

A Joint Report by the
Texas Indigent Defense Commission and the
Texas Juvenile Justice Department



INDIGENT DEFENSE IN THE TEXAS JUVENILE JUSTICE SYSTEM

June 2014



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A Joint Report on
**INDIGENT DEFENSE IN THE
TEXAS JUVENILE JUSTICE SYSTEM**

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THE FAIR DEFENSE ACT

Enacted by the 77th Texas Legislature, the Fair Defense Act established a blueprint for meaningful interaction between State and local government. In accordance with the Act, every juvenile board in Texas must adopt a plan for the appointment of counsel for indigent juveniles. In exchange for State fiscal assistance, the local judiciary must report its plan for indigent defense to the Texas Office of Court Administration. County expenditures pertaining to indigent criminal defense must be reported annually. Local plans and county expenditure reports are published by the Commission on their website and each county's juvenile indigent defense plan is available online at <http://tidc.tamu.edu/Public.net/>.

According to Texas statutes, indigent defense plans must:

- **PROVIDE FOR PROMPT APPOINTMENT OF ATTORNEYS TO INDIGENT JUVENILES.** Effective September 2013, HB 1318 requires the court to appoint counsel within a reasonable time before the first detention hearing to represent a child at that hearing, unless exigent circumstances prevent it. [Texas Family Code Section 54.01(b-1)]. The term “exigent circumstances” is not defined in the code. In cases where the juvenile court is unable to appoint an attorney who is available to represent the child at the initial detention hearing, the court should document the exigent circumstances it finds in the court's file. The court may also wish to appoint an attorney even when the attorney may not be able to be present at the initial detention hearing. The court could then document in the case file the reason the attorney was not present for the hearing. If the child does not have counsel at the initial detention hearing and a determination was made to detain the child, the child is entitled to immediate representation by an attorney. The court must order the retention of an attorney or appoint an attorney [Texas Family Code Section 51.10(c)]. If a determination was not made to detain the child, determinations of indigence are made on the filing of a petition if: (1) the child is released by intake; (2) the child is

released at the initial detention hearing; or (3) the case was referred to the court without the child being in custody [Texas Family Code Section 51.101(c)]. A juvenile court that makes a finding of indigence under Section 51.101(c) must appoint an attorney to represent the child on or before the fifth working day after the date the petition for adjudication or discretionary transfer hearing was served on the child [Texas Family Code Section 51.101(d)].

- **DETERMINE WHETHER A JUVENILE IS INDIGENT.** Under the Texas Family Code, a juvenile's indigency is determined according to his or her parents' resources and must follow the requirements of Code of Criminal Procedure Article 26.04(l)-(r). Although the Code does not set out specific standards, each juvenile board must establish objective criteria for determining indigence in that jurisdiction. Judges may base their indigency determination upon personal questioning of parents regarding their ability to afford an attorney or statements by a probation or intake officer regarding the parents' financial situation.
- **ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS FOR APPOINTMENT.** The juvenile board in each county shall adopt a plan that specifies the qualifications necessary for an attorney to be included on the appointment list to represent children in proceedings under Title III of the Texas Family Code.

The plan must establish procedures for including and removing attorneys from the appointment list and appointing attorneys to individual cases. The plan must recognize the differences in qualifications and experience necessary for appointments in which the allegation is conduct indicating a need for supervision or delinquent conduct without commitment to the Texas Juvenile Justice Department (TJJD); or delinquent conduct and commitment to TJJD without a determinate sentence; or cases in which determinate sentence proceedings or proceedings for discretionary transfer to criminal court have



been initiated [Texas Family Code Section 51.102]. In addition, attorneys accepting appointments are required to annually obtain six hours of juvenile law continuing legal education (CLE) credit per Title 1, Section 174.2 of the Texas Administrative Code. Some juvenile boards have set higher CLE requirements in their local indigent defense plans for an attorney to be eligible for appointments.

