



HENDERSON COUNTY FAIR DEFENSE PLAN FOR THE DISTRICT AND COUNTY COURTS AT LAW

11/1/2023

PREAMBLE AND ORDER ADOPTING PLAN

11/1/2023

The District Court Judges and County Court at Law Judges of Henderson County, Texas (hereinafter “Judges”) are committed to upholding the legal rights of the accused, while at the same time serving as good stewards of the public funds that are expended in the justice system.

This document is the Henderson County Fair Defense Plan for the District Courts and County Courts at Law (“Plan”), and is adopted to assure compliance with the Texas Fair Defense Act and related statutes. Accordingly, pursuant to the requirements of the Texas Code of Criminal Procedure, Arts. 1.051, 26.04, 26.047, 26.05, 26.052, and all other relevant statutes, the Judges hereby adopt these rules for the timely and fair appointment of counsel for indigent accused persons in Henderson County effective 11/1/2023.

This Plan supersedes all other plans and standards previously adopted by the Judges.

I. PROMPT MAGISTRATION

11/1/2023

A. Arresting Officer’s Responsibilities

1. The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested. [Art. 14.06(a), CCP]
 - a) Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.

B. Prompt Magistration

1. The accused must be brought before the magistrate without necessary delay, but within 48 hours of arrest. [Art. 14.06(a), CCP]
2. If an accused person, arrested for a misdemeanor, without a warrant, has not had probable cause determined by a magistrate within 24 hours of arrest, that person must be released on a

surety bond in an amount of no more than \$5,000, on a personal bond in an amount of no more than \$5,000 [Art. 17.033(a), CCP], or without bail upon order by the magistrate with an affirmative finding of “no probable cause.”

3. If an accused person, arrested for a felony, without a warrant, has not had probable cause determined by a magistrate within 48 hours of arrest, that person must be released on a surety bond of no more than \$10,000, or on a personal bond in an amount of no more than \$10,000, [Art. 17.033(b), CCP], or without bail upon order by the magistrate with an affirmative finding of “no probable cause.”
4. If requested by the State, a magistrate may postpone the release of the accused for not more than 72 hours after the accused's arrest if a probable cause determination has not been made, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure. [Art. 17.033(c), CCP]
5. All accused persons initially arrested in another county on a Henderson County warrant for a Class B misdemeanor or higher offense shall be presented before a magistrate within 24 hours of that accused’s arrival at the Henderson County Jail.

C. Accused’s Financial Affidavit & Application for Appointed Counsel

1. For accused persons appearing in the Henderson County Jail, the magistrates shall offer arrestees eligible for consideration for appointment of court appointed counsel an opportunity to complete an “Accused’s Financial Affidavit & Application for Appointed Counsel” prior to Magistration or as soon as practicable.
2. This document will contain such information as may be necessary to make a determination of the accused’s ability to pay for an attorney.
3. The arrestee will be provided reasonable assistance needed to complete the forms necessary for the accused to request appointment of an attorney.[Art. 15.17(a), CCP]
4. If appointed counsel is requested, at the time of Magistration the accused will certify the accuracy of their affidavit for the purpose of determining eligibility for appointed counsel.

D. Use of Interpreters

1. The Magistrate should determine if the accused can speak and understand English, or if the accused is deaf, and conduct any related proceedings in a manner consistent with Art. 38.30 & 38.31 CCP. [Art. 15.17(a), CCP]
2. If it appears that an arrested person cannot understand, speak, read, or write the English language, the magistrate shall appoint an interpreter to interpret the proceedings, including a qualified telephone interpreter.

3. If it appears that an arrested person is deaf, the magistrate shall appoint a qualified interpreter to interpret the proceedings in any language that the person can understand, including but not limited to sign language.

E. Magistrate's Duties

1. The Justices of Peace of Henderson County shall conduct all magistration hearings unless a District Court Judge, County Court at Law Judge or the County Court Judge elects to conduct a magistration.
2. In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.
3. If probable cause has not been determined by a magistrate, the provisions outlined above in Subsection B shall apply.
4. If probable cause is found to exist, or the individual was arrested pursuant to an arrest warrant, bench warrant, capias, or other order of magistrate or judge, then, pursuant to Art. 15.17, TCCP, the magistrate shall:
 - a) Record the date and time the accused was arrested and the date and time when they were brought before the magistrate;
 - b) Inform the defendant of the charge(s) against him or her and any affidavit filed therein;
 - c) In clear language, inform the accused of the following rights:
 - i. Right to retain counsel;
 - ii. Right to remain silent;
 - iii. Right to not make a statement and if he makes a statement, it can be used against him or her in court.
 - iv. Right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - v. Right to terminate the interview at any time;
 - vi. Right to an examining trial if charged with a felony offense; and
 - vii. Right to request the appointment of counsel if they are indigent and if the accused cannot afford an attorney, and procedures necessary for requesting such appointment.
 - d) Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel;
 - e) Inquire as to whether accused is requesting that counsel be appointed;

- f) Provide accused persons requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing the required forms is provided to the accused at the time of the magistrate's hearing; and
- g) If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.

