

**Tarrant County Juvenile Board
Indigent Defense Plan**

05/17/2023

Definitions

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Terms used to determine eligibility for indigent defense services shall have the following meanings:

“The court” refers to any state district court in Tarrant County authorized to hear cases brought under Title III of the Texas Family Code.

“Income” includes the total cash receipts, before taxes, from all resources, including money wages and the net receipts from non-farm or farm self-employment. Further, “income” shall include regular payments from a governmental income maintenance program, public or private pensions, annuities, and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts, regular payments from Social Security, strike benefits from union funds, veteran’s benefits, training stipends, alimony, child support and military family allotments, or other regular support from an absent family member or someone not living in the household, or foster care payments, benefits from a governmental income maintenance program (AFDC, SSI, unemployment compensation, or state or county general assistance or home relief), food or rent received in lieu of wages, money that is received from the sale of real or personal property or received from tax refunds, gifts, one-time insurance payments or compensation for injury, non-cash benefits (food stamps, etc.).

A juvenile is “indigent” if the juvenile and the parents are financially unable to hire counsel. There shall be a presumption of indigency if (1) the income of the juvenile and the parents is below the Living Wage Calculator (<https://livingwage.mit.edu/states/48>) and (2) the juvenile and the parents’ liquid assets do not exceed \$15,000. In determining whether a juvenile is indigent, the court may consider the juvenile parents’ income, source(s) of income, assets, property owned, outstanding obligations, necessary expenses, and the number and ages of dependents. The court in determining whether to appoint counsel shall look at the totality of the circumstances, including the willingness, or lack thereof, of the parents to provide for the child.

A “juvenile” includes any person who is ten years of age or older and under the age of seventeen years, or anyone who is seventeen years of age or older who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of an act or acts alleged to have been committed before becoming seventeen years of age.

“Liquid assets” include, but are not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property, as well as any interest in retirement accounts.

The term “parents” includes a custodian, guardian, and parent as those terms are defined by Section 51.02 of the Texas Family Code. The term “parents” further includes any other person and/or any state or private agency charged with the legal obligation to care for, supervise, and/or support the juvenile being brought before the court.

Indigence Determination Standards

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If the juvenile is found to be indigent, the juvenile shall receive a court-appointed attorney made pursuant to the juvenile appointment wheel.

A juvenile whose household income exceeds the latest Living Wage Calculator guideline may still qualify for a court-appointed attorney if the court determines special circumstances exist. In determining whether special circumstances exist, the court may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. 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 juvenile or the juvenile’s parents have retained counsel in other legal matters (e.g., administrative license revocation, forfeiture, etc.), any efforts the juvenile and the parents have made to retain an attorney, and any other factor relevant to the issue to be decided.

A juvenile determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in financial circumstances occurs. If there is a material change in financial circumstances after an indigency determination, the court, a parent, the juvenile, the juvenile’s counsel, or the attorney representing the State may move for reconsideration of the indigency determination.

A juvenile determined to be indigent is entitled to have appointed representation for appellate matters, including post-adjudication matters before a court of appeals and the Texas Supreme Court, as well as any other post-adjudication proceeding(s) in which the court concludes the interests of justice require representation.

A juvenile or the parents may be required to reimburse Tarrant County in whole or in part the cost of legal services provided as allowed by law.

The indigency guidelines established herein for the appointment of counsel also apply to the reimbursement of expenses incurred for the purposes of investigation or expert testimony, as approved by the court.

The court may appoint an attorney in any case in which the court deems representation necessary to protect the interests of the juvenile.

When the court determines it necessary or appropriate to appoint counsel under this policy, one or more practicing attorneys shall be appointed in accordance with this policy.

If the court determines the juvenile does not speak or understand the English language or that the juvenile is deaf, efforts shall be made to appoint an attorney who is capable of communicating in a language understood by the juvenile.