- **PROMULGATE A FAIR, NEUTRAL, AND NON-DISCRIMINATORY ATTORNEY SELECTION PROCESS.** The juvenile board must establish a process that allocates appointments among qualified attorneys in a fair, neutral, and non-discriminatory manner. Code of Criminal Procedure Article 26.04(a) provides that a rotation system is the default system for appointing attorneys from the list of qualified attorneys. When a rotational system is used, “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.” Code of Criminal Procedure Article 26.04(f) also

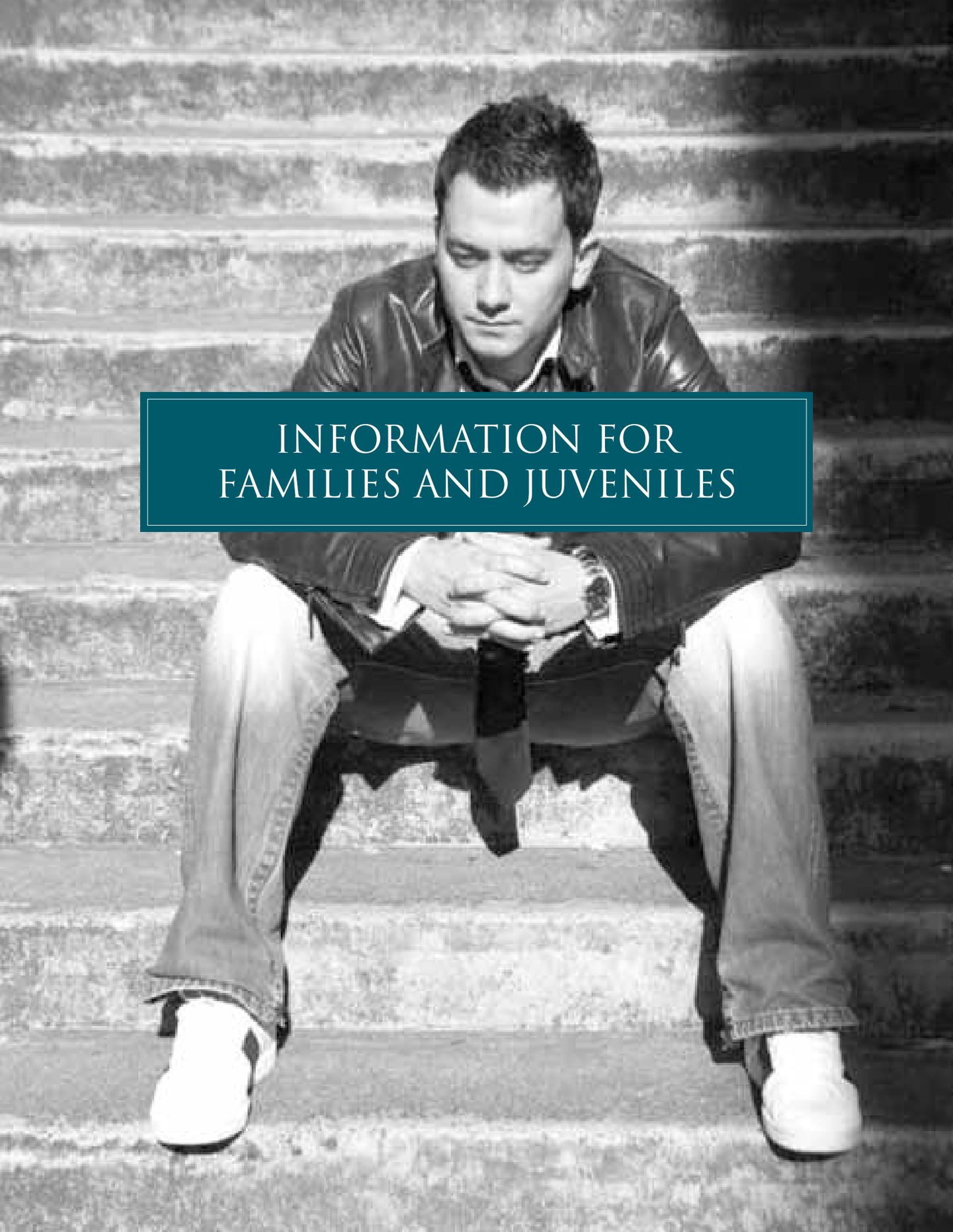
allows for the court to appoint a public defender to represent an indigent juvenile. Public defender programs may be created by a county under Code of Criminal Procedure Article 26.044 and 13 such programs currently exist to represent youth in juvenile courts in about 24 counties. In 2011, the Texas Legislature also authorized managed assigned counsel programs as a new method to provide representation to indigent defendants and juvenile respondents [Code of Criminal Procedure Article 26.047]. These programs may be designated to appoint counsel under Article 26.04(f-1).