II. RIGHT TO COUNSEL

11/1/2023

A. Informing the Accused & Attorney Election

1. Regarding the right to the right to counsel, a record must be made (and shall be preserved as required by Art. 15.17, CCP) that:
 - a) The accused was informed of their right to counsel and their right to request appointment of counsel if unable to afford counsel, [Art. 1.051(f-2), 15.17(a), 15.17(e)(1), CCP];
 - b) The accused was informed of the procedures for requesting a court appointed attorney;
 - c) The Magistrate asked whether the accused wants to request a court appointed attorney, [Art. 15.17(e)(2), CCP]; and
 - d) Whether or not the accused requested an attorney be appointed. [Art. 15.17(e)(3), CCP]
2. If the accused advises the magistrate that they intend to hire their own attorney or declines to complete an "Accused's Financial Affidavit & Application for Appointed Counsel", the magistrate shall advise the accused of the procedures for making a request for a court appointed attorney at any time after the initial magistration. [1 TAC §174.51]
3. A request for a court appointed attorney by an accused person incarcerated in the Henderson County Jail for a Class B misdemeanor or higher offense along with the "Accused's Financial Affidavit & Application for Appointed Counsel" shall be forwarded to the County Judge's Indigent Defense Coordinator within 24 hours after the request was made.
4. If the accused advises the magistrate that they are requesting a court appointed attorney, the magistrate shall:
 - a) Record the request on the magistration form;

- b) Request the accused certify the accuracy of their Financial Affidavit & Application for Appointed Counsel under oath;
- c) Obtain, under oath, such other information as may be necessary to a determination of the accused's ability to pay for an attorney;
- d) Assist the accused in completing any paperwork necessary to request the appointment of an attorney; and
- e) The Court or their designee shall, within 72 hours of receipt of the application, appoint or deny the request for court appointed counsel. [Art. 1.051(c) & 15.17(a), CCP]

III. BAIL PROCEDURES AND REPORTING

11/1/2023

A. Setting Bail and Conditions

1. If bail is allowed by law and has not been set by the court or magistrate issuing a warrant, the magistrate shall set the amount of bail and any conditions of bond for the accused, in accordance with The Texas Constitution, Articles. 15.17 & 17.028 of the Texas Code of Criminal Procedure, and all other applicable provisions of law.
2. If a defendant is charged with a felony while currently on bail in a pending indicted case for another felony in Henderson County, the defendant may be released on bail only by the court before which the case for the previous offense is pending.
3. If a defendant is charged with a felony while released on bail for another felony in another county, electronic notice of the charge must be promptly given to the out of county court in which the defendant is currently on bail for purposes of reevaluating the bail decision, determining whether any bail conditions were violated, or taking any other applicable action.

B. Public Safety Reporting System

1. The magistrate considering the release on bail of a defendant charged with an offense punishable as a Class B misdemeanor or any higher category of offense shall order that:
 - a) A Public Safety Report with respect to the defendant be prepared; and
 - b) The Public Safety Report be provided to the magistrate as soon as practicable but not later than 48 hours after the defendant's arrest.
2. A magistrate may not order the Sheriff or Sheriff's Office personnel to prepare a public safety report.

3. The magistrate may personally prepare a Public Safety Report before or while making a bail decision using the Public Safety Report System (PSRS) developed under Article 17.021, Texas CCP.
4. The magistrate shall:
 - a) Consider the public safety report before setting bail; and
 - b) Promptly but not later than 72 hours after the time bail is set, submit the bail form described by Section 72.038, Government Code, in accordance with that section.
5. The magistrate may, but is not required to, order, prepare, or consider a Public Safety Report in setting bail for a defendant charged only with a misdemeanor punishable by fine only or a defendant who receives a citation under Tex. CCP Article 14.06(c). If ordered, the report shall be prepared for the time and place for an appearance as indicated in the citation.
6. A magistrate may set bail for a defendant charged only with an offense punishable as a misdemeanor without ordering, preparing, or considering a public safety report if the Public Safety Report System is unavailable for longer than 12 hours due to a technical failure at the Office of Court Administration of the Texas Judicial System.

IV. INDIGENT DEFENSE COORDINATORS

11/1/2023

A. Multiple Indigent Defense Coordinators

1. The Court Coordinators for the District Courts, County Courts of Law and the County Court of Henderson County shall perform the duties of “Indigent Defense Coordinators”.