Minimum Attorney Qualifications

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- A. An attorney must be a member in good standing of the State Bar of Texas.
- B. An attorney must reside in Tarrant County or maintain a principal office in Tarrant County. (A post office address alone will not satisfy this requirement.)
- C. An attorney must have an administrative assistant, legal assistant, receptionist, answering service, or a regularly monitored voice mail.
- D. An attorney must have an e-mail address that the attorney can access 24-hours a day.
- E. An attorney must have the ability to produce typed motions or orders.

- F. An attorney must have on file with the court a completed application for the juvenile appointment list.
- G. An attorney shall promptly notify the court of any changes to the information contained in the application for the juvenile appointment list.
- H. An attorney shall promptly notify the court of any matter that would disqualify the attorney from receiving appointments under these guidelines or any other law, regulation, or rule.
- I. An attorney shall be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition (including, but not limited to, issues involving the Texas Juvenile Justice Department (TJJD) commitment criteria, use of juvenile adjudications in adult proceedings, license suspension, sex offender registration, school removals and expulsions, sealing of records, etc.).
- J. An attorney must have on file with the court a completed continuing legal education annual reporting form provided by the court that demonstrates the annual completion of a minimum of 6-hours of juvenile law continuing legal education during each 12-month reporting period or a statement that the attorney is currently certified in juvenile law by the Texas Board of Legal Specialization. Continuing legal education may include activities accredited by the State Bar of Texas, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class, or legal research-based writing. Continuing legal education may include up to two hours in education law or child welfare law. Credit for self-study in juvenile law is limited to 2 hours per reporting period. Continuing legal education activity completed within a 1-year period immediately preceding an attorney's initial reporting period may be used to meet the educational requirement for the initial year. Continuing legal education activity completed during any reported period in excess of the minimum 6-hour requirement for such period may be applied to the following year's requirement. The carryover provision applies to one year only.
- K. A completed continuing legal education reporting form provided by the court shall be filed with the court on or before December 31st of each year.
- L. Before being placed on the juvenile appointment wheel, an attorney must attend the Tarrant County Juvenile Law Orientation class.

- M. Pursuant to Article 26.04(j)(4) of the Texas Code of Criminal Procedure, an attorney appointed to represent a juvenile shall, not later than December 31st of each year and on a form prescribed by the Texas Indigent Defense commission, submit to the court information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in the county under this article and Title 3 of the Texas Family Code.
- N. For attorneys who are qualified only for Level Four appointments, such attorneys may satisfy their continuing CLE requirements under this plan through a combination of juvenile, child welfare, criminal appellate, and/or family law continuing education courses and/or self-study. No more than 2 hours of self-study may be used to satisfy the annual 6-hour continuing education requirement. At least 2 hours must come from the study of juvenile law.
- O. An attorney who applies for placement on the juvenile appointment wheel agrees to make every reasonable effort to contact the juvenile promptly after the date on which the attorney is appointed and to interview the juvenile as soon as practicable after the attorney is appointed.
- P. An attorney who applies for placement on the juvenile appointment wheel agrees to represent the juvenile until all pleadings are disposed and all post-adjudication matters are exhausted, or the attorney is permitted or ordered by the court to withdraw as counsel for the juvenile after a finding of good cause is entered on the record.

Attorney Qualification Levels

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In addition to the minimum attorney qualifications referenced elsewhere in this policy, an attorney must meet and provide documentation of the following requirements to be qualified for appointments for a designated level of juvenile case.

Level One: Qualifications for appointments for Conduct in Need of Supervision and Delinquent Conduct where a commitment to the Texas Juvenile Justice Department is not an authorized disposition:

- A. An attorney must have been licensed to practice law for a minimum of one year or have successfully completed a mentoring program for attorneys approved by the court, and
- B. An attorney shall have observed at least
 1. five stipulated juvenile adjudications,
 2. five juvenile dispositions, and
 3. five detention hearing dockets.

Level Two: Qualifications for appointments for Delinquent Conduct and where an indeterminate commitment to the Texas Juvenile Justice Department is an authorized disposition:

- A. An attorney must meet all the qualifications for a Level One appointment and
- B. An attorney must have been licensed to practice for one year, and
- C. An attorney must have substantial and active participation in
 1. five juvenile or criminal (class B misdemeanor or above) contested trials, of which two must be with a jury, and
 2. either
 - a. ten juvenile adjudications or modifications (contested or uncontested), or
 - b. ten criminal pleas, or
 - c. a combination of these totaling ten proceedings.