- **PROMULGATE A STANDARD ATTORNEY FEE SCHEDULE, ATTORNEY FEE VOUCHER AND EXPLAIN HOW ATTORNEYS ARE TO BE PAID.** The juvenile board must establish an attorney fee schedule where attorneys are paid a reasonable fee for the following: time spent in court making an appearance; reasonable and necessary time spent out of court on the case, supported by documentation that the court requires; preparation of an appellate brief and preparation and presentation of oral argument to an appellate court; and preparation of a motion for rehearing. The fee schedule must also take into account reasonable and necessary overhead rates. The attorney must submit a fee voucher, which must be approved by the judge before a payment may be made. If the judge disapproves the requested amount, the judge shall make written findings stating the amount that the judge approves and the reasons for any disapproval. An attorney whose request for payment is disapproved may appeal the disapproval [Code of Criminal Procedure Article 26.05(a)-(e)]. Counsel must also be reimbursed for reasonable and necessary investigation expenses and expert witness fees. Expenses incurred without prior court approval shall be reimbursed if the expenses were reasonably necessary and reasonably incurred [Code of Criminal Procedure Articles 26.05(d), 26.052(h)].

THE TEXAS INDIGENT DEFENSE COMMISSION

The Texas Indigent Defense Commission's mission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law. In exchange for State fiscal assistance, the local judiciary is required to report its plan for delivering indigent defense services. The Commission publishes these local plans on its website for all to view. The statute also requires local county auditors to annually report county expenditures pertaining to indigent defense services. The indigent defense expenditure report results are also published on the Commission website. The Commission develops policies, standards, model forms and guidelines to provide defense services to indigent juveniles.





INFORMATION FOR
FAMILIES AND JUVENILES

Juvenile law and procedure in Texas is a combination of laws drawn from several areas. Juvenile cases are significantly different from adult criminal cases and are actually a hybrid of civil and criminal law. While the actual charges against a juvenile are brought by means of a civil lawsuit, the juvenile offender is given the same constitutional rights, privileges and protections as an adult criminal defendant.

WHO HAS THE RIGHT TO AN ATTORNEY?

Juveniles have a constitutional right to counsel when they are in danger of losing their freedom, whether or not they can afford to pay a private attorney [*In re Gault*, 387 U.S. 1 (1967)]. According to Texas Family Code Section 51.10 a child may be represented by an attorney at every stage of juvenile court proceedings and may not waive the right to an attorney in:

- A hearing to consider transfer to criminal court as required by Section 54.02 of this code;
- An adjudication hearing as required by Section 54.03 of this code;
- A disposition hearing as required by Section 54.04 of this code;
- 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
- Hearings required by Chapter 55 of this code.

For these proceedings a judge must appoint an attorney when parents cannot afford an attorney or when necessary to protect the best interest of the child.

Texas law requires courts to appoint an attorney to represent the interests of a child entitled to representation by an attorney, if:

- The child is not represented by an attorney;
- 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
- The child's right to representation by an attorney

has not been waived under Section 51.09 of the Family Code, or may not be waived under Section 51.10(b).

A court may appoint an attorney in any case in which it deems representation necessary to protect the interests of a child.

HOW DOES A JUDGE DECIDE WHO CANNOT AFFORD AN ATTORNEY?

The rules of Article 26.04 of the Code of Criminal Procedure apply to juveniles; however, the income and assets of the person responsible for the child's support are used in determining whether the child is indigent [Texas Family Code Section 51.102(b)(1)].

Due to the strict mandate of requiring an initial detention hearing within two working days, some counties may be unable to appoint counsel prior to the deadline. In those rare cases in which a child is not represented by counsel at the initial detention hearing and the child is detained, Section 51.10(c) requires the court to "immediately" appoint counsel or order parents to retain counsel if the court has determined they are financially able to do so. If parents can afford counsel, the juvenile court under Section 51.10(d) is required either to order parents to retain counsel or to appoint counsel and order parents to pay counsel fees. The board's plan should provide that these minimum standards for prompt appointment are complied with and designate who has responsibility for assuring compliance in the context of the local system. Once counsel is appointed, the juvenile's attorney may request a *de novo* detention hearing within 10 working days of the initial detention hearing.