B. Responsibilities of the Indigent Defense Coordinators

2. Each Indigent Defense Coordinator is responsible for receiving applications for court-appointed counsel, considering applicant financial eligibility, reporting requests for court-appointed counsel to the appropriate court, contacting the attorney appointed to represent the accused, verifying initial attorney-client contact, and other matters which would ensure compliance with the law.
3. To accomplish these responsibilities, the Indigent Defense Coordinators shall:
 - a) Receive applications from defendants under indictment or charged by information who are not incarcerated;
 - b) Make recommendations to the appropriate judge as to whether applicants meet the financial eligibility requirements related to court-appointed counsel;

- c) Notify attorneys who are appointed by the court as to whom they have been appointed to represent and verify that initial client-attorney contact occurred in a timely manner;
 - d) Maintain the rotation system for each court's appointment list and monitor the frequency and good cause reasons for appointing out of order;
 - e) Monitor the appointment lists, CLE and reporting requirements of attorneys on the list(s);
 - f) Maintain a summary of appointment data for the court, including:
 - i. Requests for counsel
 - ii. Attorney appointments
 - iii. Denials of applications
 - g) Perform the responsibilities set out in this section in a timely manner, ensuring that attorneys are appointed within three (3) working days of the date the request for appointed counsel is made.
4. In addition to the above responsibilities, the Indigent Defense Coordinator for the County Court shall be responsible for the following additional duties:
- a) Regularly monitor the inmate population of the Henderson County Jail, assisting inmates in completing the application requesting court-appointed counsel;
 - b) Receive applications from both inmates confined in the Henderson County jail and those who are confined on Henderson County warrants, in other counties, if counsel is requested;
 - c) Act as the Henderson County liaison with the other Henderson County Indigent Defense Coordinators, Texas Indigent Defense Commission (TIDC) and other counties;

V. ELIGIBILITY FOR APPOINTMENT OF COUNSEL (DETERMINATION OF INDIGENCE)

11/1/2023

A. Definitions

1. “**Indigent**” means a person who is not financially able to employ counsel.
2. “**Net Household Income**” means the accused's income and any spousal income that is available to the accused, and includes:

- a) Take-home wages and salary (gross income earned less any deductions required by law or as a condition of employment);
 - b) Net self-employment income (gross income minus business expenses and any deductions required by law or as a condition of operating the business);
 - c) Regular payments from government income maintenance program, alimony, child support, public or private pensions, veterans benefits, training stipends, military family allotments;
 - d) Food and/or rent received in lieu of wages, money which is received from tax refunds, gifts, one-time insurance payments or compensation for injury or property loss; and
 - e) Income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts.
3. **“Non-exempt assets and property”** include, but are not limited to, cash on hand, savings, checking accounts, stocks, bonds, certificates of deposit, and accounts at financial institutions.
 4. **“Household”** means all individuals who are legal dependents of the accused.
 5. **“Legal Dependents”** are individuals under the age of 18 or disabled individuals over the age of 18 for whom the accused has financial responsibility.

B. Determination for Eligibility of Appointment

1. Indigence Application:
 - a) An accused person’s request for a court appointed attorney shall include a completed application and any requested supporting documentation (i.e. Accused’s Financial Affidavit & Application for Appointed Counsel).
2. Factors Considered:
 - a) To determine if an accused person is indigent, the judge or designee may consider the accused’s net income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the accused.[Art. 26.04 (m), CCP].If a finding of indigency is made, counsel shall be appointed.
3. Factors not Considered:
 - a) In determining the accused’s indigence status, the appointing authority shall not consider the following:

- i. Income of a victim of domestic violence or the income of a parent/guardian of a victim of domestic violence shall not be considered. Crimes of domestic violence include any assault on a child that is a member of the accused's household or assault on any adult who is a member of the accused's household.
- ii. The Court or the Court's designee may not consider whether the accused has posted or is capable of posting bail, except to the extent that it reflects the accused's financial circumstances.

C. Standard for Indigence

1. Indigence Presumed:

- a) An accused is presumed indigent if any of the following circumstances are present:
 - i. At the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or public housing;
 - ii. The accused is currently serving a sentence in a correctional facility, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.

2. Income and Asset Test:

- a) If an accused does not qualify for appointment of an attorney based on subsection 1., above, an accused person is considered indigent if they meet either of the following criteria, and the asset test:
 - i. The accused's household income is at or below 125% of the latest poverty guidelines established and revised annually by the United States Department of Health and Human Services, and used for analysis for the purpose of this plan; or
 - ii. The difference between the accused's monthly net household income and reasonably necessary expenses is less than \$500. Reasonably necessary expenses should include but are not limited to :rent or mortgage, food/groceries, child support paid, car payment, car insurance, health insurance, medical bills, and utilities (water, electric, gas, phone); and
 - iii. The accused's non-exempt assets do not exceed \$5,000.00 for felony cases, or \$2,500.00 for misdemeanor cases.

3. Special Circumstances:

- a) An accused person who does not meet the standard for indigence above may still qualify for a court appointed attorney if the Court or its designee determines special circumstances exist.
 - i. The Court or designee may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses.
 - ii. The Court may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases, whether the accused has retained counsel in related legal matters (such as ALR or forfeitures), and any efforts the accused has made to retain an attorney.

4. Transfer of Property:

- a) If the accused has transferred property after the offense date, the Court shall determine the reason for the transfer of the property and whether adequate monetary consideration was received.
- b) If adequate monetary consideration was not received, the Court shall presume that the transfer was made for the purpose of establishing eligibility for court appointed counsel, unless the accused furnishes clear and convincing evidence that the transfer was made exclusively for another purpose.
- c) If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration and the property is re-conveyed to the accused or an adjustment is made by which the accused receives full value, the accused shall, if otherwise qualified, be eligible to receive court appointed counsel.