Level Three: Qualifications required for appointments for Determinate Sentencing or Certification proceedings:

- A. An attorney must meet all the qualifications for a Level Two appointment and
- B. either
 1. be board certified in juvenile or criminal law by the Texas Board of Legal Specialization, or
 2. an attorney must:
 - a. have been licensed to practice for five years,
 - b. have actively participated as counsel in five felony (juvenile or criminal) jury trials, and
 - c. have been second chair or lead counsel in one or more determinate sentence cases.

Level Four: Qualifications required for appointments for Appeals:

- A. An attorney must be both qualified for trial appointment at any level and have completed five juvenile or criminal appeals, or
- B. an attorney must be Board Certified by the Texas Board of Legal Specialization in Juvenile Law, Criminal Law, or Criminal Appellate Law.

Procedures for Inclusion of Attorneys on the Appointment List

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- A. An attorney must complete the application form provided by the court.
- B. An attorney must demonstrate the attorney meets all qualifications for representation of juveniles at each requested level of appointment.
- C. The attorney must be approved by the Tarrant County Juvenile Board for inclusion on the appointment list.

Appointment of Counsel for Children in Custody

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- A. For the initial detention hearing, the juvenile probation department shall follow the requirements of Sections 51.01, 51.10, and 54.01 of the Texas Family Code, as well as Articles 26.04, 26.05, and 26.052 of the Texas Code of Criminal Procedure to the extent applicable.
- B. If indigency is not established, and if the juvenile is not represented by retained counsel by noon of the day following the initial detention hearing, the probation officer shall submit to the court a request for an indigency determination or a request for a show cause hearing to allow the court to appoint counsel upon showing of good cause.
- C. If a juvenile is released prior to the initial detention hearing, the juvenile's probation officer shall inform the juvenile and the parents of the right to request a court-appointed attorney. Forms to request a court-appointed attorney shall be provided to the juvenile or the parents upon request.

Appointment of Counsel for Children Out of Custody

05/17/2023

- A. Upon making a finding of indigency, an attorney shall be appointed by the fifth business day after the date a petition for adjudication or discretionary transfer hearing has been filed.
- B. Upon making a finding of indigency, an attorney shall be appointed by the fifth business day after the filing of a motion to modify disposition.
- C. The juvenile's probation officer shall provide information concerning the appointment of attorneys for juveniles and forms to request court appointment of an attorney to the juvenile and the juvenile's parents during the intake conference. When a preliminary investigation report is referred to the Criminal District Attorney's office by the probation officer, the probation officer shall submit a request for the appointment of counsel to the court if the juvenile or the parents request an appointed attorney. If a motion to modify or a petition for adjudication or discretionary transfer is filed, the request for appointment of counsel shall promptly be submitted to the court if the juvenile or the parents request an appointed attorney. If indigency is established, an attorney shall be appointed and the attorney shall be notified upon the filing of the petition.
- D. In cases in which the court has appointed counsel, upon filing of a motion to modify or the return of service of a petition for adjudication or discretionary transfer, the juvenile's probation officer shall verify an attorney has been appointed within five business days after the date the motion to modify disposition has been filed or within five business days after the date a petition for adjudication or discretionary transfer has been filed.

Procedures for Appointing Counsel

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- A. Attorneys shall be appointed from among the next five names on the appointment list in the order in which the attorneys' names appear on the approved list of attorneys, unless a finding of good cause to deviate from using the appointment wheel is made.
- B. An attorney who is not appointed in the order in which the attorney's name appears on the approved list of attorneys shall remain next in order on the list.

- C. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory.
- D. The court may replace an attorney who fails to contact the juvenile promptly after the date of appointment or fails to interview the juvenile as soon as practicable.