Indigency requirements differ from county to county depending on the county's juvenile indigent defense plan. The determination of indigency for a juvenile is based on his or her parents' income and assets. Some common factors that courts consider include:

- **INSTITUTIONALIZATION.** A juvenile is often considered indigent if he or she is currently serving a sentence in a secure correctional facility,

residing in a public mental health facility or the subject of a proceeding in which admission or commitment to a mental health facility is sought.

- **PUBLIC BENEFITS.** Means-tested public benefits could be included as a factor in indigence determination by presuming a juvenile is eligible for appointment of counsel if he or his family have been determined eligible for public assistance such as Supplemental Nutrition Assistance Program (SNAP), Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.
- **SUBSTANTIAL HARDSHIP.** A juvenile may receive appointed counsel if he or she is unable to employ private counsel without substantial hardship to the child or his or her family. This standard generally applies if the juvenile fails to meet one of the more specific eligibility standards highlighted above.
- **POVERTY GUIDELINES.** Many jurisdictions use the federal poverty guidelines, which are established annually by the United States Department of Health and Human Services, when determining whether a juvenile is indigent. These guidelines are based upon net household income and vary by the size of the family. If the family income falls below a certain percentage of the federal poverty guidelines, such as 150%, then the juvenile will be considered indigent.

See also Texas Family Code Section 51.10(f)(2)

WHEN MUST COUNSEL BE APPOINTED?

Counsel must be appointed within certain time frames that are set depending on whether the juvenile is in custody.

APPOINTMENT BEFORE DETENTION HEARING.

The juvenile court is required to appoint counsel within a reasonable time before the first detention hearing to represent a child at that hearing, unless exigent circumstances prevent it [Texas Family Code Section 54.01(b-1)]. If the child does not have counsel at the initial detention hearing and a determination is made to detain the child, the child is entitled to immediate



representation of an attorney. If the court determines the parents can afford to hire an attorney to represent the child, the court shall order the parents to employ an attorney. This order is enforceable under Family Code Chapter 61. The court must appoint counsel when the court determines that the child's family cannot afford to employ counsel. Generally, counsel is routinely provided for unrepresented children at detention hearings since it is often difficult to quickly determine the family's financial capabilities.

A need for counsel arises when a child is detained due to the increased likelihood that judicial proceedings will be pursued. Under those circumstances, effective representation requires immediate appointment of counsel to enable prompt investigation of the facts and to press for the release of the child from detention when feasible. Once counsel is appointed there is an expectation of a continuation of representation. Under Section 51.101(a) an attorney appointed to represent a child at a detention hearing continues to represent that child until the case is terminated or other counsel is employed by the family or appointed by the court.

APPOINTMENT AFTER AN ADJUDICATION OR CERTIFICATION PETITION IS SERVED ON THE CHILD, WHEN CHILD NOT IN CUSTODY.

Under some circumstances the appointment of counsel may be delayed or not required. If the juvenile was released by intake or at the initial detention hearing or was referred to the juvenile court without being in custody, then there is no need under Section 51.101 for appointment of counsel unless or until a petition for adjudication or discretionary transfer is filed. Many juvenile cases result in non-judicial handling with no realistic risk of legal prejudice to the child; therefore, to conserve limited financial resources no legal counsel is required.

Some cases are handled non-judicially. For example, deferred prosecution under Section 53.03(a) is a voluntary agreement made by the child, his or her parent, and the State. Attorney representation is not required for deferred prosecution and a petition is not required to be filed. If a petition is filed, then the court is required by Section 51.101 to determine indigency and appoint counsel not later than five working days after the petition is served on the child. If the child's whereabouts are unknown at the time the petition is filed, then counsel is not required to be appointed until after the child is located and served with the petition.

The juvenile board's indigent defense plan should detail the steps in determining indigency and the appointment of counsel. Some jurisdictions collect the financial information of the juvenile's family when the juvenile is brought into intake. The information is then maintained and transferred to the appointing judge if the child is detained and a detention hearing is ordered. If the child is released from detention, then the request for counsel would be provided to the appointing judge if the prosecutor files a petition in the case. Under this system, the court will already have the information needed to make an indigency determination.