D. Indigence Determination

1. The appointing authority can require the accused to respond to questions about the accused's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
2. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 - a) Determining if accused is (or is not) indigent; or
 - b) Impeaching direct testimony of accused regarding the accused's indigence.
3. A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in these rules and contained in Code of Criminal Procedure article 1.051.

4. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.
5. An accused's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the accused, the accused's attorney, or the attorney representing the state. The accused's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
 - a) Evidence of a material change in the accused's financial circumstances, as a result of which the accused does not meet any of the standards for indigence contained in these rules; or
 - b) Additional information regarding the accused's financial circumstances that shows that the accused does not meet any of the standards for indigence contained in these rules.
6. If an accused previously determined to be indigent is subsequently determined not to be indigent, the attorney shall be compensated by the county according to the fee schedule for hours reasonably expended on the case.

E. In-Custody Defendants previously Determined Ineligible for Appointment

1. If an accused person remains in custody for 5 days, the County Court Indigent Defense Coordinator will review the Defendant's situation. Based on this review, an attorney will be appointed if appropriate.

F. Duration of Indigence Finding

1. An accused determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the accused's financial circumstances occurs.

G. Investigators and Expert Testimony

1. The guidelines established for the appointment of counsel also apply to the reimbursement of expenses incurred for the purpose of investigation or expert testimony, as approved by the Court.

VI. REIMBURSEMENT BY DEFENDANT FOR COST OF LEGAL SERVICES PROVIDED

11/1/2023

A. Provisions Governing Reimbursement

1. If the Court determines that an accused person 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 accused to pay during the pendency of the charge or, if convicted, as court costs the amount that it finds the accused is able to pay.

2. An accused person may be required to reimburse Henderson County in whole or in part for the cost of legal services provided, as set forth in Article 26.05(g), (g-1) & (h) of the Texas Code of Criminal Procedure.
3. During or immediately after imposing a sentence in a case in which the defendant entered a plea in open court as provided by Code of Criminal Procedure Article 27.13, 27.14(a), or 27.16(a), the Court shall conduct a hearing in accordance with Article 42.15 to determine whether a defendant should reimburse the county for court-appointed attorney's fees.

VII. COURT-APPOINTED/CONTRACT ATTORNEY QUALIFICATIONS

11/1/2023

A. Appointment Lists

1. The Judges of Henderson County shall establish attorney appointment lists for all categories of offenses. Attorneys may apply for and be placed on multiple lists. To be eligible for an appointment list, an attorney must meet the following minimum requirements:

B. Misdemeanor and State Jail Felony Requirements

1. An attorney must be a licensed practicing attorney and a member in good standing of the State Bar of Texas;
2. An attorney shall complete a minimum of 8 hours of CLE in the area of criminal law and procedure each year. All attorneys on the appointment list must file a certificate with the County Court's Indigent Defense Coordinator's office each year attesting to completion of the required CLE or submit documentation showing that the attorney is certified as a specialist in criminal law. Continuing legal education activity completed with-in a one year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirements for the initial year. Continuing legal education activity completed during any reporting period in excess of the minimum of 8 hours for such period may be applied to the following period's requirement. The carryover provision applies to one year only. The first reporting period began April 27, 2009, and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing. Current certification in criminal law by the Texas Board of Legal Specialization is considered compliance to the requirement for continued legal education.
3. An attorney must also maintain the following:
 - a) An office capable of receiving email, fax, and telephone calls;

- b) A local telephone and cellular number capable of being called without a long distance charge;
 - c) Their primary office location in Henderson County or have significant professional contact with Henderson County;
 - i. Attorneys without a primary office location in Henderson County will be reviewed on a case by case basis.
 - ii. Factors the judges will consider in reviewing attorneys for inclusion on the list who do not maintain their office in Henderson County include: (not exclusive)
 - 1) The attorney's primary office location;
 - 2) The attorney's access to a copier, printer, technology and an office space or a client meeting location in Henderson County;
 - 3) The attorney's professional relationship with Henderson County attorneys;
 - 4) The attorneys past contact (if any) with the Henderson County justice system.
4. An attorney must have the ability to produce typed motions and orders;
 5. An attorney shall be familiar with the Texas Rules of Evidence and shall have knowledge of the use of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence;
 6. An attorney shall file a request for re-certification between January 1 and January 31 of each year to remain on the list(s);
 7. An attorney shall notify the judges promptly, in writing, of any matter that would disqualify the attorney by law, regulation, rule or under these guidelines from receiving appointments to represent indigent defendants.

C. First, Second and Third Degree Felony Requirements

1. An attorney must meet the general requirements for Misdemeanor and State Jail Felony appointments, and
 - a) Have at least 2 years' experience in criminal law;
 - b) Have experience as 1st or 2nd chair in at least 3 criminal cases tried to verdict before a jury. The styles and cause numbers of these cases must be listed in the application.

