

- Inform the defendant of the right to counsel;
- Inform the defendant of the procedure for requesting appointed counsel; and
- Provide the defendant a reasonable opportunity to request appointment of counsel.

Then follow the appropriate procedures depending on whether or not the defendant asserts the right to counsel.

Defendants who request appointed counsel

- Appoint counsel if the defendant is indigent. The court may not direct or encourage the defendant to communicate with the prosecutor, and the prosecutor may not communicate with the defendant, unless the court has denied the request for appointed counsel.
- If the defendant's request for appointed counsel is denied, the defendant then must be given a reasonable opportunity to retain private counsel before the court can direct or encourage the defendant to communicate with the prosecutor and before the prosecutor can communicate with the defendant.
  - The defendant can waive the opportunity to retain private counsel if he or she wants to communicate with the prosecutor at the first appearance setting.
- If the defendant fails to retain private counsel after having been given a reasonable opportunity to do so, or if the defendant waives the opportunity to retain private counsel, follow the procedures for obtaining a waiver of the right to counsel (see below).

Defendants who express an intent to retain private counsel

- Reset the defendant's case in order to provide the defendant a reasonable opportunity to retain private counsel.
- If the defendant subsequently returns to court without counsel:
  - Inform the defendant of the right to request appointed counsel; and
  - Provide the defendant a reasonable opportunity to request appointment of counsel.
- If a defendant chooses to request counsel, appoint counsel if the defendant is indigent. The court may not direct or encourage the defendant to communicate with the prosecutor, and the prosecutor may not communicate with the defendant, unless the court has denied the request for appointed counsel.
- If the defendant chooses to forego the opportunity to request appointed counsel and instead waives the right to counsel, follow the procedures for obtaining a waiver of the right to counsel (see below).

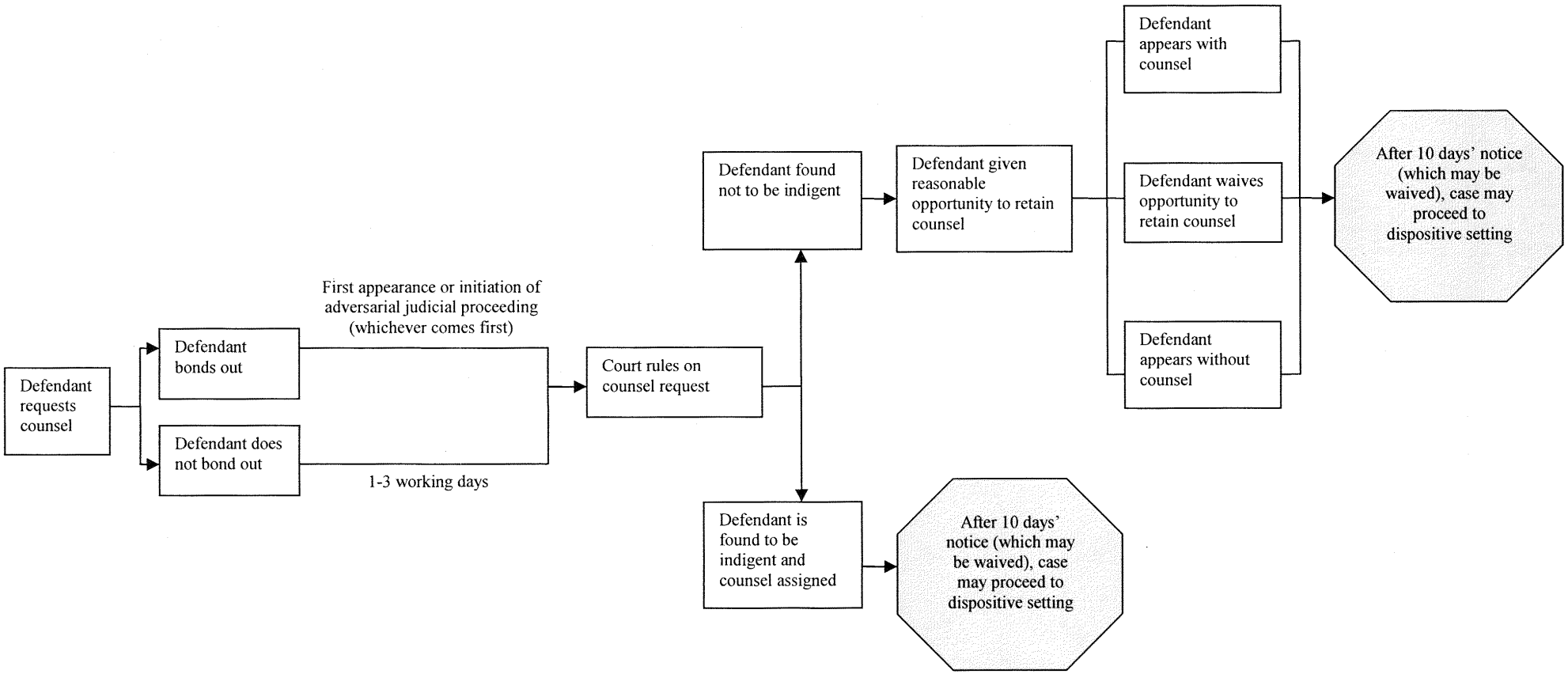
Defendants who choose to waive the right to counsel

- Inform the defendant of the nature of the charges alleged in the information or indictment;
- Inform the defendant of the range of punishment for the alleged offense(s); and
- Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g), Code of Criminal Procedure.

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice. The defendant may also waive the notice requirement and proceed to disposition.

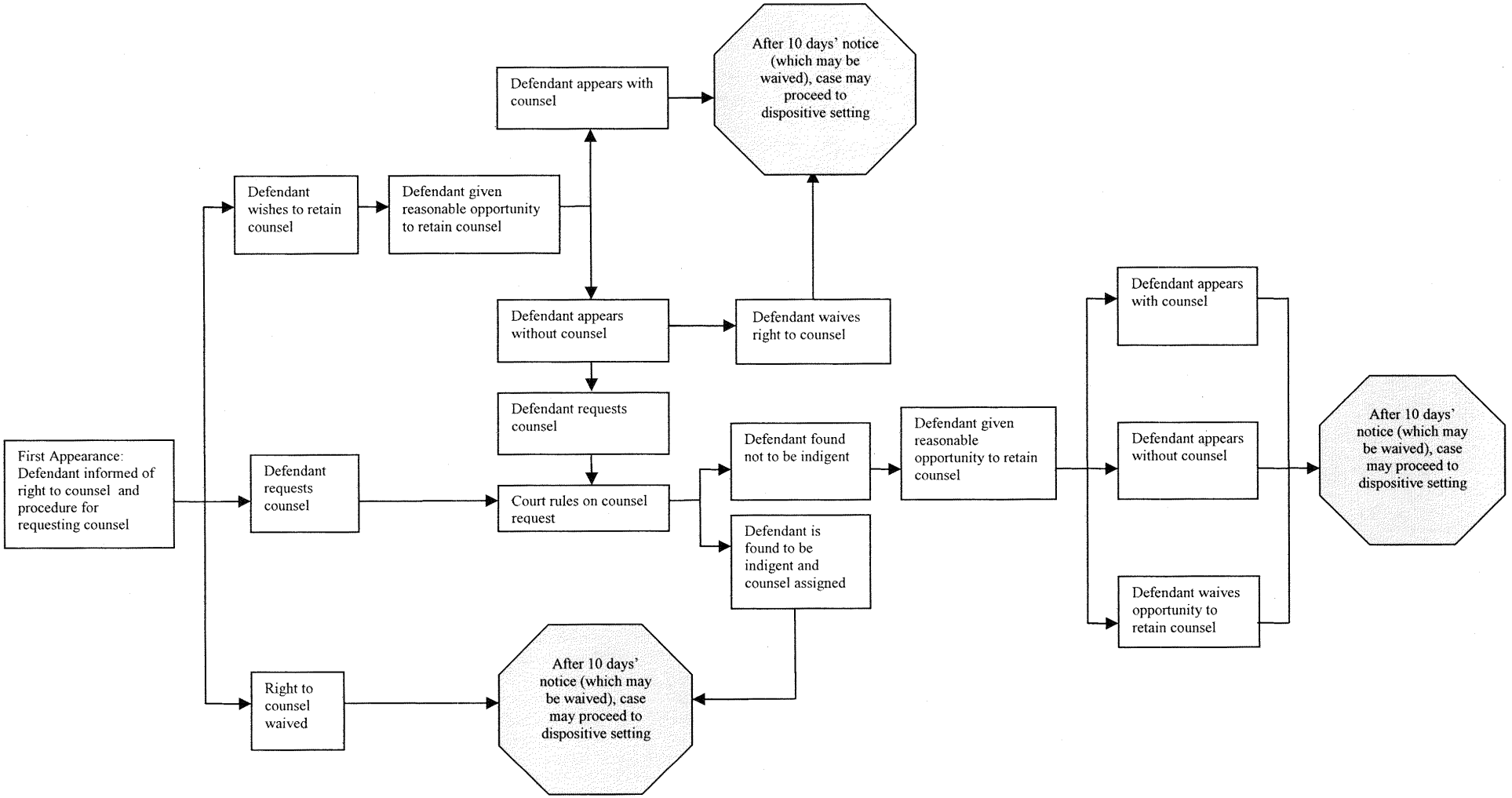
HB 1178 – Waiver of counsel flow chart

The following is the process called for by HB 1178 should the Defendant request counsel at the 15.17 hearing.



HB 1178 – Waiver of counsel flow chart

The following is the process called for by HB 1178 should the Defendant not request counsel during his 15.17 hearing or should the Defendant bond out without having a 15.17 hearing.



Public Interest Groups as Partners:

A Resource for Implementation of H.B. 1178

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Introduction

With the passage of H.B. 1178, the 80th Texas Legislature promulgated new procedures that judges and prosecutors must follow when obtaining waivers of the right to counsel from defendants charged with a felony or Class A or B misdemeanor. H.B. 1178 went into effect on September 1, 2007. Waivers obtained after September 1, 2007, will be presumed invalid if they are obtained in violation of the procedures specified in the bill.

This paper intends to explain the changes to the law made by H.B. 1178 and to set forth model procedures for obtaining counsel waivers in order to assist judges, prosecutors, and court staff in implementation of the bill. This paper also addresses how the procedures specified in H.B. 1178 interact with other provisions of Texas law governing the right to counsel in criminal cases, including the Fair Defense Act (FDA).

H.B. 1178 – An Overview

What is the purpose of H.B. 1178?

According to the Bill Analysis for H.B. 1178, the Legislature was concerned that prior law did not provide sufficient guidance on what procedures must be followed in order to ensure that a defendant proceeding without counsel does so subject to a voluntary and intelligent waiver.[i] Waivers of the right to counsel that are not voluntary and intelligent are invalid.[ii]

H.B. 1178 addresses this legislative concern by clarifying the circumstances under which a court is authorized to obtain from a defendant a waiver of the right counsel and under which an attorney representing the state is authorized to communicate with a defendant who is not represented by counsel.[iii]

H.B. 1178 also amends prior law to ensure that defendants can try to hire a lawyer on their own without losing the opportunity to request appointed counsel if it turns out that they cannot afford to hire a lawyer. This change should encourage defendants who have some income to attempt to hire a lawyer because they now can do so without being treated as having constructively waived the right to appointed counsel.

The Legislature also made amendments to Article 1.051(g) that bring Texas statutory law into conformance with recent U.S. Supreme Court case law regarding waivers of the right to counsel.[iv]

What court proceedings are affected by H.B. 1178?

The procedures specified in H.B. 1178 for obtaining waivers of the right to counsel apply in felony and Class A or B misdemeanor cases, i.e., "in any adversary judicial proceeding that may result in punishment by confinement." These are the same classes of cases in which indigent defendants have the right to appointed counsel.[v]

An adversary judicial proceeding is initiated against a defendant "by way of formal charge, preliminary hearing, indictment, information, or arraignment."[vi] Because adversary judicial proceedings are initiated against a defendant no later than by the filing of an indictment or information, courts of jurisdiction must satisfy the requirements of H.B. 1178 no later than when a defendant appears without counsel after the charging document has been filed, e.g., at the defendant's first appearance or arraignment.

What procedures does H.B. 1178 require judges to follow when a defendant is not represented by counsel?

- When a defendant appears in court for the first time after adversary judicial proceedings have been initiated, the court must advise the defendant of the right to counsel and the procedures for requesting appointed counsel and give the defendant a reasonable opportunity to request counsel before the court may direct or encourage the defendant to communicate with a prosecutor.

- If the defendant requests appointed counsel when given the opportunity to do so, the court must rule on the request and may only direct or encourage the defendant to speak to the prosecutor if the request is denied and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain private counsel or has waived the opportunity to retain private counsel.

- If an indigent defendant who has refused appointed counsel in order to retain private counsel appears in court without counsel after having been given an opportunity to retain counsel, the defendant must be given a reasonable opportunity to request appointed counsel or the court must obtain a waiver of the right to counsel before the court may, upon 10 days' notice or waiver of the same, proceed to a dispositive setting.

- If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court must advise the defendant of the nature of the charges against the defendant. If the defendant is proceeding to trial, the court also must advise the defendants of the dangers and disadvantages of self-representation.

- Finally, judges and magistrates may not order a defendant to be rearrested or require a defendant to give another bond in a higher amount because the defendant requests the assistance of counsel, appointed or retained, or withdraws a waiver of the right to counsel.

What procedures does H.B. 1178 require prosecutors to follow when a defendant is not represented by counsel?

- Consistent with a prosecutor's ethical duties,[vii] H.B. 1178 prohibits prosecutors from initiating or encouraging an attempt to obtain a waiver of the right to counsel from an unrepresented defendant.

- A prosecutor may not communicate with a defendant who has requested appointed counsel unless the request has been denied and, subsequent to the denial, the defendant has been given a reasonable opportunity to retain private counsel or has waived the opportunity to retain private counsel.

Procedures for Obtaining Waivers of the Right to Counsel in a Manner Consistent with H.B. 1178

Successful implementation of H.B. 1178 is necessary to protect the finality of criminal convictions because waivers of the right to counsel obtained in violation of the bill's provisions will be presumed invalid, and convictions obtained against unrepresented defendants in the absence of a valid waiver of the right to counsel are subject to reversal on appeal.[viii]

Implementation of H.B. 1178 also will facilitate self-representation in appropriate cases, because constitutional case law requires a defendant to validly and affirmatively waive the right to counsel in order to effectively assert the right to self-representation.[ix]

The following model procedures are intended to assist judges and prosecutors in developing local procedures for obtaining waivers of the right to counsel that both comply with H.B. 1178 and are consistent with constitutional law.

Magistration/Article 15.17 Proceedings

H.B. 1178 does not amend Article 15.17 of the Code of Criminal Procedure or other provisions relating to the duties of magistrates after an individual has been arrested. However, Article 15.17 and H.B. 1178 interact in important ways since defendants are given information about the right to counsel at the 15.17 hearing if one is held in their case and, under H.B. 1178, when they appear in the court of jurisdiction. Moreover, whether or not a defendant requests counsel at magistration will impact what procedures the court of jurisdiction must follow at first appearance in order to comply with the new law.

With respect to the right to counsel, at a 15.17 hearing the magistrate is required to:

1. Inform the person arrested of the right to counsel;
2. Inform the person arrested of the right to request the appointment of counsel; and
3. Ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time the person is requesting the right to counsel. [x]

If the person arrested does not speak and understand the English language or is deaf, the magistrate must ensure that information on the right to counsel and other rights enumerated in Article 15.17 is provided to the person in a language they do understand.[xi]

If an arrested person requests appointment of counsel, the magistrate is required to rule on the request or, if he or she is not authorized to rule on the request, to transmit the request to the

appointing authority (the court or the court's designee under Article 26.04 to appoint counsel in the county) no later than 24 hours after the person arrested requests appointment of counsel.[xii]

Note: Most counties create paperwork documenting that the magistrate provided the information required under Article 15.17. This paperwork also documents that the magistrate asked the person arrested whether they wanted to request appointment of counsel at that time, and what the person's response was. However, many jurisdictions do not record additional information such as the defendant's stated reason, if any, for declining to request appointed counsel, e.g., that the defendant declined to request appointed counsel in order to attempt to retain private counsel.