APPOINTMENT AFTER MODIFICATION MOTION FILED. Under Family Code Section 51.101(e), if a child is already on juvenile probation and a motion to modify or petition is filed that seeks either revocation with commitment to TJJD or a modification to require confinement in a secure local facility, then indigency must be determined upon the filing of the motion or petition. If the family is found by the court to be indigent, appointment of counsel shall be made within five days of filing the petition or motion. The obligation to determine indigency arises from filing a motion to modify or petition, rather than from serving it. An appointed attorney 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.

If the motion to modify seeks revocation and commitment to the TJJD, then under Family Code Sections 54.05(h) and 51.10(b)(4) legal counsel and

a juvenile court hearing are required and cannot be waived. Likewise, if the motion seeks confinement in a secure facility for more than 30 days, then legal counsel and a hearing will also be required. However, if the motion seeks confinement in a secure facility for 30 days or less, then legal counsel is still required under Section 51.101(e), but a hearing may be waived by the juvenile if joined by his or her parent/guardian, guardian ad litem, or attorney under Section 54.05(h). Counsel is constitutionally required to be appointed in both adult and juvenile cases when a term of confinement is sought, even for short periods of confinement.

SUMMARY OF TIME LIMITATIONS OF WHEN AND UNDER WHAT SITUATIONS COUNSEL MUST BE APPOINTED TO AN INDIGENT JUVENILE

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.**

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.**

The juvenile court shall determine, on the filing of a petition, whether the child's family is indigent if:

- The child is released at intake;
- The child is released at the initial detention hearing; or
- The case was referred to the court without the child in custody.

If the court finds that the child's family is indigent, the court must appoint an attorney to represent the child on or before the fifth working day after the child is served with the petition for adjudication or discretionary transfer.

A black and white photograph of two hands shaking in a firm grip. The hands are positioned centrally, with fingers interlaced. The skin texture is clearly visible. A ring is visible on the ring finger of the hand on the right. A teal rectangular box with a white border is superimposed over the center of the hands, containing the text 'INFORMATION FOR ATTORNEYS' in white, serif, all-caps font.

INFORMATION FOR
ATTORNEYS

WHO CAN SERVE AS APPOINTED COUNSEL?

Each juvenile board's plan states the requirements attorneys must meet to join the juvenile attorney appointment list or when the attorney may be removed from the list [Section 51.102(a)(1) of the Texas Family Code].

Each plan must also "recognize the differences in qualifications and experience necessary for appointments" to five different types of cases: (1) allegations of conduct indicating a need for supervision; (2) allegations of delinquent conduct in which commitment to TJJD is not possible [misdemeanor cases or contempt of a justice or municipal court]; (3) allegations of delinquent conduct in which indeterminate commitment to TJJD is possible; (4) cases in which determinate sentence proceedings have been initiated by obtaining grand jury approval of a petition alleging a covered offense; and (5) cases in which proceedings for discretionary transfer to criminal court have been initiated [Section 51.102(b)(2)].

Article 26.04, Code of Criminal Procedure, mandates that appointed attorneys:

- Apply to be included on an appointment list;
- Meet objective qualifications specified by the judges;
- Meet applicable qualifications of the Texas Indigent Defense Commission; and
- Be approved by a majority of judges who established the appointment list.

Some factors often used to determine an attorney's objective qualifications to serve as appointed counsel in a juvenile case include:

- Number of years licensed to practice law;
- Number of prior juvenile cases handled;
- Number of prior juvenile cases handled of specified type;
- Continuing Legal Education (CLE) credits in juvenile law (six hour minimum);
- Performance on any local examination in juvenile law;

- Certification in juvenile law by the Texas Board of Legal Specialization; and
- Opinion of a judge or referee before whom the attorney has appeared in regard to skill and diligence.

See Texas Family Code Section 51.101

NOTES ON CLE REQUIREMENTS. Juvenile boards often permit self-study, on-line courses, and/or independent study, which are permitted by Texas Indigent Defense Commission rules.

- The Juvenile Law Section of the State Bar (<http://www.juvenilelaw.org/>) provides two conferences a year; generally one in February and one in July or August. These conferences are programs intended to assist juvenile justice practitioners with the basic fundamentals and principles of juvenile law.
- Local bar associations also provide juvenile training to assist juvenile justice practitioners with the basic principles of juvenile law. Check with your local bar association for dates and times of these programs.
- CLE hours may carry over two years, i.e. a person can earn 12 hours one year and carry the extra 6 over to the next year.