D. Capital Case Requirements

1. Lead trial counsel must be on the list of attorneys approved by the local selection committee of the 10th Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
2. Second chair counsel must be on the list of attorneys approved by the local selection committee of the 10th Administrative Judicial Region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
3. Appellate counsel must be on the list of attorneys approved by the local selection committee of the 10th Administrative Judicial Region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

E. Capital Cases in which the Death Penalty is Sought

1. An attorney appointed as lead counsel in a death penalty case must meet the requirements of Article 26.052(d) of the Code of Criminal Procedure and comply with all requirements of the First Administrative District.

F. Appellate Attorney Qualification Requirements

1. An attorney must meet at least one of the following criteria:
 - a) Currently board certified in criminal law or criminal appellate law by the Texas Board of Legal Specialization; or
 - b) Have personally authored and filed at least three criminal appellate briefs or post-conviction writs of habeas corpus; or
 - c) Have submitted an appellate writing sample approved by a majority of Judges; or
 - d) Have worked as a briefing clerk of an appellate court for a period of at least one year; or
 - e) Have served as a justice of a court of appeals in this State for at least one year.

G. Emergency Appointment:

1. If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The authority making an appointment shall give priority to an attorney with experience in criminal law.

H. Approval for Appointment Lists and Involuntary Removal

1. Only attorneys who request consideration and receive approval will be placed on the attorney rotation list and considered for appointment.
2. Attorneys will be selected based on the order in which their name appears on the rotation list.
3. The Judges of Henderson County shall set standards for counsel for those attorneys who request placement on the rotation list and receive appointments to represent indigent defendants in Henderson County.
4. An attorney must be approved for each list by the Judges.
5. A judge may bar an attorney from appointments in their individual court, and the judges may remove an attorney from the list(s) if the attorney intentionally or repeatedly does not fulfill the duties required by law, *Attorney's Creed*, cannons, local rules, or the provisions of this plan.
 - a) An attorney removed from the list(s) will be given notice of the removal. The decision of the judges on removal from the list(s) is final and may not be appealed.

VIII. CONTRACT DEFENDER PROGRAM

11/1/2023

A. Definitions

1. **Appointing Authority.** The appointing authority is the:
 - a) Judge or judges who have authority to establish an indigent defense plan in Henderson County and approve attorneys to represent indigent defendants in criminal cases under Article 26.04, Code of Criminal Procedure; and/or
 - b) Juvenile Board of Henderson County that has authority to establish an indigent defense plan and approve attorneys to represent indigent respondents in juvenile cases under §51.102, Family Code.
2. **Contract Defender Program.** Contract defender program means a system under which private attorneys, acting as independent contractors and compensated with public Henderson County funds, are engaged to provide legal representation and services to a group of unspecified indigent defendants who appear before a particular court or group of courts.
3. **Contracting Authority.** The contracting authority shall mean Henderson County, Texas, acting by and through her duly elected County Judge and Commissioner's Court with the authority to conclude a contract and to obligate funds for the provision of indigent defense services.

4. **Contract Attorney.** The contract attorney is an attorney bound by contract to represent indigent defendants charged with class B misdemeanor and above criminal cases in Henderson County.

B. Application Process

1. The appointing authority (Judges) shall solicit and select contractors in accordance with the procedure governing alternative appointment programs contained in Article 26.04, Code of Criminal Procedure.
2. **Notification.** The notification of the opportunity to apply (NOA) to be a contractor shall be distributed in a manner that reasonably covers all practicing members of the bar within the county or other region designated by the appointing authority. The notification shall inform attorneys of all requirements for submitting applications.
3. **Opportunity to Respond.** All potential contractors shall have the same opportunity to respond to the NOA and be considered for the award of a contract. All potential contractors shall have at least 30 days from the issuance of the NOA to respond. The appointing authority may provide for less than 30 days to respond if a contract needs to be awarded on an emergency basis. A contract awarded on an emergency basis may not exceed 90 days in duration.
4. **Application.** All applications must be submitted in writing and shall be maintained by the appointing authority or contracting authority in accordance with the Texas State Library and Archives Commission Retention Schedule for Local Records-Local Schedule GR.

C. Application for Contract Attorney Review Process and Qualifications

1. Following the review of all applications, the appointing authority shall by a majority vote select the Contract Attorney(s), specify the types of cases each Contract Attorney is qualified to handle, and authorize the contracting authority to enter into a contract.
2. The selected Contract Attorneys must meet the attorney qualification requirements contained in this Indigent Defense Plan for the level of cases the Contract Attorney has been selected to handle, adopted pursuant to Article 26.04, Code of Criminal Procedure, and in addition to those requirements, meet and agree to the following:
 - a) Agree to attend all court settings in the contracting court;
 - b) Refuse any appointment or client representation that would interfere with the contracting attorney's duties under the contract;
 - c) Refrain from entering into a contract as a Contract Attorney with another court for indigent client representation; and
 - d) Maintain their residency or principal office location in Henderson County.