Under H.B. 1178, defendants who refuse appointed counsel in order to attempt to retain private counsel are entitled to one additional opportunity to request appointed counsel if they find that they cannot afford to hire private counsel. ***If the county documents that the defendant expressed the intent to retain private counsel at magistration, when applicable, this will reduce the number of settings in the court of jurisdiction required to comply with H.B. 1178*** (i.e., the court of jurisdiction may proceed directly to affording the defendant the opportunity to request appointed counsel instead of holding two settings, one at which the defendant expresses the intent to retain private counsel and a second at which the defendant requests appointed counsel after failing to retain private counsel).

After Magistration

If the person arrested requested appointed counsel at the Article 15.17 hearing, the appointing authority is required to appoint counsel if the defendant is indigent.

If the person who requested counsel is in jail, the appointing authority is required to appoint counsel as soon as possible but no later than the end of the third working day after the date the appointing authority receives the request for counsel in a county with a population of less than 250,000, and no later than the end of the first working day after the date the appointing authority receives the request for counsel in a county with a population of 250,000 or more.[xiii]

If the person who requested counsel is released on bail prior to the appointment of counsel, the appointing authority is required to appoint counsel at the defendant's first court appearance or when adversary judicial proceedings are initiated, whichever comes first.[xiv]

Note: Adversary judicial proceedings are initiated against a defendant no later than the filing of an indictment or information. An indictment or information is filed against most defendants before their first appearance in the court of jurisdiction. If that occurs, ***courts should appoint counsel to bond defendants at the time an information or indictment is filed, and thus prior to their first court appearance, in order to comply with Article 1.051(j).*** Appointing counsel to bond defendants before their first appearance also will avoid at least one court appearance in the court of jurisdiction, because the defendant will not appear without counsel at the first appearance and require a reset in order to allow for the appointment of counsel.

First Appearance

Defendants who appear without counsel at first appearance will fall into three different categories. Judges should determine which category a defendant falls into and then follow the appropriate procedures.

Defendants who requested appointed counsel prior to first appearance

Although qualified bond defendants who request counsel at magistration usually should receive appointed counsel immediately subsequent to the filing of an indictment or information (see Note Box on page 4 above), in some circumstances defendants will not receive a ruling on their counsel request prior to their first appearance and thus will appear in court without counsel.

The court should use magistration records to identify defendants who requested counsel prior to first appearance and immediately rule on pending requests for counsel. The court must appoint counsel if the defendant is indigent. If a defendant requests appointed counsel at magistration, the court may not direct or encourage the defendant to communicate with the prosecutor,[xv] and the prosecutor may not communicate with the defendant,[xvi] unless the request for counsel is denied. A counsel waiver obtained in the absence of a judicial ruling denying the request for counsel will be presumed invalid.[xvii]

> **Note**: A defendant's financial circumstances often will have changed between the time the defendant initially completed the application for appointed counsel at magistration and the defendant's first appearance, particularly if the defendant has been released on bond. The court may ask the defendant to supplement the pending application for appointed counsel with updated financial information. However, the court should be very wary about treating the initial application as moot and making the defendant initiate another request for appointed counsel. If the prosecutor communicates with a defendant who requested counsel at magistration and never received a ruling on that request, the prosecutor will violate Article 1.051(f-1) of the Code of Criminal Procedure as enacted by H.B. 1178 and the waiver will be invalid.

If the defendant's request for appointed counsel is denied, the defendant then must be given a reasonable opportunity to retain private counsel before the court can direct or encourage the defendant to communicate with the prosecutor and before the prosecutor can communicate with the defendant.[xviii] However, the defendant can waive the opportunity to retain private counsel if he or she wants to communicate with the prosecutor at the first appearance setting.[xix]

A defendant who requested appointed counsel at magistration also may appear without counsel at first appearance because the request for counsel was denied prior to first appearance. In this situation, just as in the situation where the request for counsel was denied at first appearance, the defendant must be given a reasonable opportunity to retain private counsel before the court can direct or encourage the defendant to communicate with the prosecutor and before the prosecutor can communicate with the defendant.[xx] The defendant can waive the opportunity to retain private counsel.[xxi]

Note: H.B. 1178 states on several occasions that the defendant must be given a "reasonable opportunity to retain" appointed counsel. The bill does not specify what constitutes a "reasonable opportunity." Appellate courts are likely to look at the totality of the circumstances in determining whether an opportunity to retain private counsel is reasonable. Circumstances the courts may consider include whether the defendant was informed that he was being given an opportunity to retain counsel and that the case would proceed after the expiration of the time provided even if the defendant failed to retain counsel. If a court does not deny a defendant's request for counsel until first appearance, it is advisable to give the defendant a reset in order to retain private counsel and to inform the defendant of the potential consequences of failing to retain private counsel before the next court date. However, courts may be able to avoid resetting the cases of defendants whose requests for counsel are denied *prior* to first appearance if procedures are in place to provide defendants with the information specified above sufficiently in advance of first appearance so that they have a reasonable opportunity to retain counsel prior to the first appearance setting.

If the defendant fails to retain private counsel after having been given a reasonable opportunity to do so, or if the defendant waives the opportunity to retain private counsel, the court should:

1. Inform the defendant of the nature of the charges alleged in the information or indictment;
2. Inform the defendant of the range of punishment for the alleged offense(s); and
3. Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g).

Note: In a 2004 case, the U.S. Supreme Court clarified what admonitions must be given to a defendant who chooses to waive the right to counsel in order to enter a guilty plea. The Court held that a waiver of the right to counsel for purposes of entering a plea is valid if the defendant is informed of the nature of the charges, the range of allowable punishments for the charges, and the right to be counseled regarding the plea. *Iowa v. Tovar*, 541 U.S. 77, 81 (2004). Informing defendants of the nature of the charges – e.g., the elements of the charged offense – allows them to better assess whether they are in fact guilty of the charges and may facilitate informed guilty pleas.

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice.[xxii] The defendant may waive the notice requirement.

Defendants who expressed an intent to retain counsel at magistration

Defendants in this category can be identified only if the magistrate's paperwork records defendants' stated reasons for refusing to request appointed counsel. (See Note Box on page 4 above.)

If the magistrates in a county record defendants' stated reasons for refusing to request appointed counsel, the court should use magistration records to identify defendants who expressed an intent to retain private counsel at magistration. If a defendant in this situation is identified and appears in court without counsel, the court should:

1. Inform the defendant of the right to request the appointment of counsel; and
2. Provide the defendant a reasonable opportunity to request appointment of counsel.[xxiii]

Note: H.B. 1178 states on several occasions that the defendant must be given a "reasonable opportunity to request" appointed counsel. The bill does not specify what constitutes a "reasonable opportunity." Appellate courts are likely to look at the totality of the circumstances in determining whether an opportunity to request counsel is reasonable, and circumstances that they may consider include (1) whether the appropriate paperwork for submitting a request for counsel was made available to the defendant, (2) whether reasonable assistance in completing the necessary forms for requesting appointment of counsel was provided, and (3) whether information on the right to request counsel and assistance in requesting counsel was provided to non-English speaking defendants in a language they understand.

If a defendant chooses to request counsel, the court must appoint counsel if the defendant is indigent. The defendant's ability to pay the legal fees quoted to him by any private attorneys he or she attempted to retain prior to the first appearance may supplement previously available information regarding the defendant's financial eligibility for appointment of counsel.

The court may not direct or encourage the defendant to communicate with the prosecutor,[xxiv] and the prosecutor may not communicate with the defendant,[xxv] unless the request for counsel is denied. A counsel waiver obtained in the absence of a judicial ruling denying the request for counsel will be presumed invalid.[xxvi]

If the defendant chooses to forego the opportunity to request appointed counsel and instead waives the right to counsel, the court should:

1. Inform the defendant of the nature of the charges alleged in the information or indictment;
2. Inform the defendant of the range of punishment for the alleged offense(s); and
3. Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g).

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice.[xxvii] The defendant may waive the notice requirement in order to enter a plea at the first appearance.

All other defendants who appear at first appearance without counsel

This category will include most defendants who did not request counsel at magistration (i.e., any defendant who did not request counsel at magistration and who is not on record as having expressed an intent to retain private counsel) and defendants who have not had an Article 15.17 hearing before a magistrate prior to their first appearance. Defendants may not have appeared before a magistrate either because they were released on bond before receiving an Article 15.17 hearing or because they are appearing in the court of jurisdiction subject to summons.[xxviii]

When defendants in this category appear in court without counsel, the court should:

1. Inform the defendant of the right to counsel;
2. Inform the defendant of the procedure for requesting appointed counsel; and
3. Provide the defendant a reasonable opportunity to request the appointment of counsel.[xxix]

Note: When informing defendants of the right to counsel, the court should inform defendants of their right to be counseled regarding their plea and their right to be represented by counsel at the first appearance hearing, and not simply tell defendants that they have a right to be represented by counsel at trial. In a 2004 case, the U.S. Supreme Court stated that defendants must be advised of their right to be counseled ***regarding their plea*** in order for a counsel waiver to be valid when a defendant pleads guilty without the assistance of counsel. *Iowa v. Tovar*, 541 U.S. at 81. Defendants may be able to challenge the validity of their counsel waivers and convictions if courts only advise them of the right to be represented by counsel at trial.

Defendants who request appointed counsel

If a defendant chooses to request counsel, the court must appoint counsel if the defendant is indigent. The court may not direct or encourage the defendant to communicate with the prosecutor,[xxx] and the prosecutor may not communicate with the defendant,[xxxi] unless the request for counsel is denied. A counsel waiver obtained in the absence of a judicial ruling denying the request for counsel will be presumed invalid.[xxxii]

If the defendant's request for appointed counsel is denied, the defendant then must be given a reasonable opportunity to retain private counsel before the court can direct or encourage the defendant to communicate with the prosecutor and before the prosecutor can communicate with the defendant.[xxxiii] However, the defendant can waive the opportunity to retain private counsel if he or she wants to communicate with the prosecutor at the first appearance setting.[xxxiv]

If the defendant fails to retain private counsel after having been given a reasonable opportunity to do so, or if the defendant waives the opportunity to retain private counsel, the court should:

1. Inform the defendant of the nature of the charges alleged in the information or indictment;
2. Inform the defendant of the range of punishment for the alleged offense(s); and

3. Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g).

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice.[xxxv] The defendant may waive the notice requirement in order to enter a plea at the first appearance.

Defendants who express an intent to retain private counsel

If a defendant first expresses an intent to retain private counsel at their first appearance, the court should reset the defendant's case in order to provide the defendant a reasonable opportunity to retain private counsel.

If the defendant subsequently returns to court without counsel, the court should:

1. Inform the defendant of the right to request the appointment of counsel; and
2. Provide the defendant a reasonable opportunity to request appointment of counsel.[xxxvi]

If a defendant chooses to request counsel, the court must appoint counsel if the defendant is indigent. The defendant's ability to pay the legal fees quoted to him by any private attorneys he or she attempted to retain may supplement previously available information regarding the defendant's financial eligibility for appointment of counsel.

The court may not direct or encourage the defendant to communicate with the prosecutor,[xxxvii] and the prosecutor may not communicate with the defendant,[xxxviii] unless the request for counsel is denied. A counsel waiver obtained in the absence of a judicial ruling denying the request for counsel will be presumed invalid .[xxxix]

If the defendant chooses to forego the opportunity to request appointed counsel and instead waives the right to counsel, the court should:

1. Inform the defendant of the nature of the charges alleged in the information or indictment;
2. Inform the defendant of the range of punishment for the alleged offense(s); and
3. Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g).

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice.[xl] The defendant may waive the notice requirement in order to enter a plea at the first appearance.

Defendants who choose to waive the right to counsel

If the defendant fails to retain private counsel after having been given a reasonable opportunity to do so, or if the defendant waives the opportunity to retain private counsel, the court should:

1. Inform the defendant of the nature of the charges alleged in the information or indictment;
2. Inform the defendant of the range of punishment for the alleged offense(s); and
3. Obtain a written waiver of the right to counsel that substantially complies with the language contained in Article 1.051(g).

After the defendant waives the right to counsel, he or she may choose to discuss a plea bargain with the prosecutor and the court may set the case for disposition on 10 days' notice.[xli]

Endnotes

[i] HOUSE COMM. ON CRIMINAL JURISPRUDENCE, BILL ANALYSIS, Tex. H.B. 1178, 80th Leg., R.S. (2007).
[ii] *Jordan v. State*, 571 S.W.2d 883, 884 (Tex. Crim. App. 1978); *see also* TEX. CODE CRIM. PROC. art. 1.051(f).
[iii] *See* BILL ANALYSIS, *supra* note 1.
[iv] *See Iowa v. Tovar*, 541 U.S. 77, 81 (2004).
[v] TEX. CODE CRIM. PROC. art 1.051(c).
[vi] *Kirby v. Illinois*, 406 U.S. 682, 689 (1972).
[vii] TEX. DISCIPLINARY R. PROF'L CONDUCT 3.09(c).
[viii] *Arizona v. Fulminante*, 499 U.S. 279, 307 (1991) (citing *United States v. Cronic*, 466 U.S. at 659 & n.25).
[ix] *Iowa v. Tovar*, 541 U.S. at 87-88 (2004); *Faretta v. California*, 422 U.S. 806, 835 (1975).
[x] TEX. CODE CRIM. PROC. art. 15.17(a).
[xi] *Id.*
[xii] *Id.*
[xiii] TEX. CODE CRIM. PROC. art. 1.051(c).
[xiv] TEX. CODE CRIM. PROC. art. 1.051(j) (emphasis added).
[xv] TEX. CODE CRIM. PROC. art. 1.051(f-2).
[xvi] TEX. CODE CRIM. PROC. art. 1.05(f-1)
[xvii] TEX. CODE CRIM. PROC. art. 1.051(f).
[xviii] TEX. CODE CRIM. PROC. art. 1.051(f-1), (f-2).
[xix] *Id.*
[xx] *Id.*
[xxi] *Id.*
[xxii] TEX. CODE CRIM. PROC. art. 1.051(e).
[xxiii] *Id.*
[xxiv] TEX. CODE CRIM. PROC. art. 1.051(f-2).
[xxv] TEX. CODE CRIM. PROC. art. 1.05(f-1)
[xxvi] TEX. CODE CRIM. PROC. art. 1.051(f).
[xxvii] TEX. CODE CRIM. PROC. art. 1.051(e).
[xxviii] The number of Texas defendants who appear in county courts subject to a summons may increase as a result of the passage of H.B. 2391 (effective Sep. 1, 2007), which authorizes law enforcement officers to issue "citations" to defendants who commit specified Class A or B misdemeanors in lieu of arrest.
[xxix] TEX. CODE CRIM. PROC. art. 1.051(f-2).
[xxx] *Id.*
[xxxi] TEX. CODE CRIM. PROC. art. 1.05(f-1)
[xxxii] TEX. CODE CRIM. PROC. art. 1.051(f).
[xxxiii] TEX. CODE CRIM. PROC. art. 1.051(f-1), (f-2).
[xxxiv] *Id.*
[xxxv] TEX. CODE CRIM. PROC. art. 1.051(e).
[xxxvi] *Id.*
[xxxvii] TEX. CODE CRIM. PROC. art. 1.051(f-2).
[xxxviii] TEX. CODE CRIM. PROC. art. 1.05(f-1)
[xxxix] TEX. CODE CRIM. PROC. art. 1.051(f).
[xl] TEX. CODE CRIM. PROC. art. 1.051(e).
[xli] *Id.*

AN ACT

relating to procedures applicable to waivers of the right to counsel in certain adversary judicial proceedings that may result in punishment by confinement.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1.051, Code of Criminal Procedure, is amended by amending Subsections (e), (f), and (g) and adding Subsections (f-1) and (f-2) to read as follows:

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

notice to the defendant of a dispositive setting.

