

_____ **COUNTY'S**

PLAN FOR APPOINTMENT OF COUNSEL

The County's plan for appointment of counsel is an alternative program as provided by Article 26.04 of the Texas Code of Criminal Procedure, as amended by Senate Bill 7. The Plan governs appointment of counsel in both misdemeanor and felony cases. In all cases in which a defendant is entitled to appointment of counsel, the court or the court's designee will appoint counsel in accordance with this Plan.

I.

REQUEST FOR APPOINTMENT OF COUNSEL

All arrested persons will be promptly taken before a magistrate without unnecessary delay as required by Article 14.06 of the Texas Code of Criminal Procedure. During the initial appearance, the magistrate will advise each defendant of his rights, including the right to counsel and the right to request appointment of counsel if he or she is indigent and cannot afford counsel. An indigent defendant is entitled to have an attorney appointed to represent him in any adversary judicial proceeding that may result in punishment by confinement.

The magistrate will specifically advise the defendant of the procedures for requesting appointed counsel, including: 1) that a written

Request for Appointment of Counsel, which will be used to determine whether the defendant is indigent, must be completed; and 2) that the defendant will be given assistance in completing the Request for Appointment of Counsel upon request. Each defendant desiring appointed counsel must request appointment of counsel using the same form, which will be established and approved by separate order.

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

If the information obtained from the Request for Appointment of Counsel fails to establish that the defendant is indigent, the court will deny the Request. The original Request for Appointment of Counsel and Order will be filed, and a copy given to the defendant.

If the defendant is indigent, counsel will be appointed according to the terms of this Plan. After a defendant has been determined to be indigent, it will be presumed that he remains indigent throughout the course of the

proceeding against him. However, the determination of indigency can be re-evaluated if the defendant's financial circumstances change.

If adversarial judicial proceedings have been instituted against an indigent defendant, counsel will be appointed as soon as possible, but in no event later than the end of the 3rd business day after the court or the court's designee receives the Request for Appointment of Counsel. If an indigent defendant is released from custody prior to appointment of counsel, counsel will not be appointed until the first court appearance, or the initiation of adversarial judicial proceedings, whichever occurs first.

II. QUALIFICATIONS OF ATTORNEYS

In appointing counsel pursuant to the procedures and terms set forth in Section III, below, the court or the court's designee will appoint only attorneys who are qualified to handle the particular case for which he or she is appointed. Attorneys who satisfy the standards set forth below will be presumed to be competent and qualified.

The court, in a proper circumstance, may consider exceptions to these qualifications and may appoint an attorney not meeting these qualifications if the attorney has other qualifications or experience that establish his competency to handle a particular case. However, no exceptions will be entertained with respect to capital cases.

A. Qualifications for Handling Misdemeanor Cases

1. Be licensed to practice law in the State of Texas
2. Be in good standing with the State Bar of Texas
3. Exhibit proficiency and commitment to providing quality representation

B. Qualifications for Handling 3rd Degree/State Jail Felony Cases

1. Satisfy all the requirements for handling a misdemeanor case.
2. Have practiced law for at least 1 year.
3. Have tried to a verdict at least one criminal jury trial.

C. Qualifications for Handling 2nd Degree Felony Cases

1. Satisfy all requirements for handling misdemeanor cases.
2. Have practiced law in the area of criminal law for 2 years.
3. Have tried to conclusions at least four criminal jury trials as lead counsel, including at least two felony trials.

D. Qualifications for Handling 1st Degree Felony Cases

1. Satisfy all the requirements for handling misdemeanor cases.
2. Have practiced in the area of criminal law for 4 years.
3. Have tried to conclusion at least 6 criminal jury trials as lead counsel, including at least 3 felony trials.

4. Have attended at least 6 hours of Continuing Legal Education courses pertaining to criminal law in the previous year.

E. Qualifications for Handling Capital Cases

1. Satisfy all of the requirements for handling misdemeanor cases.
2. Have practiced in the area of criminal law for at least six years;
3. Have tried to verdict at least ten criminal jury trials as lead counsel, including at least eight felony trials, of which at least six were trials in first or second degree felonies or capital felonies and at least two of which were homicide cases.
4. **In all cases in which the death penalty is sought, both a lead counsel and a second chair counsel will be appointed in accordance with Article 26.052 of the Texas Code of Criminal Procedure, and in compliance with the standards adopted pursuant to that Article by the local selection committee of the administrative judicial region.**

III APPOINTMENT OF COUNSEL

The court or the court's designee will appoint counsel for eligible defendants pursuant to the following plan, which is designed to insure that all indigent defendants receive competent representation. All attorneys appointed under this Plan will be notified immediately of the appointment and reminded of the duty to attempt to contact the defendant by the end of the next business day.

Misdemeanor Cases:

[Insert a written description of the method you intend to use in appointing counsel in misdemeanor cases. Some options to consider are: 1) to continue the method that the court has been using in the past; 2) to appoint, on a case-by-case basis, any available qualified attorney; or 3) to retain one or more attorneys pursuant to contract and appoint these attorneys to represent indigent defendants in cases in which they are qualified. Whatever method is chosen, describe the method in as much detail as possible. Use attached sheets if necessary.]

Felony Cases:

[Insert a written description of the method you intend to use in appointing counsel in felony cases. Some options to consider are: 1) to continue the method that the court has been using in the past; 2) to appoint, on a case-by-case basis, any available qualified attorney; or 3) to retain one or more attorneys pursuant to contract and appoint these attorneys to represent indigent defendants in cases in which they are qualified. Whatever method is chosen, describe the method in as much detail as possible. Note: It might be wise to include in your plan a provision that allows attorneys appointed in felony cases to be drawn from a multi-county area. Use attached sheets if necessary.]

IV.
**ATTORNEY ACCEPTANCE OF APPOINTMENT
AND CONTACT WITH DEFENDANT**

Within 72 hours, the appointed attorney must, in a manner acceptable to the court, acknowledge the appointment and advise the court that the attorney made a reasonable effort to contact the defendant by the end of the first working date after the appointment. Acceptable means of contacting a defendant include regular mail, facsimile, telephone and in-person contact. Each appointed attorney shall arrange to meet personally with the defendant as soon as practicable.

V.
COMPENSATION OF ATTORNEYS

Attorneys will be compensated with reference to the standards found in Article 26.05 of the Code of Criminal Procedure, and according to a schedule of fees established by separate administrative order. This order will be entered after consultation with the commissioners court of the county concerning the fiscal impact to the county. The operation of this alternative program will not, without the commissioners court's approval, obligate the county, by contract or by the creation of new positions, to any increase in expenditure of county funds.

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VI.
APPROVAL OF THE PLAN

This Plan for Appointment of Counsel was approved by at least two-thirds of the judges in the county with jurisdiction over misdemeanor cases and by at least two-thirds of the judges in the county with jurisdiction over felony cases. This Plan has been forwarded to the Presiding Judge of the Administrative Judicial Region for approval and published as required by law.

[ADD SIGNATURES OF ALL JUDGES APPROVING THE PLAN]