- i. A principal office is defined as the commercial location where the attorney conducts the majority of his or her criminal law practice, and does not include a post office address.
3. The appointing authority shall consider at least the following factors when evaluating applications:
 - a) Experience and qualifications of the applicant;
 - b) Applicant's past performance in representing defendants in criminal cases;
 - c) Applicant's disciplinary history with the state bar;
 - d) Applicant's ability to comply with the terms of the contract; and
 - e) Cost of the services under the contract.

D. Awarding the Contract

1. In accordance with Article 26.04(h), Code of Criminal Procedure, the contracting authority (County Judge and Commissioner's Court) may approve the recommended Contract Attorney(s) and enter into a contract for services.
2. The contracting authority (County Judge and Commissioner's Court) shall enter into a contract only if it complies with the standards contained in Texas Administration Code, Title I, Part 8, Chapter 174, and all applicable law governing professional services contracts entered into by counties.

E. Required Elements of the Contract

1. The following components shall be included in a Contract for Indigent Services and shall serve as the basis for the NOA in accordance with Texas Administration Code, Title I, Part 8, Chapter 174:
 - a) **Parties:** Identify the appointing authority, contracting authority, and contractor;
 - b) **Term of Contract:** The contract shall specify the term of the contract, including any provision for renewal, and a provision for terminating the contract by either party;
 - c) **Scope of Contract:** The contract shall specify the categories of cases in which the contractor is to provide services;
 - d) **Minimum Attorney Qualifications:** The contract shall specify minimum qualifications for attorneys covered by the contract and require such attorneys to

- maintain the qualifications during the term of the contract. The qualifications shall equal or exceed the qualifications provided in the indigent defense procedures adopted pursuant to Article 26.04, Code of Criminal Procedure. If a contract covers services provided by more than one attorney, qualifications may be graduated according to the seriousness of offense and each attorney shall be required to meet and maintain only those qualifications established for the offense level(s) for which the attorney is approved to provide defense services;
- e) **Duration of Representation:** The contract shall specify that the contractor has the responsibility to complete all cases once representation is commenced during the term of the contract, unless an attorney covered by the contract is relieved or replaced in accordance with Article 26.04(j)(2), Code of Criminal Procedure;
 - f) **Substitution of Attorneys:** The contract shall identify the attorney(s) who will perform legal representation in each category of case covered by the contract and prohibit the substitution of other attorneys without prior approval by a majority of the appointing authority. Nothing in the contract shall prohibit an attorney covered by the contract from being relieved or replaced in accordance with Article 26.04(j)(2) of the Code of Criminal Procedure;
 - g) **Caseload Limitations:** The contract shall set the maximum number of cases or workload each attorney may be required to handle pursuant to the contract, which may include a maximum caseload not exceeding the annual full-time equivalent caseload established by the Guidelines for Indigent Defense Caseloads and the Juvenile Addendum and Appellate Addendum: Guidelines for Indigent Defense Caseloads, published by the Texas Indigent Defense Commission pursuant to House Bill 1318, 83rd Texas Legislature;
 - h) **Standards of Representation:** The contract shall require that the contractor provide zealous legal representation to all clients in a professional, skilled manner consistent with all applicable laws and the Texas Disciplinary Rules of Professional Conduct;
 - i) **Conflicts of Interest:** The contract shall state a policy to assure that the contractor and its attorneys do not provide representation to defendants when doing so would involve a conflict of interest;
 - j) **Investigators and Experts:** The contract shall specify how investigation services and experts that are necessary to provide competent representation will be made available in a manner consistent with Article 26.05(d), Code of Criminal Procedure; and
 - k) **Compensation and Payment Processes:** The contract shall set the amount of compensation to be paid to the contractor and the designated method and timing of payment. The contract shall state that the contractor shall be required to submit an itemized fee voucher. The voucher must be approved by a member of the appointing authority prior to being forwarded to the county financial officer for approval and

payment. The contract shall also specify how a contractor is to be compensated for cases assigned but not disposed within the term of the contract as provided in subchapter E. of this section.

F. Additional Requirements for Contract Attorneys

1. Attorneys under contract by the appointing authority shall meet all the requirements for the respective level of case above, and;
 - a) Agree to attend all court settings in the contracting court;
 - b) Refuse any appointment or client representation that would interfere with the contracting attorney's duties under the contract;
 - c) Refrain from entering into a contract with another court for indigent client representation; and
 - d) Maintain their residency or primary office location in Henderson County.
 - i. A principal office is defined as the commercial location where the attorney conducts the majority of his or her criminal law practice, and does not include a post office address.