(f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

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

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

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

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

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

(f-2) In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to

communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

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

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

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

"I have been advised this _____ day of _____, 2 [~~19~~] ____, by the (name of court) Court of my right to representation by counsel in the case [~~trial of the charge~~] pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request

the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of [~~the~~] defendant)"

SECTION 2. Article 17.09, Code of Criminal Procedure, is amended by adding Section 4 to read as follows:

Sec. 4. Notwithstanding any other provision of this article, the judge or magistrate in whose court a criminal action is pending may not order the accused to be rearrested or require the accused to give another bond in a higher amount because the accused:

(1) withdraws a waiver of the right to counsel; or

(2) requests the assistance of counsel, appointed or retained.

SECTION 3. (a) The change in law made by this Act to Article 1.051(e), Code of Criminal Procedure, applies only to a proceeding at which an indigent defendant appears without counsel after having refused appointed counsel if the proceeding occurs on or after the effective date of this Act. A proceeding at which an indigent defendant appears without counsel after having refused appointed counsel that occurs before the effective date of this Act is covered by the law in effect at the time of the proceeding, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act to Article 1.051(f), Code of Criminal Procedure, applies only to a waiver of counsel or a communication with a defendant that occurs on or after the effective date of this Act. A waiver of counsel or a communication with a defendant that occurred before the effective date of this Act is covered by the law in effect at the time the waiver or

communication occurred, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2007.

Providing Effective Representation

Don Hase, Criminal Defense Attorney, Tarrant County

Indigent Defense Workshop, October 18, 2007
Texas Association of Counties Event Center, Austin

Table of Contents

BEST INDIGENT DEFENSE PRACTICES:
Systems Which Can Withstand Public Scrutiny

"Reason and reflection require us to recognize that in our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth."

---U.S. Supreme Court Justice Hugo Black
Gideon v. Wainwright, 372 U.S. 335, 344 (1963)

I. Introduction

The original purposes of the Texas Fair Defense Act included ensuring the prompt appointment of qualified counsel for indigent defendants, and the elimination of patronage in the appointment process. As Dr. Phil might ask: how is that working out?

The FDA has many lofty goals, but it leaves much to individual counties to establish their own indigent defense plans, within certain parameters.

Are there some practices that work best? Are there guardrails (checks and balances) that counties should build into their systems to ensure public confidence—safeguards that can make each county's system able to withstand scrutiny of enterprising reporters and others looking for abuses in and of the system? What can the Texas Task Force on Indigent Defense do to help tweak existing systems to achieve these goals?

To answer these questions, attention is first turned to the indigent defense system in one county: Tarrant.

II. A History of the FDA in Tarrant County

Any discussion of the history of the Fair Defense Act in Tarrant County must begin with the prevalent attitude at the time of its inception: "We don't need SB7 here." Most involved in the various aspects of the Tarrant County Criminal Justice system before the FDA did not think it was needed. There is an element of truth (but not total truth) to this sentiment. For in-custody defendants, things worked fairly well pre-FDA: A court coordinator would call a defense attorney a few days prior to a "Jail Run." The attorney would appear and meet the defendants in the holdover and review the prosecutor's file. [The Tarrant County DA's Office has had an open file policy for approximately 30 years.] The prosecutor and defense attorney would discuss the case and often work out a deal. On extremely serious cases, not so much. The defense attorney would discuss the case with the new client, and where deals were struck, pleas were soon taken. The defense attorney could count on getting approximately 3-7 new clients. It was worthwhile for the attorney to spend his/her morning at the jail run. Cases that were not settled at the jail run were either settled eventually, or went to trial.

On-bond defendants claiming indigency were different. The prevailing attitude was "If you're out breathing free air, you must hire your own attorney." Beyond that, seldom was a real inquiry made into that defendant's true financial situation.

To a degree (but not totally), the Tarrant attitude toward the FDA has improved over the years, but it is still called (often with a hint of derision) "SB7."

All of that said, Tarrant County must be given credit for being one of the first counties in the state to put together its "SB7" plan. However, being one of the first came with a price. Tarrant made what may be the biggest blunder in FDA history at the outset of enacting its plan: Rather than hire additional county magistrates to take on the now legislatively mandated task of determining indigency (as other counties did), Tarrant tried to do it on the cheap, by delegating this key task to the various municipal judges. The assumption was that the municipal judges would do this at the time they arraigned the defendants and set bonds, and that they would take this task seriously. But Tarrant County has over 40 local jurisdictions and JP precincts. Attitudes varied. Some took the screening function seriously and tried to make accurate determinations. Others decided that was too much work, and the easier thing to do was to give 'free' lawyers to anyone who asked; besides, this was county money, not city money. One thing was constant however: the position of municipal judge was not designed for this task. Municipal judges presided over traffic trials, issued warrants, set bonds and arraigned prisoners. Screening for indigency is not what they signed up for. Added to this was a long-standing dispute between the County and its largest city over the housing of prisoners, which resulted in Fort Worth prisoners having their bonds set and being arraigned very quickly downtown, so that the prisoners could all be transported quickly to the Mansfield jail near the county line, to be housed until bond is posted or the case is filed by the DA's Office, at which time the prisoners would be brought back downtown to the County Jail. For the convenience of those running the 'system,' defendants were not given the chance to post bond before being asked about indigency; rather indigency and bond were handled at the same time (one-stop shopping): the exact opposite of the practice in many other counties.

After a couple of years of this, the County finally hired an additional magistrate and approximately five Financial Information Officers ("Screeners"). Now, for the first time, Tarrant had in its employ dedicated professionals whose sole task was to meet with defendants claiming indigency, and compile information to give to a county magistrate so that an accurate assessment could be made. [The new magistrate met with some misdemeanor on-bond defendants who wanted counsel appointed; in felony courts, county magistrates had already been meeting with on-bond accused felons who wanted appointed counsel; however until recently, the felony magistrates did not have the assistance of a financial screener.] Also, it was now easier for defendants to post bond before being asked about indigency.

While change has come in the area of indigency determination since the inception of the FDA in Tarrant, the county still has in place its system of 'wheels' whereby lawyers must qualify for various levels of offenses for which they desire to receive court-appointments. The 'wheel' is designed to fairly distribute appointments and avoid issues of patronage. It is administered by the Office of the Attorney Appointments Coordinator. Under the wheel, when a need for an attorney in a given category of offense arises, the next attorney listed on the wheel should receive the appointment. The current problem is (as will be discussed more fully below) that not all judges fully utilize the wheel.

The assumption was that when the indigency determination task was taken away from the municipal judges and placed in the hands of county judges that this would result in a more steward-like approach to the determination of indigency. For in-custody defendants, this did not matter. It was a rare defendant who was in custody and not indigent. However, for on-bond defendants, things were different: especially in the misdemeanor courts where 'free world' lawyers advertised extremely low attorney fees. For many years, elected judges have long looked at their own monthly statistics, as well as those of their fellow judges. It has usually been competitive among the judges to see which courts are disposing of the most cases each month. And it is this dynamic that met with the new-found concept of many on-bond defendants appearing for their first court dates without attorneys, and wanting appointed counsel. Often, it was bail bondsmen who had told the defendants

to show up for court and ask for a 'free' lawyer (after first paying the bond fee). What was happening often (in some courts more than others) was that there was a temptation on the part of a judge to go ahead and appoint an attorney on that first court date, with the expectation being that the case would be plead (or 'moved') that day (often without a financial questionnaire). Appointments were not made via the OAAC wheel rotation system, but by judges appointing whoever they chose. These appointed attorneys were often friends of the judges. Thus in an effort to rack up quick dispositions, some judges were foregoing accurate indigency determinations in order to get fast stats. Some judges said they did this because of "SB7;" in reality, this practice was an abuse of the FDA: defendants were meeting their new free attorneys and pleading guilty within minutes. Many of these defendants felt like the raw ingredients on a conveyer belt at a sausage factory; yet the name of a licensed attorney appeared on the judgment, and so Tarrant had the *appearance* of an effective indigent defense system. In reality however, many of these defendants were not truly indigent, and money was being diverted away from the truly indigent defendants. And the court papers never reflected that many defendants plead guilty within minutes of meeting appointed counsel. Often it appeared that elected judges viewed the jury box full of defendants who wanted "free" lawyers as a pool from which they could give work to their favorite members of the bar. Often, part of the 'culture' of such a day in court including the judge's favorite defense attorney binging doughnuts and other snacks for the prosecutors and court staff. And for the attorney pleading numerous cases within minutes of meeting the clients, it was pure gravy.

In addition to this situation, some judges (particularly in felony courts) had gotten away from using the OAAC wheel for many in-custody defendants facing probation revocations. Once again, some judges had favorite lawyers: lawyers who they believed (and experience had shown) could 'move' these cases quickly. Additionally, the Auditor's page on the county website listed real check amounts paid to attorneys on these appointments. In early 2007, numbers were added that revealed that a small number of lawyers were receiving well over $100,000 in a year on court appointments; for one lawyer, the total was approximately $300,000. Although one of the main goals of the FDA had been to eliminate patronage, in Tarrant in the FDA era, patronage existed at a level never before imagined. The lawyers had effectively been divided into the 'haves' and the 'have-nots.'

Then came March 8, 2007: an extremely significant day in Tarrant FDA history: that is the day that attorney Travis Young addressed the Tarrant County Criminal Defense Lawyers Association at its monthly meeting. The audience included several of Tarrant's 19 elected criminal judges, as well as the media.[1] It was then that several of the judges 'found religion.' Prior to that date, four of the 10 misdemeanor judges had been sending all of their on-bond defendants who desired court appointed counsel to the County's new magistrate (Matt King) to be screened by a Financial Information Officer and the judge. When a defendant is indigent, Judge King will so find, and the OAAC wheel will appoint counsel. When Judge King reviews the defendant's information and determines a particular defendant is not indigent, he will usually tell that defendant to hire counsel (although Judge King has the authority to authorize an appointment if he believes justice requires that action in a given case). After March 8, the other six misdemeanor judges began utilizing the services of Judge King and the Screeners, to varying degrees. However, there has been no system in place to require all of the judges to use Judge King and the Screeners: each elected judge is sovereign, and can do what s/he wants. And since March, some of the judges have gone back to their old practices, and are either no longer using Judge King and the Screeners, or are doing so to a much lesser degree. And in some courts, things are back to the way they were before March: appointments for all defendants who ask, the same predictable defense attorneys appearing in court, 'movement' of cases within minutes of appointment: in many courts, the Patronage Sausage Factory is back in business.

[1] See attached March 21, 2007 *FW Weekly* article ("Justice's Low Tire").

Ironically enough, Travis Young spoke almost a year to the day after the Texas Task Force on Indigent Defense had issued its March 10, 2006 "Review of Tarrant County Indigent Defense System" (published at www.courts.state.tx.us/tfid/Resources.asp). The report had been prepared by Special Counsel Wesley Shackelford after his on-site visit to Fort Worth. To prepare the report, Mr. Shackelford reviewed many records and interviewed many of the participants in the Tarrant County Criminal Justice System. He also observed many court proceedings. The primary recommendation had been further centralization of the indigency screening process, which could be accomplished through an expansion of Judge King's role. This "would allow for the most consistent and thorough screening of defendants." This result "would be to minimize use of courts' valuable time while providing a meaningful review of the indigency status of defendants...It would also provide more countywide uniformity, which is a key principle of the FDA. This process would also enhance public trust and confidence by assuring that only the indigent receive appointed counsel, whereas those that can afford it will be responsible for hiring his or her own counsel." (Page 8). The report went on to note that in August 2005, the OAAC had begun compiling a monthly report that showed which courts were using the wheel, and which courts were not. These OAAC numbers revealed that in misdemeanor courts, a majority of the appointments were made by the courts, not the OAAC wheel. The report noted that the "only significant use" of the wheel appeared to be when it did not seem likely that the case could be disposed of that day. (Page 10). The report also addressed the issue of felony judges getting away from the use of the OAAC wheel in probation revocations. The report noted that "there is no way to 'ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory' as the statute requires. The current practice of judges directly appointing attorneys from the bench without following the rotation system appears to contradict the provisions of the indigent defense plan of the district courts. The plan envisions all appointments, except those related to revocations, going through the wheel." (Page 11). The report went on to recommend that the courts establish a separate wheel for revocations to address this issue (Page 13), since "the judges report that this is a specialized type of practice and they rely on attorneys that are experts in alternatives to incarceration." (Page 11). The report stated that "the rationale for making bench appointments of immediately available attorneys is that it fosters immediate attorney client contact. It is further posited that this will in turn lead to faster dispositions and ultimately reduced jail populations since cases will be settled more quickly." (Page 12). [However, note that when the defendant seeking appointed counsel is on bond, 'jail population' is not affected at all.]

This report painted an accurate picture of Tarrant County's system. Its recommendations were on target. Yet a year later, problems still existed. One recommendation was not in this report, but should have been: as discussed below, when counties keep and publish monthly stats on which courts use professional screeners and the OAAC wheel, most of these problems will be removed. The system will then truly be transparent, and the public will know that everything is out in the open.

III. Toward A Permanent Solution

From its beginnings in Tarrant, the FDA has had high and low points on its journey.[2] After March, Tarrant saw how good things can/could be. The key is to establish a means of insuring that all of the judges fully utilize the services of the magistrates and the screeners. This way, the public can have full confidence in its Indigent Defense System.[3]

Since it is statistics that 'drive' many of the judges' trains (i.e. their desires to have good disposition stats), stats must be put in place as a form of check and balance. All counties should keep statistics on which courts are utilizing screening procedures, and which ones are not, as well as which courts are using the OAAC wheel. The stats should be easily comprehendible by the public, so that if a judge slips back into the old ways of patronage and no professional indigency screening, a future election opponent can use this information. There is always going to be a human element in an indigent defense system. Problems arise however, when, for parts of the system, there is in fact no system: some Tarrant judges appointing counsel to any who ask. This, coupled with the temptation to 'move' the case today, gives the appearance of things done properly, but it is really cheating.[4]

Tarrant County's history provides an example of abuses of the FDA on one end of the pendulum: giving attorneys out with no showing of true indigency. On the other end of the pendulum are stories of counties which are reluctant to ever appoint counsel for indigents. Stories still circulate in this FDA era about some places where those in power believe that if a defendant can make bail, s/he is not entitled to appointed counsel. One option regarding judges who refuse to follow the FDA is to seek help from the State Commission on Judicial Conduct. But a less drastic (and likely more effective) tool is to keep public stats as suggested above: this is a way to satisfy constituents on both ends of the pendulum. Good stats will reveal to all that the FDA is being followed as it was intended; this should result in more state-wide compliance. Sending all defendants requesting appointed counsel to Financial Information Officers for professional screening should also greatly reduce litigation associated with wrongful denial of appointed counsel, and not make it necessary for anyone to test the limits of judicial immunity.

Another aspect of the FDA in Tarrant that appears to work well is giving defendants a true picture of how things work in the notices that are sent to defendants advising them of their court

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[2] On its FDA journey, the Tarrant sense of frustration has lead to a multitude of ideas, some good, some not. One area where Tarrant appears to leave no stone unturned is in the area of requiring indigent defendants to make re-imbursement payments to the County for anticipated counsel fees. In some courts, failure to make such payments results in contempt and jail confinement.