Some counties have chosen to implement different requirements in conjunction with the seriousness of the case, i.e. a discretionary transfer to criminal court case may require 10 CLE hours and a minimum of 6 years' experience, while a supervision case may only require 6 CLE hours and 1 year of experience.

HOW WILL AN ATTORNEY BE SELECTED FROM THE APPOINTMENT LIST?

Texas Family Code Section 51.102 requires juvenile boards from each county to adopt a plan that specifies the qualifications necessary for an attorney to be included on an appointment list to represent children in proceedings under Title III. In addition, the plan establishes the procedures for including attorneys on the appointment list and removing attorneys from the list, as well as appointing attorneys from the appointment list to individual cases.

Under the Texas Family Code Section 51.102(b), the juvenile board’s plan must, “to the extent practicable,” comply with the requirements of Article 26.04 of the Code of Criminal Procedure. Article 26.04 outlines the criminal appointment system. Many of the provisions in Article 26.04 are not applicable to juvenile proceedings; therefore, “to the extent practicable” was added to Section 51.102. The juvenile board plan differs specifically from the adult criminal requirements as stated in Section 51.102(b). First, the child’s indigency is determined by the assets and income of the parent or other person responsible for the support of the child, not by the child’s assets and income. Secondly, if an alternative plan is adopted, the juvenile board must adopt it, not the juvenile court judge or judges.

Article 26.04(a) sets out the requirement of rotational appointment from a public appointment list:

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), (f-1), (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.

Article 26.04(f) provides for appointment of a staff attorney of a public defender’s office in counties with such an office. Subsection (i) permits a court to appoint an attorney in a felony case from the appointment list of any county in the administrative judicial region, thereby increasing the pool of attorneys qualified for appointment in serious cases.

Article 26.04(f-1) provides that a managed assigned counsel program may appoint counsel if such a program is created in a county under Article 26.047.

Article 26.04 (h) authorizes a judge to appoint an



attorney from an alternative program in a county in which an alternative program has been adopted. Subsection (g) sets out the requirements for an alternative program for the appointment of counsel in criminal cases. Most of its requirements are not applicable to juvenile cases. Subsection (g)(1)(B) provides that an alternative program may “use a multi-county appointment list using a system of rotation.” This is designed for rural counties with fewer lawyers and for counties in which the county seat may be located near another county so that the natural area for appointing counsel extends into the next county and permits out-of-county appointments to be made in all cases, not just in felonies.

A juvenile board that wishes to have a multi-county appointment list may do so by designating its plan as an alternative program. Any alternative program must be approved by the presiding judge of the administrative judicial region. Such approval is not a step that is required for a “standard” plan.

An alternative program may, under Article 26.04 (g)(1) (A), provide for a mixed system of appointed counsel and contract lawyers for indigent defense services. In criminal cases, there may be one alternative program for felony cases and another for misdemeanor cases or one program for both.

However, the availability of an alternative program under Subsection (g) is not an authorization for each juvenile court judge to adopt his or her own appointment system. The Fair Defense Act was

intended to end the practice of each judge adopting individualized plans. Subsection (g) only authorizes the adoption of a “countywide alternative program by a formal action in which two-thirds of the judges of the courts vote to establish the alternative program.” Section 51.102(b)(1)(B) requires that an alternative program must be established by the entire juvenile board, not by a judge or judges sitting in juvenile cases.

If an alternative program is adopted by the juvenile board, the juvenile court is not required to make appointments in the rotational fashion required under the standard program. However, any alternative program must, under Subsection (g)(2)(D), assure that “appointments are reasonably and impartially allocated among qualified attorneys” to prevent judicial favoritism.

Juvenile board plans with multi-county jurisdiction should work with each county in the board’s jurisdiction. A single plan may be adopted to cover all counties or an individual plan may be adopted by the juvenile board for each county. Any plan, for any county in a juvenile board’s jurisdiction is required to be approved by the entire juvenile board.

There must be an affirmative vote of at least a majority of the members of the juvenile board for a plan to be approved by the board [Government Code Section 311.013].

WHEN CAN AN ATTORNEY BE REMOVED FROM THE APPOINTMENT LIST?