IX. STANDARDS OF CONDUCT & DUTIES OF APPOINTMENT LIST AND CONTRACT ATTORNEYS

11/1/2023

A. Professional Competence and Ethical Compliance

1. Any attorney seeking to be included on the list for indigent appointments shall comply with all requirements of the State Bar of Texas and the Judges of Henderson County for minimum continuing legal education. Each attorney shall annually provide an affidavit to the Judges that he or she has successfully fulfilled the CLE requirements. Each attorney shall further comply with the Canon of Ethics and Rules of Discipline of the State Bar of Texas. Each attorney shall conduct his business in a manner that would not demean the practice of law.
2. An attorney should not, directly or indirectly, suggest that a defendant owes him anything in payment beyond the fee paid by the County, nor shall he collect any fees, favors, or gifts in exchange for legal services rendered.

B. Duties of Appointed Counsel

1. Appointed Counsel shall:

- a) Make every reasonable effort to contact the defendant by the end of the first working day after the date the attorney is notified of the appointment. in person or via telephone;
- b) Interview the defendant as soon as practicable after the attorney is appointed;
- c) Represent the defendant until:
 - i. Charges are dismissed;
 - ii. The defendant is acquitted; or
 - iii. Appeals are exhausted; or the attorney is relieved of his duties by the court or replaced by other counsel with court approval.
- a) Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
- b) Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- c) Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- d) Be prepared to try the case to conclusion either with or without a jury;
- e) Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
- f) Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case; and advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client is making appropriate decisions about the case;
- g) Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics;
- h) Manage attorney's workload to allow for the quality representation of defendants and the execution of the responsibilities listed in these rules in every case. Attorneys with caseloads in multiple counties, which result in multiple requests for continuances, failures to appear at Henderson County docket calls, or inability to timely dispose of cases will not be considered qualified for the Henderson County list(s).
- i) An attorney shall submit, by October 15th each year, a statement that describes the percentage of the attorney's practice time that was dedicated to work based on

appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the online form to the Texas Indigent Defense Commission.

- j) An attorney shall be provided a copy of this plan upon being approved for inclusion on the list(s) of attorney's eligible for appointment or upon executing a contract for services as a Contract Attorney. This plan is also available online on the County's website and in hard copy or digital copy by email upon request to the County Court Indigent Defense Coordinator. All attorneys under contract or on the list are considered to have actual or constructive knowledge of this plan and are subject to its duties and requirements.

X. APPOINTMENT OF COUNSEL

11/1/2023

A. Prompt Appointment of Counsel

1. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the third working day after the date on which the appointing authority receives the defendant's request for court appointed counsel.
 - a) Working day means Monday through Friday, excluding official Federal, State holidays or County holidays. Counsel must be appointed whether or not a case has been filed in the trial court [Art. 1.051(c-1), CCP].
2. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

B. Appointment Authority

1. Misdemeanor cases:
 - a) If no case has been filed in the trial court, the appointing authority for misdemeanors is the judges of the County Courts at Law and the County Court.
 - b) The Judges of the Statutory and Constitutional Courts shall make the appointment of counsel to all defendants who meet the financial eligibility requirements of indigence and are charged with misdemeanor offenses only.
2. Felony cases:
 - a) If no case has been filed in the trial court, the appointing authority for felonies is the Judges of the District Courts. The Judges of the District Courts shall make

appointments of counsel to all defendants who meet the financial eligibility requirements of indigence, and who are charged with felony offenses and those defendants who are charged with felony offenses in addition to misdemeanor offenses.

3. A determination of indigence will be based upon the information provided to the Court in the Accused's Financial Affidavit & Application for Appointed Counsel.
4. If a case has been filed in the trial court by indictment, information or writ, the appointing authority is the judge presiding over the case.

XI. RIGHT TO COUNSEL

11/1/2023

A. Appearance without counsel/ Admonitions

1. If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:
 - a) 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.
 - b) 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 appointing authority has denied the request and, subsequent to the denial, the defendant:
 - i. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
 - ii. Waived or has waived the opportunity to retain private counsel.
2. The attorney representing the State may not:
 - a) Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
 - b) Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - i. Has been given a reasonable opportunity to retain counsel; or
 - ii. Waives or has waived the opportunity to retain private counsel.

3. Waiver of the Right to Counsel:

- a) A defendant may voluntarily and intelligently waive the right to counsel.
- b) A waiver obtained in violation of this plan is presumed invalid.
- c) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the following at a minimum as applicable: (See *Faretta v. California*, 422 U.S. 806 (1975)).
 - i. Of the nature of the charges against the defendant and the range of punishment with and without enhancements,
 - ii. that he would be treated no differently from an attorney,
 - iii. that he would have to follow all of the rules of criminal procedure, the U.S. and Texas Constitutions, statutes, and applicable rules of evidence, local rules and general rules of court-room décor;
 - iv. that he would have to follow rules to preserve any error in his case,
 - v. that attorneys have specific training in the laws and trial advocacy,
 - vi. that his self-representation could result in a conviction,
 - vii. that a jury decides any factual issues,
 - viii. that he might not have the experience or level of training to properly object to preserve error, or admit any evidence he may to admit,
 - ix. that the court believes it may be a mistake to represent himself, and
 - x. that he has the right to court-appointed counsel if he cannot afford an attorney.
- d) If the court determines that the defendant understands the admonitions and that his right to counsel is voluntarily and intelligently waived, 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 admonished of the dangers of self-representation and advised this ___ day of ____, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me.