[3] A great article on the history of indigent defense in Texas is "In Pursuit of Independent, Qualified, and Effective Counsel: The Past and Future of Indigent Criminal Defense in Texas," 42 S. Tex. L. Rev. 595 (Summer, 2001), by Catherine Greene Burnett, Michael K. Moore and Allan K. Butcher. The authors noted that "The process of determining whether the defendant is indigent is arguably one of the most important decisions the courts will make in resolving the issue of representation." Id. at 616. They wrote that "Consistent standards for determining whether or not a defendant is indigent should be adopted." They suggested an examination of tax returns and food stamp qualification. Id. at 653. They also suggested examination of W-2 forms. Consistent results across various government entities will enhance public confidence in the system. Id. at 680. But there are different components to 'public' in this context. Clearly the taxpayers must know that the truly indigent are receiving appointed counsel, and non-indigents are not. But another component of the 'public' must also have confidence: indigent defendants must experience that they are not merely raw ingredients in a sausage factory who plead guilty within minutes of meeting appointed counsel.

[4] For a great study on how the human heart works when given the opportunity to cheat in various settings, see *Freakonomics* by Steven D. Levitt and Stephen J. Dubner. There, on page 67, Supreme Court Justice Brandeis is quoted as saying "Sunlight is said to be the best of disinfectants;" hence the recommendation that keeping good public stats is a great check and balance for all indigent defense systems.

dates. An example of an effective setting notice is attached. It dangles a carrot of allowing a defendant to have a court appearance waived, if that defendant hires counsel.[5] It also tells defendant how the system really works, removing the mystery.

When counties fully utilize good public Statistics, professional Screeners and full-information Setting notices, they are well on their way to having model Indigent Defense Systems.

IV. Best System Practices

1. Setting Notices: Give on-bond defendants full disclosure about how the system works. As the attached sample shows, that includes the waiving of having to make a first court appearance for those who hire counsel; and a brief overview of how the appointed counsel system works for those who believe they are too poor to afford to hire an attorney. Not all defendants will bother to read the entire setting notice, but many will. After all, they are in the comfort of their own homes. The various topics on the setting notice are highlighted. At the Initial Appearance setting, the only issue to consider is that of representation. There should be no prosecutors or defense attorneys present. There should be no way to 'move' the case that day. Defense attorneys will not receive credit for an appearance in court. This way, discovery can be gathered by newly appointed counsel, and the defendants will not be feeling like they must plead within minutes of meeting counsel. An indigent defense system works best when the issue of representation is resolved separately from the merits of the case. This will also lead to full use of the wheel/rotation system, and minimize patronage.

2. Screeners: All on-bond defendants requesting appointed counsel should be interviewed by a professional financial information officer. Defendants should be required to bring their financial documentation for review by the screener. This information should then be given to the magistrate who makes the decision about whether a defendant is indigent or not. [It is more cost-effective for counties to invest in fewer high-paid magistrates and more (relatively) low-paid screeners.]

3. Stats: Having all on-bond defendants seen by county screeners is the best way to assure the public that all indigent defendants are receiving appointed counsel, yet non-indigent defendants are not receiving appointed counsel. However, since all elected judges are sovereign, they can choose to ignore this practice. [Although as noted below, Article 26.04(a) of the Code of Criminal Procedure places some limits on this sovereignty.] The best way for counties to ensure that the maximum number of judges send all on-bond defendants for screening is to keep public statistics on which courts do and which courts do not follow this practice. Stats should also be kept on which courts do and do not use the OAAC wheel. They should be published monthly along with the disposition stats—always broken down by court. When counties keep these statistics, most elected judges will choose to adopt the practice of having screeners review the financial situations of all on-bond defendants who want appointed counsel, and making appointments via the OAAC wheel.

4. Bail Bonds: Often, people who are not indigent become indigent after they pay a bond fee to a bond professional. Many counties have pre-trial release programs which charge lower fees to defendants desiring to make bond, thus leaving more money available to hire counsel. Even though this is a politically sensitive area, and many bond professionals are politically active, counties should seek to allow other forms of release (especially for low-risk defendants) wherever possible. In addition to pre-trial release, cash alternatives should be

[5] Any defendant who hires counsel effectively removes him/herself from being an FDA issue.

considered. Also, counties should be allowed to have other magistrates re-review bond amounts, with an eye toward lowering bond amounts that were originally set too high.

5. Verification: Counties should have the ability to verify financial information given by defendants. However, it is not cost-effective for this practice to occur in each case. Counties should establish criteria under which verification is called for in certain cases.

6. Integrated System: Systems should be in place to insure that where an in-custody defendant has been screened and determined by a magistrate not to be indigent, that this defendant does not languish in jail without an opportunity for a Pre-Trial Release bond, or a subsequent review of indigency. While not all defendants who remain in custody are indigent, many are. Also, often indigent defendants will have a felony pending in the District Court and a misdemeanor pending in the County Court. It is common for defense counsel not to want to resolve the misdemeanor until the felony is resolved. Often, the misdemeanor is plead in bar at the time the felony is disposed. The misdemeanor coordinator should not continually set court dates on defendants who have felonies pending; if they do so, counsel is going to accumulate several unnecessary, unproductive appearances in misdemeanor court.

7. Telephone numbers: Screeners should collect valid phone numbers from all on-bond defendants requesting counsel; as well as in-custody defendants (in the event they make bond). The OAAC should provide these phone numbers to counsel at the time the appointment is made.

8. Appeal Courts: In order to equalize the workload between the 14 intermediate appellate courts, the Texas Supreme Court has devised and enacted a plan whereby a certain percentage of cases are sent from certain high-volume Courts of Appeals to lower-volume Courts of Appeals. Thus, a case tried in Tarrant County can be sent to El Paso, Amarillo, Waco or elsewhere for appeal. If this is a case where defense appellate counsel is appointed (as is usually the case in appeals), additional expense is incurred when defense counsel believes this is a case where oral argument is appropriate. In appeals, most cases are decided on the briefs, but occasionally one side or the other will want to present oral argument. Instead of the appeal lawyers for both sides driving to the local courthouse, they must travel (and incur expenses) for oral argument. The Task Force should push for change in this area, both legislatively and non-legislatively. One possible short-term change would be instead of transferring cases randomly, to instead exempt all criminal cases: there are instances in the Rules of Appellate Procedure where criminal cases are treated differently than civil cases. For example, see Rule 48.4 which specifies how defendants are to receive copies of the opinion and judgment of the Court of Appeals.

V. Best Judicial Practices

In addition to full-information setting notices, professional screeners and good public stats as discussed above, judges should also separate the issue of indigency determination from resolving the merits of the case. This way, lawyers will have adequate time to meet with their clients, and not feel pressure (real or imagined) to 'move' (plead) the case the same day the appointment is made. One of the American Bar Association's *Ten Principles of a Public Defense Delivery System* is that "defense counsel must be allowed adequate time and a confidential meeting space to meet with the client." [See attachment.] Pleading a new client within minutes of appointment is not the way to do this. Alexander Hamilton said: "The first duty of society is justice." And according to President Woodrow Wilson (Feb. 26, 1916): "Justice has nothing to do with expediency."

The ABA also says that defense counsel must be "independent" from the judiciary. Although from time to time a judge may have good cause to remove counsel from a particular case, this should never be a first option. Good cause does not include counsel filing certain motions or asking for certain experts which the judge thinks will only delay getting the case being plead. A lawyer not being available to 'move' the case the day the appointment is made is also not a good reason for removal; this practice definitely calls into question whether or not defense counsel is independent from the judiciary.

Judges should use the OAAC wheel for all counsel appointments, except on rare occasion. Even though judges are sovereign, sovereignty has its limits under the FDA: "A court *shall* appoint an attorney from a public appointment list using a system of rotation, unless" one of three other statutorily-approved methods is used. Article 26.04(a), Texas Code of Criminal Procedure (emphasis added). The statute goes on to state that when a rotational system is used for appointments under a county's FDA plan, "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.*" (emphasis added). According to the Texas Task Force on Indigent Defense, a core requirement of the FDA is to "institute a fair, neutral, and non-discriminatory attorney selection process."

The wheel is designed to eliminate patronage. Canon 2 of the Texas Code of Judicial Conduct requires that judges avoid impropriety and "the appearance of impropriety" in all of the judge's activities. Thus, no judge should show favoritism in appointment. Attorneys should also seek to avoid the appearance of impropriety.

Also, the wheel helps balance out the workload between attorneys. The ABA says that "Defense counsel's workload is limited to allow for ethical, quality representation."

When appointed counsel brings an *ex parte* motion for appointment of an expert (under seal) to the judge for consideration, the judge should not in any way divulge this fact to the prosecutor. For example, defense attorneys on occasion will discuss with their clients the possibility of taking a polygraph test. This is best done under the attorney-client privilege without the prosecution's knowledge. When a polygraph test is done under the protection of the attorney-client privilege, many defendants have a higher comfort level about submitting to such an exam. Often, a polygraph test can be helpful in disposing of a case without a trial. But difficulties arise if the judge reveals this information to the prosecution.

VI. Best Defense Practices

When county procedures are in place as described above, the chances of a successful system from the criminal defense practitioner's perspective increase greatly. Yet another constituent of the 'public' that must have confidence in the system is the criminal defense attorney. And by the nature of the beast, if proper indigency screening procedures are not in place, an attorney is from time to time placed in the ethical quandary of representing a defendant who the attorney knows is not truly indigent. And then the attorney must wrestle with Article 26.04(p) of the Code of Criminal Procedure which allows defense counsel to move for reconsideration of the indigency determination. But when proper screening is done, the lawyer can focus his/her attention to the primary task at hand: effectively representing the indigent defendant.

The practice of law is an art, not a science, and there are different opinions on what are in fact the best ways to represent defendants (indigent or not). What follows are the views of one criminal defense attorney.

When receiving a new court appointment, one of the first considerations is whether or not the defendant is in custody or on bond. If in custody, a consideration is whether bond is a possibility. In Tarrant County, the OAAC notifies newly appointed counsel by fax and e-mail of the appointment. Many Tarrant County criminal defense lawyers have given standing instructions to their office staff to immediately fax a pre-written form letter to the jail housing the defendant. The letter contains basic information about representation and advice to talk to no one about the facts of the case until the defendant can speak to the attorney. It does not discuss the merits of the case. [See attached sample.] [All jails in Tarrant have agreed to take these faxes to prisoners in their cells.] The attorney should attempt to get as much discovery as possible from the prosecutor as soon as possible. The pleadings should also be examined soon. For on-bond defendants, the attorney's staff should attempt to phone the defendant as soon as possible to schedule a meeting with the attorney. Some defendants will not want to meet with the attorney before court (either in person or by phone). But the attorney's staff should attempt to set up a meeting. Otherwise, the first attorney-client meeting may be in the hallway at the courthouse.

Regardless of whether the new client is on bond or in custody, the first meeting with the new client is important. Many attorneys begin this first meeting by telling defendant what the prosecutor is offering. This is a mistake. The attorney should first explain to the client briefly how the system works and that the burden of proof is on the prosecution. Then, when discovery has been obtained, go over the offense reports with the new client, telling him or her that this is what the prosecution intends to use to obtain a conviction. The range of punishment should also be explained to the defendant. Obviously, the new client needs to be given an opportunity to tell his/her view of the facts, but this is usually best done after they have heard the government's perspective. At this point, some clients will tell counsel they are guilty and want to see about cutting a deal. Others will tell counsel they are innocent and do not want a deal. If counsel has received an offer from the prosecution, it must be communicated to the client so he/she can accept or refuse. This decision is solely that of the client. Counsel should document his/her file when a defendant rejects an offer. [See attached suggested form.]

Shortly after meeting the client, there is usually a first court appearance. In-custody defendants are typically in crowded holdover cells with many other defendants. It is best not to have substantive attorney-client conferences in these settings. It is best to interview the new client before the court date in the jail, where the defendant can talk freely to counsel. New offers can be communicated to the client in the (crowded) holdover, but the client should be cautioned against substantive conversation in this setting. There is no privilege if someone else (like a snitch) is listening.

For on-bond defendants, it is best to have substantive conversations in the attorney's office before the court date. This includes going over the offense report. Meeting the client in court and trying to quickly plead them out is not the way to provide good representation. In fact, most clients who are allowed the opportunity to meet with the lawyer before court in the office do not feel like the indigent defense system is running a railroad. They prefer to be treated like human beings, not sausage.

After meeting with the client, the attorney must weigh other issues: Motions? Investigator or other experts to be appointed? Further negotiations? Trial? [Under Ex parte Briggs, 187 S.W.3d 458, 468 (Tex. Crim. App. 2005), even retained counsel may have a duty to ask the court for funds for expert assistance.] For all cases not resolved by early plea negotiations, counsel should begin thinking in terms of going to trial. Does the client have any witnesses that need to be located and possibly subpoenaed? Counsel should keep an accurate record of the time spent working on the case.

A special word must be said about newly appointed appeal clients. They have seen the system up close and personal. They have been found guilty, and are usually not happy. They often have complaints about their trial counsel. The key for the newly appointed appeal counsel is to go see the new client as soon as possible. Hear what they have to say about what they experienced. Explain to them how the appeal procedure works, including PDR. Explain to sentenced felons that they will likely soon be shipped to TDC, and your further communication will be in writing. Invite them to send you a long letter explaining their concerns. Tell them you will pay particular attention to their concerns when you review the record when it is prepared. The key is to go meet them as soon as possible.

VII. Conclusion

The FDA is a huge step forward for Texas. After the enactment of the FDA, one of the judges of the Court of Criminal Appeals wrote that the new law "fills a dire need in this state for ensuring quality representation of indigent criminal defendants." Ex parte Graves, 70 S.W.3d 103, 122 (Tex. Crim. App. 2002). With the FDA, this state has clearly made strides toward filling this dire need. However, more must still be done to give Texas an indigent defense system of which it can be even more proud, a system which goes beyond the appearance of providing effective representation to the indigent, but does this in reality. The suggestions offered above will lead to a more fair system, one in which all of the constituents can have confidence. This includes the taxpaying public as well as those who serve in the criminal justice system, and the defendants too. Also, these ideas lay the groundwork for far fewer instances in the future when defendants will be heard to complain "My appointed lawyer didn't do anything in my case except plead me out." This will translate into far few writs, grievances and other complaints. When the FDA was written, it is not likely that the authors envisioned defendants being found indigent, counsel being appointed and pleas taken within minutes. "Eyeglasses in about an hour"—OK. "Pleas in about an hour" is not a practice that increases anyone's confidence in the criminal justice system.

"Meet 'em and plead 'em" is a joke that cannot withstand the scrutiny of enterprising investigative reporters. The practices suggested in this paper will lead to increased odds of adequate defense and effective representation in all cases. And if the idea of the FDA is to truly eliminate patronage and provide adequate/effective/good defense to the indigent, all counties should heed the words of Justice Brandeis and apply sunlight to the entire system, by keeping public statistics on which courts are using the attorney appointment wheels and which courts fully utilize the services of professional screeners. This will also go a long way to having county-wide uniformity in indigency findings. These suggested practices allow judges to visibly demonstrate to the public that they take the FDA seriously and are making every effort to comply. This will also lead to less litigation.

If Texas had unlimited resources with which to defend the indigent, accuracy in indigency determination would be less important. But resources are limited. And indigent defense systems cannot afford the luxury of providing free representation to those who are not indigent.

Once all counties decide to use professional screeners and keep public statistics, most of the problems discussed here will be gone. And indigent defense systems in this state will all be able to withstand public scrutiny.

Setting Notice

REQUIRED COURT APPEARANCE: You must appear at the above time and date in the _____on the ____ floor of the _____ County Justice Center, _____, _____, Texas. Failure to appear will result in a warrant for your arrest.

EXCUSAL FROM COURT: If you hire an attorney at least 24 hours before the above Initial Appearance setting, the attorney can contact the court coordinator and your appearance may be excused. You may select and hire an attorney of your own choosing.

TOO POOR TO AFFORD ATTORNEY?: If you believe you are too poor to afford an attorney, you can ask the court to appoint an attorney for you. If you want an appointed attorney, you will be required to disclose information to the court about your financial resources. Unless you hire an attorney before the above date, you must bring to your Initial Appearance setting copies of your financial documents, including your two most recent paychecks or pay stubs and your W-2 forms. You will be required to complete a detailed financial questionnaire in court. Whether you qualify for a court appointed attorney is a decision the judge will make. In making this decision, the judge will consider your personal circumstances as well as the federal poverty guidelines.