Only the juvenile board has the authority to remove an attorney from the appointment list. As with adding an attorney to the list, it must do so by a majority vote. A juvenile court judge who has good cause to believe that an attorney should be removed under board standards has the power to remove an attorney from an appointment and not make further appointments pending full board action within a reasonable time. The finding of good cause must be entered on the record. Two Articles of the Code of Criminal Procedure, 26.04(k) and 26.05(e), address

specific conduct that can be used as the basis to remove an attorney from the list. The first provision deals with an attorney contacting and then interviewing an appointed client in a timely manner, while the second addresses an attorney submitting a claim to be paid for legal services that were not performed.

HOW ARE APPOINTED ATTORNEYS PAID?

An attorney appointed to represent the interests of a child will be paid from the general fund of the county in which the proceedings were instituted. The Texas Family Code Section 51.10(i) requires for appointed counsel in juvenile court to be paid the same as appointed counsel in criminal court for comparable work in comparable cases. The county’s juvenile board is required to adopt a fee schedule based on the fee schedule adopted by the criminal court judges.

Article 26.05(c), Code of Criminal Procedure, requires that each adopted fee schedule state reasonable fixed rates or minimum and maximum hourly rates. The fee schedule must take into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates. It must also provide a form for the appointed counsel to itemize the types of services performed.

If an attorney submits a payment voucher that is decreased by the trial judge, Article 26.05(c) provides a mechanism to appeal. The attorney can appeal the trial court’s decision to the presiding judge of the administrative judicial region, whose decision on the matter is final. The juvenile board’s plan should recognize that same process of appeal.

The attorney fee schedule for each county may be viewed online at:

<http://tidc.tamu.edu/public.net/Reports/FeeDocuments.aspx>



INFORMATION FOR COUNTIES
AND JUVENILE BOARDS

WHAT MUST A COUNTY INCLUDE IN ITS JUVENILE INDIGENT DEFENSE PLAN?

REQUIREMENTS FOR THE ATTORNEY APPOINTMENT LIST:

- List of eligible attorneys is created and posted;
- Qualifications for attorneys to be on the appointment list is specified with differences in accordance with the three levels recognized by law;
- Procedures for including attorneys on the list are specified;
- Procedures for removing attorneys from the list are specified;
- Procedures for appointing attorneys on the list to cases and for payment are specified;
- The plan complies with the Code of Criminal Procedure to the extent practicable; and
- The plan also meets the requirements set by the Texas Indigent Defense Commission in order for the county to be eligible for grant funds from the Commission.

Family Code Section 51.102
Code of Criminal Procedure Article 26.04

STANDARD APPOINTMENT OR ALTERNATE APPOINTMENT PROGRAM IS IMPLEMENTED:

- Article 26.04 is complied with “to the extent practicable.”
- The standard rotational appointment is as follows:
 - The court shall appoint an attorney from 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 the attorney out of order.
 - When an attorney is appointed out of order, the attorney next on the list that was not appointed should stay on the list as the next available attorney.
 - Article 26.04 allows the county to appoint counsel from a public defender’s office or managed assigned counsel program, if available,

from a list that merges multiple counties if in a rural area, or to have separate appointment lists based on offense levels (e.g. felony and misdemeanor cases).

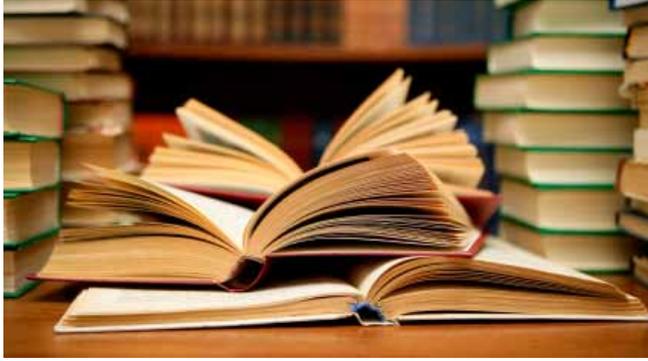
- An alternative program:
 - May include more than one appointment method;
 - Must be approved by a majority vote of the juvenile board; and
 - Must be countywide.