I hereby waive my right to counsel. (signature of defendant)”

- e) 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.

B. Appointment for out-of county warrants

1. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within 3 working days of this county's receipt of the request for counsel.
2. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody [Art. 1.051(c-1), CCP]. The appointment will be terminated upon the defendant's transfer to the county that issued the arrest warrant.

C. Requesting counsel prior to the initial appearance

1. If a defendant wishes to request counsel prior to the initial appearance, the forms required to request counsel may be obtained at:
 - a) INSERT WEBPAGE LINK, or
 - b) from the Court Coordinator of the court in which the defendant is required to appear:

County Court:	(903) 675-6120
County Court at Law:	(903) 675-6162
County Court at Law 2:	(903) 676-4010
3 rd District Court:	(903) 677-7277
173 rd District Court:	(903) 675-6107
392 nd District Court:	(903) 675-6110

XII. ATTORNEY SELECTION PROCESS

11/1/2023

A. Appointment Wheel

1. The appointing authority will identify which of the appointment lists is most appropriate based on the accusations against the defendant and will appoint the attorney whose name is first on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order. Good cause may include:
 - a) The defendant requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the clients' language, if one is available;
 - b) The defendant has an attorney already appointed on a prior pending or concluded matter. The same attorney will be appointed to the new matter, unless the attorney is not on the list for the type of offense involved in the current case; or
 - c) Other good cause exists for varying from the list.

2. Once appointed, the attorney's name will be moved to the bottom of the appointment list. 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. Judicial Removal from Case

1. The judge presiding over a criminal case may remove appointed counsel upon entering an order showing good cause for such removal, including without limitation, the following:
 - a) Counsel's failure to appear at a court hearing;
 - b) Counsel's failure to comply with the requirements imposed upon counsel by this plan;
 - c) Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
 - d) Replacement of appointed counsel in a death penalty case is required under Article 26.052(e), Texas Code of Criminal Procedure;
 - e) The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 - f) The defendant requests an attorney, other than trial counsel, for appeal; or
 - g) The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.

2. Appointment of Replacement Counsel:

- a) Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

C. Alternate Attorney Selection Process for Criminal Cases in the District Courts

1. An alternate plan for the appointment of counsel for indigent defendants with criminal cases in the District Courts may be adopted by the judges of the District Courts.
 - a) The judges of the District Courts shall designate the number of qualified attorneys which shall be decided by the judges in accordance with this plan and Art. 26.04 Tex CCP , who shall work on a contract basis, and who shall be paid a monthly amount, as determined by the judges, per attorney for representation of indigent defendants in the District Courts.

- b) The judges of the District Courts may also determine additional qualification requirements not included in this plan for service as a contract attorney.

D. Attorney Selection Process for Criminal Cases in the County Courts at Law

1. An alternate plan for the appointment of counsel for indigent defendants with criminal cases in the County Courts at Law may be adopted by the judges of the County Courts at Law.
 - a) The judges of the County Courts at Law shall designate the number of qualified attorneys which shall be decided by the judges in accordance with this plan and Art. 26.04 Tex CCP , who shall work on a contract basis, and who shall be paid a monthly amount, as determined by the judges, per attorney for representation of indigent defendants in the County Courts at Law.
 - b) The judges of the County Courts at Law may also determine additional qualification requirements not included in this plan for service as a contract attorney.

XIII. FEE AND EXPENSE PAYMENT PROCESS

11/1/2023

A. Compensation

1. Court appointed counsel in non-capital cases shall be compensated for all reasonable and necessary expenses and appropriate services rendered in representing the accused, including expenses for investigation and for mental health and other experts.
2. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the District and County Courts at Law judges.
3. The judges may modify the fee schedule at any time with reasonable notice to the attorneys qualified and selected to represent indigent defendants under this plan.

B. Attorney's Fees Payment Process

1. No payment of attorney's fees will be made other than in accordance with the rules set forth below:
2. An appointed attorney shall fill out and submit the approved fee voucher to the court for services rendered.
 - a) The trial judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the amount requested.

- b) If a judge disapproves a request for compensation, 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.
- c) 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 this administrative judicial region.

C. Payment of Expenses

1. Court appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for approved investigation and for mental health and other experts.
2. Expenses incurred with approval shall be paid according to the procedures set forth below.
 - a) Prior court approval shall be obtained before incurring expenses for investigation and for mental health and other experts.
 - b) Appointed Counsel may file with the trial court a pretrial ex- parte confidential request for advance payment of investigative and expert expenses.
 - c) The request for expenses must state the below, as applicable:
 - d) The type of investigation to be conducted or the type of expert to be retained;
 - i. Specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
 - ii. An itemized list of anticipated expenses for each investigation and/or each expert.
 - e) The court may 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 upon request:
 - i. State the reasons for the denial in writing;
 - ii. Attach the denial to the confidential request; and
 - iii. Submit the request and denial as a sealed exhibit to the record.