RE-PAYMENT FOR APPOINTED ATTORNEY: If you receive an appointed attorney, the court may order you to repay the county for court-appointed attorney fees under such terms as the court may determine, based on your future financial status. If you receive a court-appointed attorney, you must cooperate with that attorney.

ROTATION SYSTEM: Attorney appointments are made on a rotating-wheel system. If you receive an appointed attorney, that attorney will be the next name up on the list for your category of offense.

ABA Ten Principles

The mission of the American Bar Association is "to be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law." Its 400,000 members include judges, prosecutors and defense attorneys, and lawyers practicing civil law. Its *Ten Principles of a Public Defense Delivery System* have been used by numerous states, including Texas, Georgia and Montana, as a prominent guidepost for reform.

The Ten Principles of an Indigent Defense Delivery System provide standards that

- ensure fundamental fairness to defendants who cannot afford to hire an attorney,
- ensure that the indigent defense system is accountable to taxpayers and transparent to policy makers, and
- ensure public safety and improving public confidence in the criminal justice system.

The Ten Principles are as follows:

1. The public defense function, including the selection, funding and payment of defense counsel is independent from other agencies in the criminal justice system and free from undue political interference. The public defense system should be overseen by a nonpartisan board, not the judicial system, and public defenders should be hired on the basis of merit.
2. When the caseload is sufficiently high, the public defense delivery system utilizes both a public defender office and the active participation of the private bar. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure to ensure uniform quality statewide.
3. Clients are screened for eligibility and assigned a public defender as soon as possible after client's arrest, detention or request for a lawyer, usually within 24 hours.
4. Defense counsel must be allowed adequate time and a confidential meeting space to meet with the client.
5. Defense counsel's workload is limited to allow for ethical, quality representation. National standards should never be exceeded, and limited support staff or a defender's nonrepresentational duties may further reduce the caseload limits.
6. Defense counsel's ability, training and experience match the complexity of the case.
7. The same attorney continuously represents the client through all stages of the proceeding. Effective lawyering is impossible in an assembly line system of indigent defense.
8. There is parity between defense counsel and the prosecution with respect to resources. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, support staff, investigators and access to forensic services and experts). Further, defense counsel is included and treated as an equal partner in the criminal justice system.
9. Defense counsel is provided with and required to attend continuing legal education.
10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to national and locally adopted performance standards.

For a link to the actual text of the *Ten Principles of a Public Defense Delivery System*, including commentary, please visit the ABA site at:
http://www.abanet.org/legalservices/downloads/sclaid/resolution107.pdf

Mr. John Defendant
_____ Police Department
_____, Texas

By facsimile to: ___-___-_____

Dear Mr. Defendant:

I have been advised by the courts that I have been appointed to represent you in a criminal law matter. I will make arrangements to visit with you as soon as my schedule permits. Until then, I will gather information concerning why you were arrested and the nature of any charges or potential charges against you as that information becomes available.

In the meantime, my advice to you is that you do not talk to anyone about the facts of your case. This includes cellmates, guards and relatives. Also, should you write any letters or send any documents to the Court, the prosecutor will get copies of those. Since you are probably not legally trained, you can damage your case. I am advising you not to send documents to the Court without reviewing them with me. Anything you tell me or my staff is confidential and protected by the attorney-client privilege. Also, sometimes your behavior in jail is monitored depending on the seriousness of your case. I am advising you to be on your best behavior.

If you make bond in your case. Please contact my office immediately and provide your contact information. Should you hire an attorney, please advise my office so that we can provide that attorney with any information we may have about your case. If you are on bond, the Court requires as a condition of bond to make yourself available for office conferences and keep us informed of current addresses and telephone numbers. Failure to maintain contact with my office and keep scheduled appointments can result in your bond being forfeited and your return to jail.

Due to the fact that I am a trial attorney, I spend a lot of time in various courts in this and other counties and am often away from the office. Therefore, if you want to contact me before I can see you in jail, or any other time, please write me at the above address. Make sure you mark the envelope with the words "LEGAL MAIL."

Sincerely,

_____
RUMPOLE BAILEY

STATEMENT OF JOHN DEFENDANT

My name is John Defendant. I am the Defendant in the following felony case currently pending in the ___ District Court of _____ County:

CAUSE NO.	CHARGE:
_____	SEXUAL ASSAULT OF A CHILD

My attorney, _____, has explained to me the punishment range in this case. I understand that if I am convicted the range of punishment for Sexual Assault of a Child is 2-20 years in the Institutional Division of the Texas Department of Criminal Justice, and a fine of up to $10,000.

My attorney has explained to me that the State of Texas has made a plea bargain offer to me. The offer is: __years in the Institutional Division of the Texas Department of Criminal Justice.

I have had ample opportunity to discuss the case with my attorney. I have decided to ACCEPT the State's plea bargain offer. I have not been threatened in any way to accept the State's plea bargain offer. It is my decision and my decision alone.

_____
Defendant

DATE:

-OR-

I have had ample opportunity to discuss this case with my attorney. I have decided to REJECT the State's plea bargain offer. I have not been threatened in any way to refuse the State's plea bargain offer. It is my decision and my decision alone.

_____
Defendant

DATE:

I UNDERSTAND THAT THE DISTRICT ATTORNEY IS UNDER NO OBLIGATION TO REOPEN PLEA NEGOTIATIONS AT ANY TIME, AND THAT MY CASE WILL PROBABLY BE TRIED AS A RESULT OF MY DECISION.

Justice's Low Tire

Attorneys accuse local judges of favoring friends and quick trials over defendants' rights.

By JEFF PRINCE

The highlight of the meeting was supposed to be a speech by former Tarrant County prosecutor Terri Moore, who recently joined the Dallas County DA's office after twice failing to unseat Tim Curry as district attorney here. But the dynamic Moore was upstaged by a short, slight, gray-haired attorney named Travis Young, whose 10-minute battle cry at a March 8 meeting of the Tarrant County Criminal Defense Lawyers Association created a commotion among the 100 or so folks in attendance.

"That took courage," one of the lawyers said afterward.

"Travis Young is a brave man," said another.

What did the longtime Fort Worth attorney do to earn such peer praise? He criticized the good ol' boy system in local courts. Young, who made about $29,000 last year as a court-appointed attorney in addition to his private practice, pointed to other lawyers who had raked in five to 10 times as much by representing poor defendants. Judges are supposed to spread those cases among a long list of qualified attorneys. Some judges, however, call on favorites more often than others.

It took a while for Young to get started. First, he asked the crowd in the back room at Joe T. Garcia's Mexican Restaurant whether any reporters were there. He didn't want the news media listening, because, he said, the problem could be solved in-house.

"We don't need their help," he said.

The fellow in charge of the meeting started toward a Fort Worth Weekly reporter, but other attorneys stopped him. Several said they wanted the media there because the problems at the courthouse had been covered up for too long.

"Sit down, you're not going anywhere," a lawyer said firmly to the Weekly reporter.

Young lamented that he would have to tone down his remarks, but went ahead. His original speech must have been a doozy – even the toned-down version was impassioned and accusatory.

"We have an emergency. We have a crisis," he said of the case appointment system. "I don't want trouble, but trouble is going to come if people don't listen."

Young described how judges are sidestepping the state's Fair Defense Act and continuing to give the nod far too often to their favorite attorneys, a system he described as patronage. The law, enacted in 2001, was designed to speed up the process of getting legal representation for poor defendants and to ensure competent representation, in part by prompting judges to choose lawyers from a pre-approved list.

That computerized list is known in Fort Worth as "the wheel." Cases are supposed to be assigned in order on a rotating basis. If an attorney is busy or unable to accept a case, a judge is then supposed to go to the next name on the wheel. The assigned attorney meets with the client and then gets back in touch with the judge.

The law "changed more than just the wheel. It made what we used to call patronage illegal," Young said, referring to favoritism shown to lawyers who could be trusted to convince defendants to enter a plea and avoid trial.

Before the law, also called Senate Bill 7, was passed, judges frequently gave the majority of their court appointments to a small handful of attorneys, often appointing the same attorney to represent a half-dozen or so defendants at a time, all called up on the same "jail run." At the time, critics charged that judges favored attorneys who would convince their clients to plead out, thus quickly reducing the judge's caseload and improving his case-handling record. If an inmate insisted on his innocence and on a trial, which can take days or weeks, a judge could purposely delay appointing an attorney, leaving the defendant sweating it out in jail and adding to the pressure to cooperate.

"It makes it tough to represent somebody if you have judges who think a case should be [pleaded out] instead of going to trial," said attorney Brian Willett. "The purpose of the system was where you couldn't have a judge appoint the case to someone just because he liked an attorney." But despite the law, in Tarrant County, "there are certain attorneys because of friendship or whatever, who are getting the lion's share of them," he said.

Most local judges weren't happy with the legislation. They said it wasn't needed and complained that the new system added steps to the process, reducing their

courts' efficiency and increasing the cost to taxpayers. Some didn't let a little thing like a new law change their way of doing business – thanks to a loophole that allows judges to stray from the wheel for "good cause." For instance, in February, more than half the appointments made by County Criminal Court Judge Phil Sorrells went to only three attorneys, including Trent Loftin, who received 27 of the 79 appointments.

Longtime Fort Worth attorney J.R. Molina said some judges interpret "good cause" far too liberally, basically ignoring the Fair Defense Act's intent.

"We've had this problem for multiple years now, and it continues on and on," Molina said. "Some of the judges have been told, and people have complained to them, and it continues."

He disagrees with Young's opinion that the matter should be handled quietly and without media scrutiny.

"It's only when the press is involved that it embarrasses someone, and things move," he said. "This involves taxpayers' money and public trust. I don't think the public wants their tax money to be administered in this fashion."

Indeed, the county courthouse was abuzz the day after Young's tirade. And the furor seemed to create an immediate response.

"The judges are looking at this to see if there are any changes that ought to be made to the system," Criminal Courts Administrator Clete McAlister said. "We've learned something that causes us now to re-examine what we are doing, and we need to find out what the problems are and fix them."

He said the primary concern was in the misdemeanor courts, where many cases are heard each day, and large jail runs are standard procedure. About 60 percent of the time, judges appoint attorneys who are already in the courtroom or nearby rather than going to the wheel and slowing down the process, McAlister said.

"That's what has caused many of those numbers to look bad," he said. "If they go to the wheel, that attorney [whose name comes up] might not be available that day."

Attorneys, however, aren't buying the excuse. They say judges could check the wheel a couple of days prior to a jail run and make appointments on a fair, rotating basis. McAlister, though, said the county's computer software isn't set up to let judges access the wheel in advance of hearing cases.

"That's the way our system is set up," he said. "That may be a modification we need to make to the software."

In the felony courts, judges are ignoring the wheel about 40 percent of the time, McAlister said, although they appear ready to more closely follow the spirit of the Fair Defense Act.

"I think all of them will be changing that practice if they haven't already," he said. "They believed they had latitude to appoint attorneys for probation revocations that they had a lot of confidence in, and they thought they had that authority, and now they're questioning whether they do. Some of them have already stopped that practice and are appointing directly from the wheel now."

To get their names on the wheel in the first place, attorneys must meet qualifications and be OK'd by a majority of local judges. That can be a chore for good attorneys who have run afoul of judges in the past.

In February, Fort Worth Attorney L. Patrick Davis accused felony judges of judicial misconduct after being denied inclusion on the felony wheel. He never received an explanation and believes he was blackballed after clashing with Judge Sharen Wilson, whom he tried to have removed from a case last year after accusing her of intimidating a defendant. Meanwhile, Dallas County judges approved him for their felony wheel, and he is representing indigent defendants there.

"They're keeping qualified attorneys off the wheel [in Tarrant County] because it keeps the conviction rate up, people are pled out, and judges clear their dockets quicker," he said. "The Fair Defense Act was passed in part because of the good ol' boy system. That's the way it's still working now in this county. If you fight for your client and you stand up and do your job, you're punished by the judiciary."

Supplemental Publication re

The Costs and Benefits of an Indigent Defendant Verification Study

Introduction

The Sixth Amendment provides that, "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 an idea of how they can efficiently screen defendants and verify that they are eligible for court-appointed counsel, helping a county fulfill its constitutional obligation while also serving its financial interests.

One caution regarding verification 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 in the local indigence defense plan but 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 provides:

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

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. 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.[3] 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 recoup indigent defense costs by finding a defendant partially indigent or providing for recoupment of fees in their indigent defense plan.[4]

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[1] *See* The Constitution of the United States of America, http://law.cornell.edu/constitution/constitution.overview.html

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

[3] JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO'S ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 14 (2007).

[4] 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

A corollary concern of the bright-line standard is that defendants often cannot accurately describe their financial situation and may even *overreport* their assets and income. The reasons for lying about having *more* resources can vary, including: not wanting to appear 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.[5] Defendants may unintentionally report false information, may overreport 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."[6] Screening not only makes sense for counties, but many defense attorneys may also be in favor of the process. It can help to 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. . . ."[7] Uniformity across a jurisdiction has concrete benefits for those providing services. "Counties, states and public defenders will also be better able to forecast their future resource and budgetary needs when they use more reliable screening methods."[8] Judges and court personnel may also prefer a uniform rule and form because it helps to foster consistency amongst defendants and fellow judges.[9] 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.[10] A standardized rule applied consistently can help bring greater uniformity and reliability in indigency appointments.[11]

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 expenses, the

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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.

[5] JUSTICE CENTER, *supra* note 3, at 10.

[6] *Id.*

[7] TEX. CODE CRIM. PROC. ANN. art. 26.04 (a) (Vernon 2006).

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

[9] *Id.* at 8.

[10] TEX. CODE CRIM. PROC. ANN. art. 26.04 (l) (Vernon 2006).

[11] Neely & Tomkins, *supra* note 8, at 10.

number and ages of dependents, and spousal income.[12] Approximately 60% of counties in Texas use these factors to determine indigence.[13]

Counties utilizing a bright-line rule use 100% (38 counties), 125% (54 counties), and 150% (6 counties)[14] of the latest Federal Poverty Guidelines as established by the Department of Health and Human Services to determine what will be the income cut-off.[15] 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 offenses(s) with which the defendant is charged.[16]

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."[17] The guidelines are based on the cost of providing food and other essentials to families of different sizes and can help provide a quick determination if someone is below them that that person cannot afford counsel without extreme hardship. The Justice Program advises that jurisdictions use the guidelines (as the majority of counties in Texas do) but also recommends that counties use a multiplier of the guidelines.[18] 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.[19] Jurisdictions should never use the guidelines as the sole criterion for determining indigence, and facts such as cost of counsel and unusual expenses should be taken into account.[20]

Additional Qualifiers

Counties may include factors other than asset and income levels. A person may be found indigent if on public assistance (in 44 counties), or if institutionalized (in prison, custody, mental health facility)(in 36 counties).[21] If a defendant cannot retain private counsel without "substantial hardship," the judge should make a finding of indigence (in 43 counties).[22] 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. National guidelines and many jurisdictions have interpreted the constitutional requirement as providing

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[12] TEX. CODE CRIM. PROC. ANN. art. 26.04 (m) (Vernon 2006).
[13] *See* Appendix A, Indigence Standards in Criminal Cases.
[14] *Id.*
[15] The 2007 HHS Poverty Guidelines, http://aspe.hhs.gov/poverty/07poverty.shtml (last visited June 21, 2007).
[16] 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).
[17] JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO'S ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 14 (2007).
[18] *Id* at 20.
[19] *Id.*
[20] *Id.*
[21] *See* Appendix B, Indigence Standards in Criminal Cases: Additional Factors.
[22] *See* Appendix B.

counsel to those who cannot afford it without "substantial hardship."[23] As the Justice Program Report notes, "The right at issue in *Gideon* was the right to counsel for those 'unable to obtain counsel,' a group that can include many who fail to meet some statutory standard or screening criteria if those standards or criteria are not properly designed."[24]

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 "[t]he resources available to friends or relatives of the defendant."[25] 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.[26] It also makes defendants less able to participate in their defense, which may result in longer sentences and avoidable appeals, which increase costs to taxpayers.[27]

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.[28] The statute only allows for income and assets available to the defendant to be considered. The model guidelines of the ABA, NLADA, and State Bar agree that liquid assets should not include things necessary for daily living, such as a house and a vehicle. 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 pretrial services, 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.