Family Code Section 51.101
Code of Criminal Procedure Article 26.04

REPORTING REQUIREMENTS FOR INDIGENT DEFENSE INFORMATION:

Counties are required to report a variety of indigent defense information to the Texas Indigent Defense Commission. This includes the indigent defense plan adopted by the juvenile board (required biennially), the annual indigent defense expenditure report, and the annual report of the number of indigent cases handled by each attorney in the jurisdiction. Information on each of these reports is available at the Commission’s website: tidc.texas.gov. These requirements are also detailed below:

- (a) Not later than November 1 of each odd-numbered year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission:
- (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 plan or proposal submitted to the commissioners court under Article 26.044, Code of Criminal Procedure;
 - (3) any plan of operation submitted to the commissioners court under Article 26.047, Code of Criminal Procedure;



- (4) any contract for indigent defense services required under rules adopted by the commission relating to a contract defender program;
- (5) any revisions to rules, forms, plans, proposals, or contracts previously submitted under this section; or
- (6) verification that rules, forms, plans, proposals, or contracts previously submitted under this section still remain in effect.

(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure.

(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 county; 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 commission in the form and manner prescribed by the commission 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 commission under this section.

Government Code Section 79.036



APPENDICES

APPENDIX A: JUVENILE BOARD STATUTES

There are several statutes that are relevant to the juvenile board's task, including:

TEXAS FAMILY CODE SECTION 51.10.

Establishes the right to assistance of counsel in juvenile cases and provides some of the procedures needed to implement that right.

TEXAS FAMILY CODE SECTION 51.101.

Provides details as to timeliness of appointments and the continuing obligations of appointed counsel to represent a juvenile client.

TEXAS FAMILY CODE SECTION 51.102.

Sets out the basic requirements that a juvenile board's appointment of counsel plan must meet.

TEXAS FAMILY CODE SECTION 54.01

Sets out requirements for detention hearings.

CODE OF CRIMINAL PROCEDURE ARTICLE 26.04.

Sets out requirements for the procedures for appointing counsel in criminal cases to which a juveniles board's plan must adhere "to the extent practicable."

CODE OF CRIMINAL PROCEDURE ARTICLE 26.05.

Sets out the compensation systems to be used for payment of counsel in indigent defense cases.

TEXAS GOVERNMENT CODE SECTION 79.036.

Sets out the plan reporting requirements.

APPENDIX B: FURTHER RESEARCH REFERENCES

LETTER FROM PROFESSOR ROBERT DAWSON, UNIVERSITY OF TEXAS SCHOOL OF LAW,
http://www.texasappleseed.net/pdf/projects_fairDefenseJ_fairdefact.pdf.

NATIONAL JUVENILE DEFENDER CENTER, [NATIONAL JUVENILE DEFENSE STANDARDS \(2012\)](http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf),
<http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>.

TEXAS APPLESEED FOUNDATION, [JUVENILE JUSTICE IS NOT CHILD'S PLAY: A HANDBOOK FOR ATTORNEYS WHO REPRESENT JUVENILES IN TEXAS \(2005\)](http://www.texasappleseed.net/pdf/hbook_Juvenile_attorney_JuvenileChildPlay.pdf),
http://www.texasappleseed.net/pdf/hbook_Juvenile_attorney_JuvenileChildPlay.pdf.

TEXAS APPLESEED FOUNDATION, [NAVEGANDO EL SISTEMA DE JUSTICIA PARA MENORES: UN MANUAL PARA MENORES DE EDAD Y SUS FAMILIAS \(2003\)](http://www.texasappleseed.net/pdf/hbook_Juvenile_family_SP_Navegando.pdf),
http://www.texasappleseed.net/pdf/hbook_Juvenile_family_SP_Navegando.pdf.

TEXAS APPLESEED FOUNDATION, [NAVIGATING THE JUVENILE JUSTICE SYSTEM: A HANDBOOK FOR JUVENILES AND THEIR FAMILIES \(2004\)](http://www.texasappleseed.net/pdf/hbook_Juvenile_family_Navigating.pdf),
http://www.texasappleseed.net/pdf/hbook_Juvenile_family_Navigating.pdf.

TEXAS APPLESEED FOUNDATION, [SELLING JUSTICE SHORT: JUVENILE INDIGENT DEFENSE IN TEXAS \(2000\)](http://www.texasappleseed.net/pdf/projects_fairDefenseJ_sellshort.pdf),
http://www.texasappleseed.net/pdf/projects_fairDefenseJ_sellshort.pdf.

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