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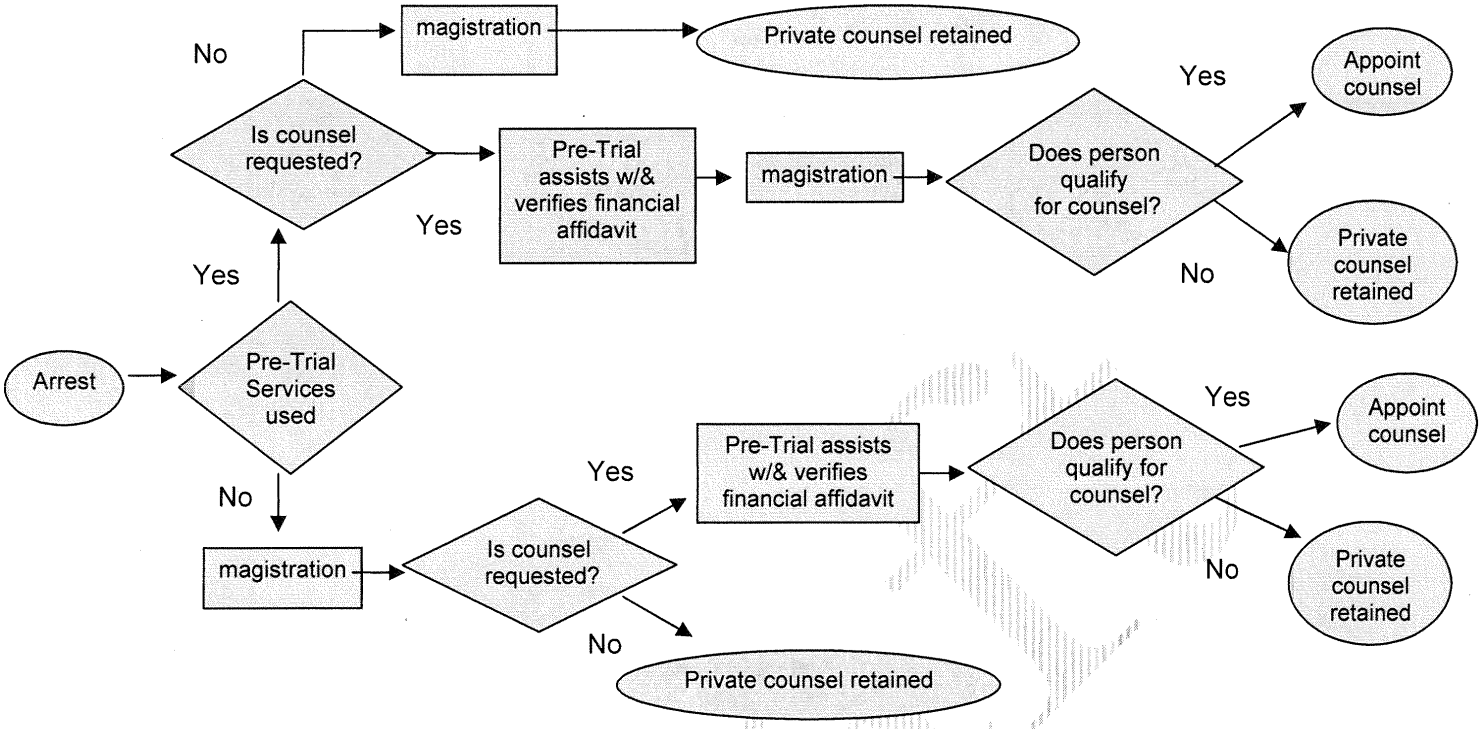
[23] JUSTICE PROGRAM, *supra* note 17, at 11.
[24] JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO'S ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 11 (2007).
[25] *Id.*
[26] *Id. at 18.*
[27] *Id.*
[28] TEX. CODE CRIM. PROC. ANN. art. 26.04 (m) (Vernon 2006).

Screening Process



Who Should Screen

Screening by a third party can be a cost-effective and sound means of making eligibility determinations.[29] As the Justice Program notes, "It can sometimes be done at little cost, and it can be done by professionals who develop expertise and specialized knowledge."[30] Ideally screening should be conducted by neutral third parties without potential conflict to the legal proceedings or the financial considerations of the county. Having a third party screen can "increase fairness and consistency by providing a more uniform and accurate assessment of the defendant's financial information."[31] Judges in one study reported that they did not obtain nearly as much information on their own as third party screeners.[32] 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.[33] 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.

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

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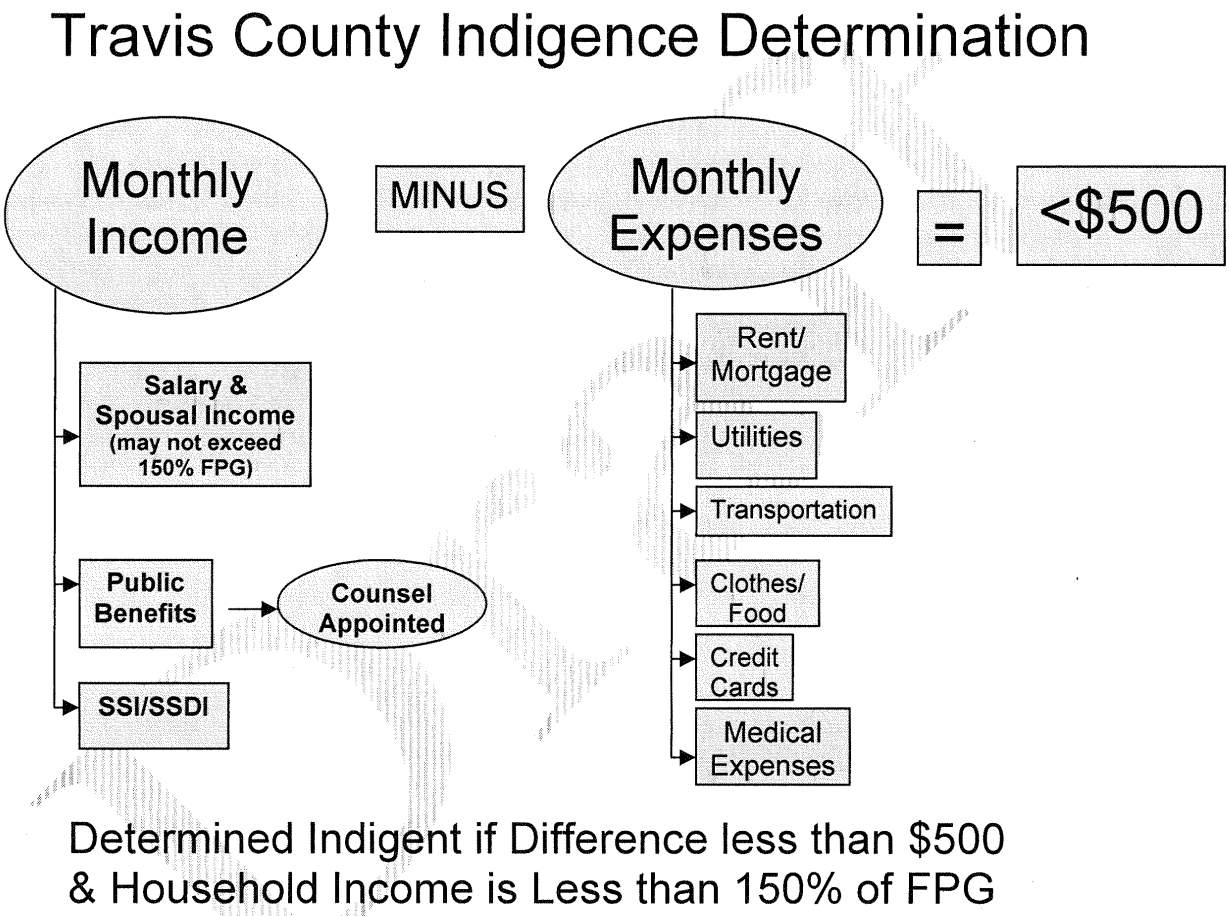
[29] JUSTICE PROGRAM, BRENNAN CTR. FOR JUSTICE AT NYU SCHOOL OF LAW, DRAFT: WHO'S ELIGIBLE FOR JUSTICE: RECOMMENDATIONS FOR STANDARDS FOR APPOINTING PUBLIC DEFENSE ATTORNEYS 11 (2007).
[30] *Id.*
[31] Elizabeth Neely & Alan Tomkins, *Evaluating Court Processes for Determining Indigency*, 43 COURT REVIEW 4, 8 (2007).
[32] *Id.*
[33] *Id.*

county. Montgomery, Tarrant, and Bell Counties utilize an Indigent Defense Coordinator as a function of the courts. 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 persons fill out affidavits and probably have no incentive to assist with affidavits. As noted throughout this report, pretrial services personnel can take a methodical approach to questioning the individual and can quickly obtain greater information about the individual's income and assets than may officially be reported.

Travis County Model

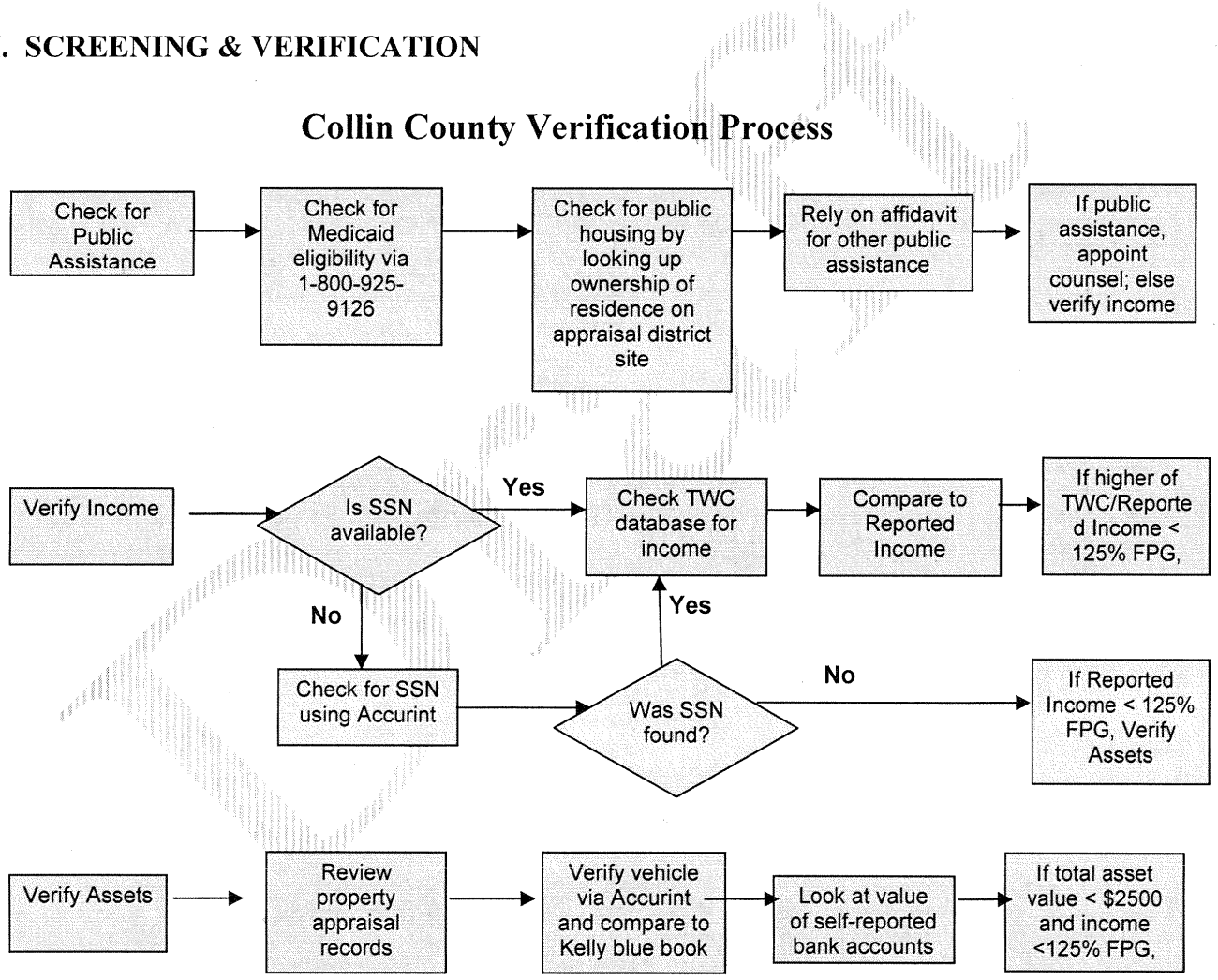


Travis County is an example of a county that uses the Pretrial Services Agency to conduct Indigence Screening of defendants with no external verification. It is worth noting, however, that defendants wanting to complete the indigence form to determine their indigency qualification for a court appointed attorney are required to sign a sworn statement at the end of the form that the information they have provided is true and correct. Following arrest, defendants are booked centrally into the Travis County Jail. Shortly thereafter, Pretrial Services interviews defendants in the jail, handling issues such as personal bond and indigence screening. The intake is essentially a computerized version of Travis County's Indigence Form.[34] 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, which includes rent, utilities, transportation, clothes/food, child support, medical

[34] *See* Appendix C, Travis County Indigence Form.

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 and guidelines 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 (attached as Appendix C) 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 is an example of a county 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 officers to verify information such as vehicles, houses, boats, and the last address of the defendant. The final program used to verify was local appraisal records. This includes property and houses, and is current. One unexpected benefit of using the verification programs was that the 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.

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, a search that 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 officers in Tarrant County 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 financial officers estimated that the information was six months or more behind. Collin County reported that they used LexisNexis to look at residence, licenses, and property but it to verify the defendant's social security number. 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. Tarrant County, while participating in the study, had its financial officers input a defendant's social security number (which the officer could get from the county database or on LexisNexis) which would pull up wages listed by quarter and year. The officer would then scroll down to find the most recent quarters, which would give the entire wages a defendant had earned in 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 and parental income, 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.[35] 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

[35] *See* Appendix D, Information Required to Initiate a Contract.

sign a confidentiality agreement.[36] 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 uses 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 from LexisNexis can help a county that wants to verify get a more complete picture of defendants' resources in order to determine indigence.

Conclusion

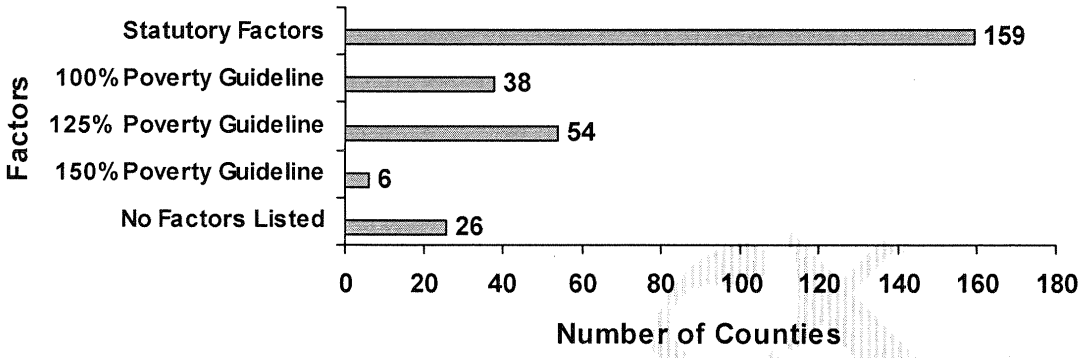
The process of determining whether a defendant is indigent is one of the most important decisions the courts will make in resolving the issue of representation.[37] There are many options available to counties for screening defendants for indigence, from Travis County's streamlined screening process 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.

[36] *See* Appendix D, Confidentiality Agreement.

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

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

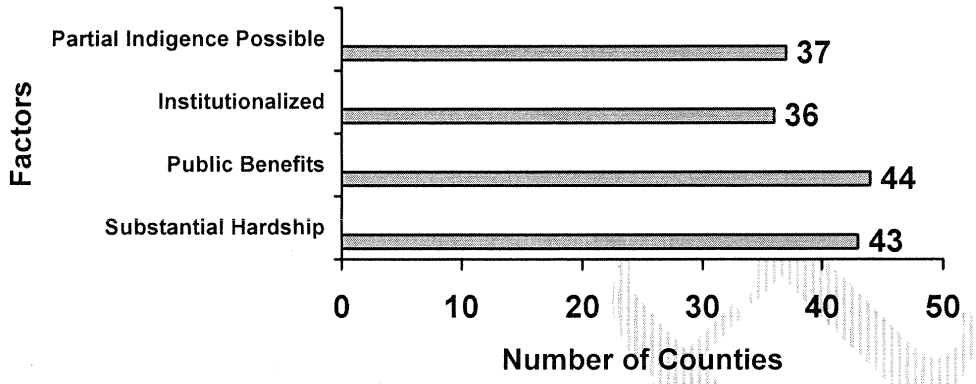
★ Statutory factors means the plan states the financial evidence that will be considered in determining whether a defendant is indigent. The factors include items such as defendant's income and assets, outstanding obligations, and necessary expenses [Texas Code of Criminal Procedure Article 26.04(m)]. 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	36	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
Public Benefits	44	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, Waller
Substantial Hardship Test	43	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, 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 thresholds 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

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 automible 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 Dependants) are eligible for a public program (Medicaid, Food Stamps, SSDI, Public Housing, or Collin County Indigent Health Car 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 SS 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.

Appendix F
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 th own attorney. This process is governed by the Fair Defense Act (SB 7, 77th Legislature) and particularly Article 26.04(l)-(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 t 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/s is a public official who has requested disclosure of records in the administration or enforcement of a l by that public official. Specifically the requester is requesting disclosure of information for the followi 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 ir 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 purpos described in this Agreement.

(e) Requester shall not transfer the authority and ability to access or maintain data under this Agreem 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, remc terminal or other means.

(h) Requester shall instruct all personnel with access to the information regarding the confidential nat 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 m be, compromised in any way.

(j) Information obtained from the Agency shall be maintained and treated as confidential informatior 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 concernii such information except where the request is from an official with subpoena authority, other than clerk of the court on behalf of a litigant, with authority to obtain such information by subpoena un 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 nc include any individual names or data in any research report produced under this project. Requeste

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 fro 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 requirement 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 c 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 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 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 t 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 Un 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 restituti as permitted under such law for all costs incurred by the Agency in pursuing the breach of this Agreemen and enforcement the terms of this Agreement.

_____ _____

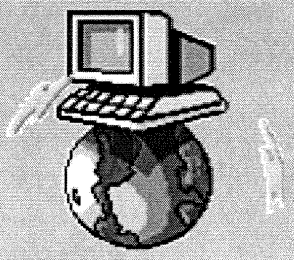
(signature) (date)

_____

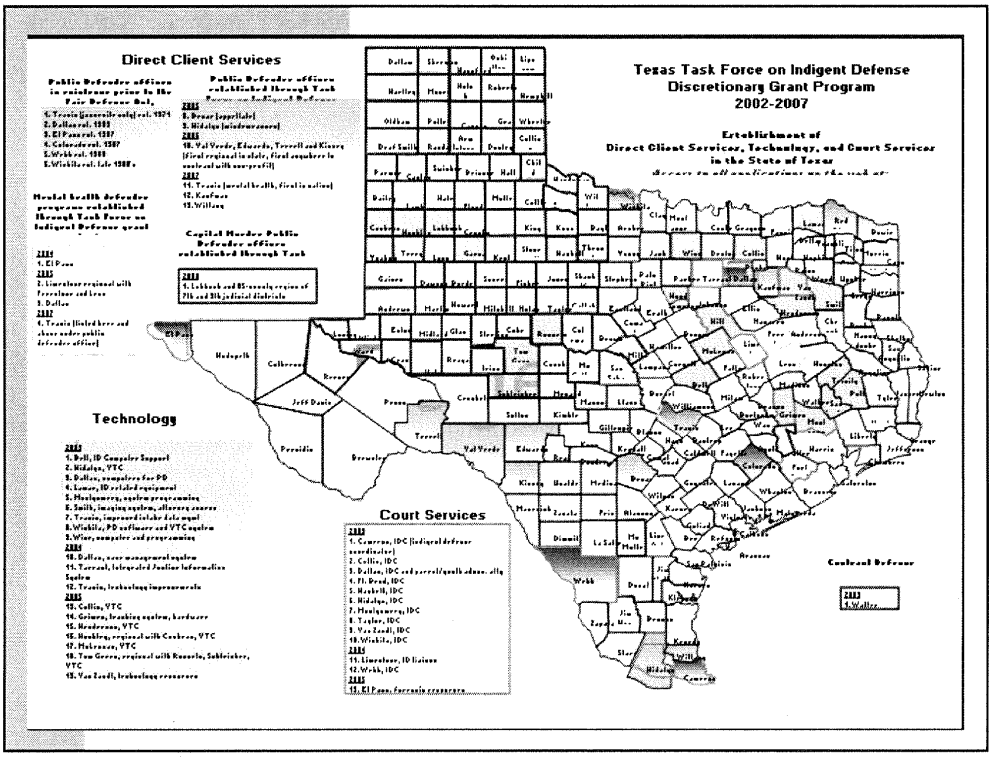
(name of organization)

(revised 10-27-06)

Evidence-Based Practices: Tools You Can Use



What Can the Task Force Websites Do for You?



Task Force on Indigent Defense Website:

www.courts.state.tx.us/tfid/

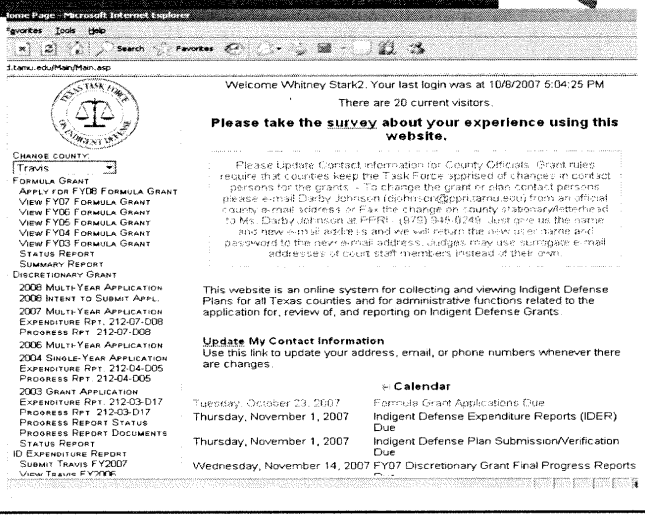
See the handout for links to specific TFID documents and resources

Terri Tuttle runs this fabulous website!

Click here to access the data management website

TFID Data Management Website

Home page:
http://tfid.tamu.edu



TFID Data Management Website (cont'd)

- What: The database is a vortex of indigent defense-related data for Texas counties. Counties can use the website to report data, submit their Indigent Defense county plan, apply for TFID grants, view & compare county data, and more.

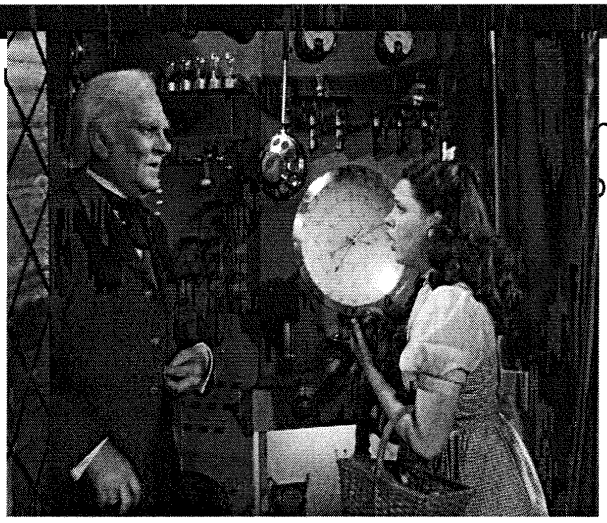
- Why: This is one source of the *evidence* in *evidence-based practices*: the data is used for TFID reports, calculating grant formulas & disbursements, strategic planning, etc. The website can be a great resource to counties as well.

TFID Data Management Website (cont'd)

- When: Counties can log in anytime. Deadlines for reports, ID plan submission and grant applications are posted on the website calendar.
  - Upcoming: ID Plan & Expenditure Report Due Nov. 1

- Who: The website is used by: TFID, counties, legislators, the public
(a read-only version of the site is available at http://tfid.tamu.edu/Public/)

So Who's Behind the Curtain?



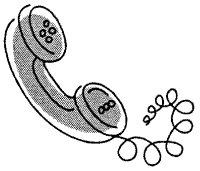
P

-
-
-

n Scientist

or

Who Do I Contact?



- Darby Johnson
  - Contact about: password/user log-in, ID plan submission, updating contact info, change contact persons
  - djohnson@ppri.tamu.edu
- Jim VanBeek
  - Contact about: technical support (e.g. the submit button is not working! The report is not showing up!)
  - jvanbeek@ppri.tamu.edu

- Whitney Stark, Grants Administrator
  - Contact about: anything TFID-grant/disbursement related, programmatic & reporting questions
  - whitney.stark@courts.state.tx.us

Website Tool Kit

Task Force on Indigent Defense (TFID) Website

Home page: www.courts.state.tx.us/tfid

- **What can I find there?**

The TFID website contains a wealth of information related to indigent defense including:

- **TFID Publications**: www.courts.state.tx.us/tfid/Resources.asp
  - Includes numerous studies, annual reports, training presentations, Texas bills & statutes related to indigent defense, TFID press coverage.
- **TFID e-Newsletters:** http://www.courts.state.tx.us/tfid/e-newsletters_archives.asp
  - View archived newsletters published four times annually since 2003 with TFID news and updates, legislative information, past grant awards and more.
- **Grants & Reporting Information**: www.courts.state.tx.us/tfid/TFID_Grant_Program.asp
  - Includes descriptions of TFID grant funding and disbursement opportunities, policies and procedures, requests for applications, training presentations, grant/disbursement forms, rules and regulations.
- **Policies and Standards Resources:** http://www.courts.state.tx.us/tfid/TFID_policies_and_standards.asp
  - Includes model forms (affidavits of Indigents, attorney fee voucher, etc.) and model procedures (appeal of disapproval of requested counsel fee, removal of attorneys from list), and rules (CLE, contract defender rules).
- **Program and Fiscal Monitoring**: http://www.courts.state.tx.us/tfid/monitorfiscal.asp
  - Includes best-practice forms, monitoring checklist, most common monitoring findings, core requirements and more.
- **Legislative Information:** http://www.courts.state.tx.us/tfid/Legislative80.asp
  - Includes bills affecting TFID and indigent defense in Texas.
- **Do I need a user ID and password?**
  - No. All documents are viewable by the public.

Public Policy and Research Institute's (PPRI) Reporting Website

Home page: http://tfid.tamu.edu

- **What can I find there?**

The PPRI website is the one-stop-shop for indigent defense data and reporting for Texas counties. Counties can use the PPRI website to:

- Submit expenditure reports
- Apply for formula and discretionary grants
- View past discretionary grant applications from other counties
- Submit their Indigent Defense Plan documents
- Update county contact persons (county judge, auditor, etc.)
- View other counties' data and stats

- **Do I need a user ID and password to log in?**
  - Yes. You can obtain your user ID and password by emailing Darby Johnson at djohnson@ppri.tamu.edu
  - A read-only version of the website is available to view by the public at: http://tfid.tamu.edu/Public/

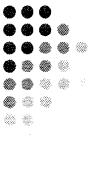
Caseflow Management for Improved System Performance

Two Models of Justice System Management

- Vertical View
- Individual
- Redundant Data Entry
- Focus on Department vs Process
- Point Finger/Place Blame

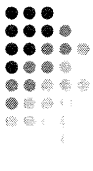
- Horizontal View
- Team
- Share & Update
- Decision Focused
- Problem Solving/Collective Responsibility

Principles of Caseflow Management



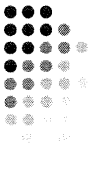
- Early Control of the Caseflow Process
- Identification of Critical Events
- Managing Time Between Events
- Monitoring to Assure Events Occur as Scheduled
- Date, Time and Purpose Certain

Critical Events



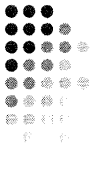
- Arrest
- Identification
- Case Screening
- Offender Interview
- Filing & Set 1st Court Appearance Date

Critical Decisions



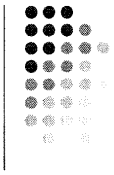
Who do we have?
How are cases screened?
Eligibility for Release?
Release Conditions and Monitoring of Conditions?
Who remains incarcerated?
First Appearance in the Court of Dispositive Jurisdiction?
Representation: Hired or Appointed?
How do we share information?

Next Steps . . .



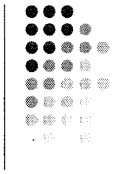
- **Vision**
- **As is . . .**
- **To be . . .**
- **Gap . . .**
- **Determine Metrics**
- **The benefits are . . .**
- **Make your case . . .**

The Criminal Justice Task Force/Executive Board/Criminal Justice Council

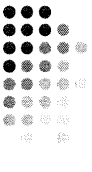


- Courts
- Prosecution
- Defense
- Law Enforcement
- Community Supervision/Social Services/Mental Health/Treatment Providers
- Pre Trail Services
- District and County Clerks
- Commissioners Court Representative

Economic Impact of A Managed Caseflow Process



- Jail Population
- Fines,Fees and Collections
- Fees for Appointed Counsel
- Fees for Court Interpretation
- Costs for Records Management: Paper, Electronic and Digital Media
- Costs for "Frequent Flyers"
- Other Costs



The best way to predict the future is to invent it.

Alan Kay

Indigent Defense Workshop
October 18-19, 2007, Austin

Small Workgroups and Introduction to County Teams

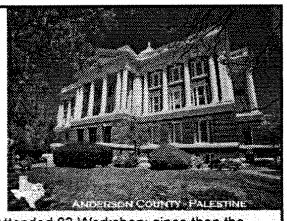
Texas Task Force on Indigent Defense
www.courts.state.tx.us/tfid
Toll free: 866.499.0656

Anderson County Pop: 55,109

Team Members:

The Honorable:
Linda Ray, County Judge

Sandy Powell, Indigent Defense Coordinator



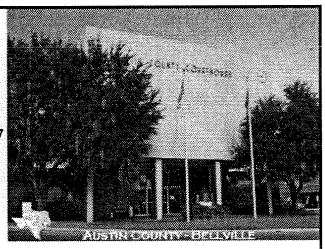
Attended 03 Workshop: since then the county streamlined its application process (combined the TFID model affidavit of indigency and magistration forms); plan was also improved

What is hoped to be learned and accomplished: ideas, tools to take back to brainstorm with leaders re new PD office; need advice on how to work with those opposed

Austin County Pop: 26,407

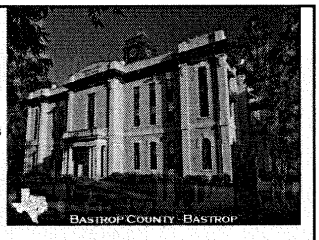
Team Members:

The Honorable:
Carolyn Bilski, Austin County Judge



First time attending; hoping to learn from blueprint re establishing a public defender office; determining indigence, legislation updates

Bastrop County Pop: 57,733

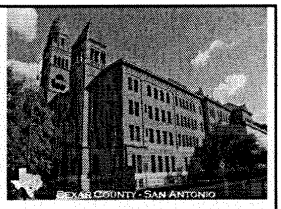


Team Member:

Patricia Carter, Internal Auditor

Attended 05 workshop: interested in indigence determination/verification

Bexar County Pop: 1,392,931



Team Members:

Laura Angelini, District Court Administrator, Juvenile

Audrey Cavazos, Sr. Grant Analyst

Melissa Fischer, District Court Administrator, Criminal

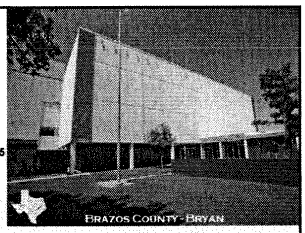
Seth Mitchell, County Judge Wolff's chief of staff

Angela Moore, Chief Appellate Public Defender

Attended 05 workshop: since then have created an appellate PD and that has since expanded to serve 4th appellate region

Hoping to take back: information on juvenile justice and indigence determination/verification

Brazos County Pop: 152,415



Team Members:

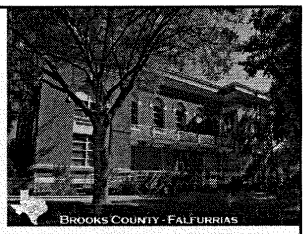
The Honorable:

Dana Zachary, Magistrate Judge

Lisa Paradis, Court Administration

First time attending: hope to take information regarding indigency determination; advice re appointments for defendants who refuse to work and handling cases where government benefits/income conflict; also appointments after private counsel hired but the request is made due to change in financial circumstances

Brooks County Pop: 7,976

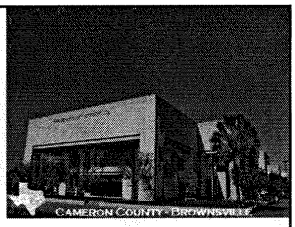


Team Members:

Juana Garza, Indigent Defense Program Director

First time attending; any and all information related to processes

Cameron County Pop: 335,227



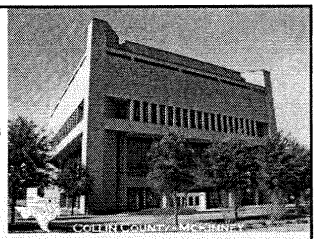
Team Members:

The Honorable:
Arturo Cisnero Nelson, 138th District Judge

Kevin Saenz, Indigent Defense Coordinator

Attended 03, 05 workshops: hoping to get information to strengthen contract system and to streamline and centralize processes

Collin County Pop: 491,675



Team Members:

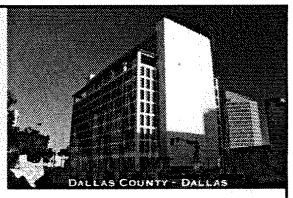
Erik Engen, Indigent Defense Coordinator

Stacee Sloan, Program Coordinator

Attended 03, 05 workshops, since then have implemented VTC arraignment for magistration; standardized income and asset verification tools making appointment and screening process less subjective; participated in UTD study re indigence study; 2007 – strategies for proficiencies re verification to become a model program

Dallas County

Pop: 2,218,899



Team Members:

The Honorables:
Jeanine Howard, Judge, 6th Criminal District Court

Angela King, Judge, County Criminal Court No. 6

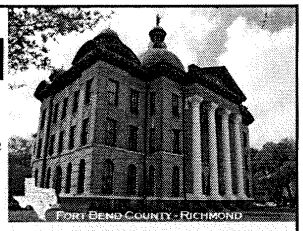
Mikah Mitchell, Criminal County Court Administrator

Dana Wrisner, Criminal District Court Administrator

Attended 03, 05 workshops: received grant funding for case management system and a mental health unit in the PD office; 07 – determining indigence, centralized wheel, pay for appointed attorneys, investigators, experts

Fort Bend County

Pop: 354,452



Team Members:

Raquel Levy, Indigent Defense Coordinator

Elvia Morales, Administrator

Attended 03 and 05 by former ID coordinator, Susan DeLaTorre, there continues to be a centralized indigent defense coordinator process; 07 - new IDC and hoping to get any and all information to increase proficiencies in process, learn about new legislation that affect those processes

Freestone County

Pop: 17,867

Team Members:

The Honorable:
Linda Grant, County Judge

Letha Willis, Criminal Clerk

First time attending: hoping to get information concerning appointment for defendants who have bonded out; what do other counties do, appoint in 3 days or wait until first appearance

Hidalgo County Pop: 569,463

Team Members:

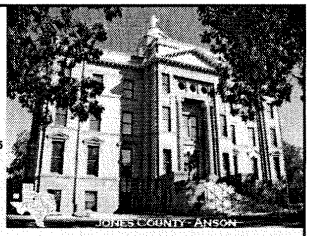
The Honorable:
Aida Salinas Flores, Judge 398th District

Jim Gonzalez, Chief Public Defender

Isidro Sepulveda, Supervisor, Indigent Defense

Attended 03, 04, 05, 06 workshops: since then established a misdemeanor public defender office; 07 – hope to get advice/direction re continuing jail overcrowding, perhaps a study; high drug case load

Jones County Pop: 20,785

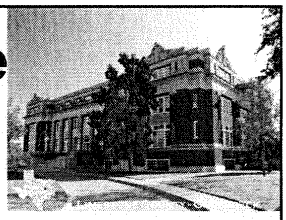


Team Member:

Gwen Bailey, Indigent Defense Coordinator

First time attending: any and all information re proficiencies

Limestone County Pop: 22,051

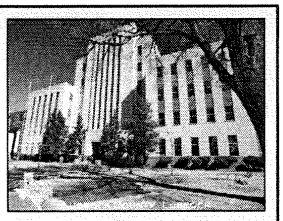


Team Members:

Karmen Hoffpauir, Indigent Defense Coordinator

First time attending; new to position; would like any and all information to learn more and improve proficiencies, specifically, If there is no paper work for any case, bonded out, MHMR, etc, do we still appoint; what are qualifications for money to appoint; reports; any new laws

Lubbock County Pop: 242,628



Team Members:

The Honorables:
Tom Head, Lubbock County Judge

Ms. Melissa McNamara, Magistrate Judge
Ms. Nacina Silva, ID Coordinator
Mr. David Slayton, Director, Court Administration

Attended 05, 06: has since received funding for the creation of a regional capital public defender office serving 85 counties; here to gain any and all new information re proficiencies

McLennan County Pop: 242,628

Team Members:

The Honorable:
Matt Johnson, Judge, 54th District Court

Cathy Edwards, Court Administrator

Ellen Watson, Asst. Court Administrator

Attended 06; received grant funding to establish a VTC between the court and jail and juvenile center; 07 interested in integrating felony and misdemeanor court appointments

Montgomery County Pop: 293,768

Team Members:

The Honorable:
Will let me know

Ms. Berenice Juan, Asst. Appointment Designee

Ms. Genoveva Perez, Director, Office of Indigent Defense

Maria Rendon, Jail Liaison

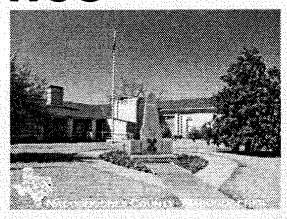
Attended 03-06 workshops; since then have implemented a centralized video magistration and arraignment, plea and sentencing process, saving time, money with regards to transport and attorney costs, as a result of 06: created a committee involved rep from each division of CJ system in co; changes: new jail liaison between sheriffs/ID great increases proficiencies; 07 want to adopt same Tarrant Co. electronic integrated justice case filing program; also info on HB1178

Nacogdoches County

Pop: 59,203

Team Members:

The Honorable:
Joe English, County Judge



First time attending; any and all information re processes; also interested in information regarding establishing a public defender

Nueces County

Pop: 313,645

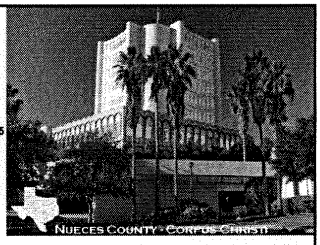
Team Members:

JoAnn Beltran, Accounts Payable

Tyner Little, Governmental Affairs

Sheri Quintanilla, Sr. Administrative Assistant

Bertha Roldan, Jail Liaison/ Court Coordinator



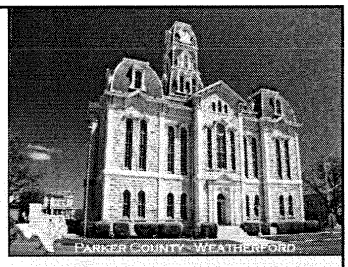
First time attending; county interested in setting up a 24/7 jail in-house magistration system; also interested in indigence determination and verification

Parker County

Pop: 88,495

Team Member:

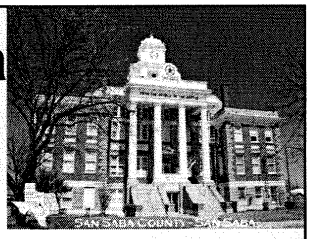
Mike Rhoten, Auditor



First time attending: on a fact gathering mission for the county concerning all aspects of process proficiencies and also determining indigence and verification processes

San Saba County

Pop: 6,186



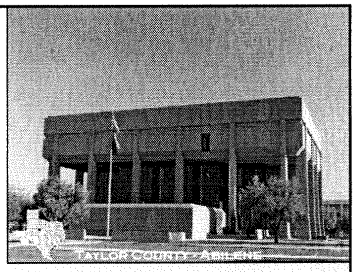
Team Member:

The Honorable:
Byron Theodosis,
County Judge

First time attending: on a fact gathering mission for the county concerning all aspects of process proficiencies and also determining indigence and verification processes

Taylor County

Pop: 126,555



Team Members:

The Honorables:
Stan Egger, County Commissioner

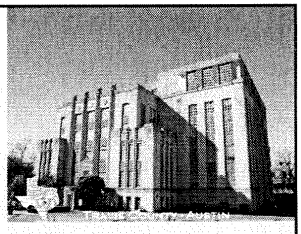
Chuck Statler, County Commissioner

Ms. Jennifer DeLeon, ID Coordinator

Attended 05, 06; 07 – here to get and all information re proficiencies

Travis County

Pop: 812,280



Team Members:

Cathy McClaugherty, Research Assistant

Jeanette Kinard, Director, MH Public Defender

Erin Nelson, Research Assistant

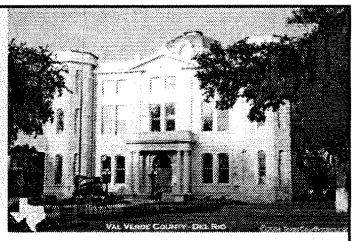
Kimberly Pierce, Planning Manager

Melissa Shearer, Assistant Attorney, MH Public Defender

Valerie Whiting, Case Management Coordinator, MH Public Defender

Attended 04, 05: technology improvements, intake, attorney kiosks re appointments; established mental health PD, first in nation; 07 – hope to get more information re jail diversionary programs; determination of indigence, MH in corrections facilities, crisis intervention

Val Verde County



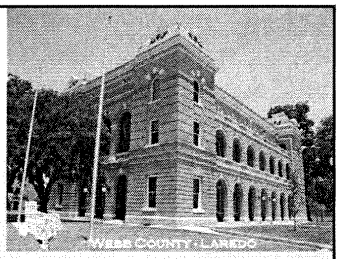
Pop: 44,856

Team Members:

The Honorable:
Ramiro Ramon, Commissioner

First time attending; established a regional public defender office with FY06 discretionary grant…now in its second year; 07 attending to get any and all information to increase proficiencies

Webb County



Pop: 193,117

Team Members:

The Honorables:

Joe Lopez, Judge, 49th District

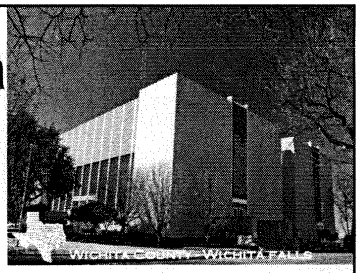
Frank Sciaraffa, Commissioner

Attended 04, 05; 07 – here to get any and all information re proficiencies

Hugo Martinez, Chief Public Defender

Cornell Mickley, Director, Indigent Defense Services

Wichita County



Pop: 131,664

Team Members:

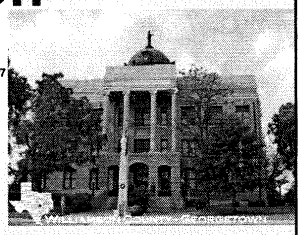
Tony Odiorne, Public Defender

Sandy Miller, Indigent Defense Coordinator

Attended 03, 04, 05; PD software and VTC; 07; indigence determination/verification information and examples of how other counties do; any and all information that may be used to increase proficiencies

Williamson County

Pop: 249,967



Team Members:

The Honorables:
Don Higginbotham, Judge, County Court at Law #3

Stephen Ackley, County Attorney, Civil Litigation Chief

Doyle "Dee" Hobbs, Jr., County Attorney, Criminal Court Chief

Tom Eastes, Magistrate Judge

Allison Garner, Accountant

Lisa Moore, Accounting Specialist

Amanda Vega, Court Coordinator

Attended 05, have direct file felony system; also misdemeanor; have mental health initiative; 07 – here to get any all new information re proficiencies

INDIGENT DEFENSE WORKSHOP REFERENCE SHEET

County:_____ Completed by: _____
Team member

1. How many new **felony indictments were filed** in the district courts of your county in August, 2007?	
2. How many new **Class "A" & "B" misdemeanor informations** were filed in your county courts in August 2007?	
3. Identify by name and office the person who performs the art. 15.17 magistrate's hearings.	
4. Identify by name and office or position the person who determines indigence.	
5. Identify by name and office or position the person who appoints attorneys.	
6. How many defendants received court appointed attorneys in the district courts in August, 2007?	
7. How many defendants received court appointed attorneys in the county courts in August, 2007?	
8. How many indigent defendants remained in jail until their first appearance in county court?	
9. In district court?	

10. How many days from arrest to appearance before a magistrate?	
11. What kind of information is gathered for the indigence hearing? By whom?	
12. Does the arresting officer provide the magistrate with any information regarding the reason for the arrest?	
13. How many days from magistrate appearance to appointment of counsel?	
14. How many days from arrest to receipt of an offense report by the prosecutor?	
15. Is the time different for each law enforcement agency (i.e., DPS, sheriff, constable, city police)?	
a. Name of agency: Time from arrest to report.	
b. Name of agency: Time from arrest to report	
c. Name of agency: Time from arrest to report.	
d. Name of agency: Time from arrest to report.	
e. Name of agency: Time from arrest to report.	

16. How many days from receipt of offense report to preparation of misdemeanor complaint?	
17. How many days from preparation to filing with clerk?	
18. How many days from receipt by clerk to assignment of a case number?	
19. How many days from receipt by court clerk to first appearance before the judge of the court with jurisdiction to try the case?	
20. Daily cost to house and feed defendant in the county jail.	

Instructions: At the end of the Small Workgroup Session, Team Leader completes this Action Plan (in duplicate), places one inside envelope; self-addresses the envelope; all envelopes will be collected at the conclusion of the workshop and will be mailed in three months.

90-DAY ACTION PLAN FOR _____ COUNTY

Goal: Strategies for Efficient Implementation of Indigent Defense Practices

Action List activities or steps to be taken and what you want to accomplish.	**By Whom** Identify person who will be responsible to coordinate activities or steps and report back to Task Force. List by name and title persons to include in activity.	**Time Frame** Set specific time table to accomplish key events.