Distribution of Cases

05/17/2023

- A. Once an attorney is approved by the Tarrant County Juvenile Board to be on the juvenile appointment list, that name shall be given to the court, which shall manage the list.
- B. An attorney may receive an appointment for the highest level of offense for which the attorney is qualified and for each lower level of offense.
- C. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.
- D. Appointments will be made by following a rotation of the names of attorneys and meeting the requirements of Article 26.04(a) of the Texas Code of Criminal Procedure.

Itemized Billing

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- A. Attorneys shall present itemized hourly billing for cases along with a billing (voucher) form. Attorneys shall provide the dates for all in-court settings. If a contested, in-court setting takes longer than one hour, the attorney shall provide such information and provide a brief description of the contested hearing's substance.
- B. Out-of-court time shall be billed in increments of tenths of hours.

C. Attorneys shall be paid at the following hourly rate:

Type of Work	Pay Range
Out-of-Court Time	\$75 - \$225 per hour
Indeterminate Sentence (Levels I & II)	
Uncontested hearings	\$100 - \$225 per setting
Contested hearings	\$100 - \$225 per hour
Determinate Sentence and Certification (Level III)	
Uncontested hearings	\$100 - \$250 per setting
Contested hearings	\$100 - \$275 per hour
Appellate Time (Level IV)	
	\$100 - \$325 per hour

D. An additional \$50.00 per hour may be paid to an attorney when bilingual skills are required for representation and the attorney speaks the language required to represent the client.

E. An additional \$50.00 per hour may be paid to an attorney if the court believes the complexity of the case and/or special skills of the attorney warrant such.

III. Attorney's Fees

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A. Counsel shall submit a payment request for services provided.

B. An attorney may appeal the payment amount authorized by filing a motion with the presiding judge of the administrative judicial region within 60 days after submission of a request for payment.

C. An attorney may appeal the failure to act by filing a motion with the presiding judge of the administrative judicial region.

Investigative and Expert Expenses

05/17/2023

- A. Appointed counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigation and for mental health and other experts. Expenses incurred with prior court approval shall be reimbursed, according to the procedures set forth below. Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.
- B. Procedure with Prior Court Approval:
1. Appointed counsel may file with the trial court a pre-trial, *ex parte* confidential request for advance authorization for investigative and expert expenses. The request for expenses must state, as applicable:
 - a. the type of investigation to be conducted or the type of expert to be retained;
 - b. specific facts suggesting that 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
 - c. an itemized list of anticipated expenses for each investigation or each expert.
 2. The court may grant the request for advance payment of expenses in whole or in part if the request is reasonable.
- C. Procedure Without Prior Court Approval: Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court may order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred.

Application to the Appointment List

05/17/2023

- A. To apply to be on the juvenile appointment list, an attorney must submit:
1. a completed application for the juvenile appointment list, and
 2. Either
 - a. an accurate copy of the attorney's State Bar of Texas minimum continuing legal education annual verification report that demonstrates the annual completion of a minimum of six hours of juvenile law continuing education during the preceding twelve month period,
 - b. a completed continuing legal education annual report form provided by the court that demonstrates the annual completion of a minimum of six hours of juvenile law continuing education during the preceding twelve month period, or
 - c. a statement that the attorney is currently Board Certified in Juvenile Law by the Texas Board of Legal Specialization.
- B. An attorney whom the Tarrant County Juvenile Board has previously approved to be on the juvenile appointment list must reapply annually by December 31st. To apply to remain on the juvenile appointment list, the attorney must submit:
1. a completed application for the juvenile appointment list, and
 2. Either
 - a. an accurate copy of the attorney's State Bar of Texas minimum continuing legal education annual verification report that demonstrates the annual completion of a minimum of six hours of juvenile law continuing education during the preceding twelve month period,
 - b. a completed continuing legal education annual report form provided by the court that demonstrates the annual completion of a minimum of six hours of juvenile law continuing education during the preceding twelve month period, or
 - c. a statement that the attorney is currently Board Certified in Juvenile Law by the Texas Board of Legal Specialization.
- C. Approval of an attorney's application or reapplication to be on the juvenile appointment list shall require a majority vote of a quorum of the members of the Tarrant County Juvenile Board.
- D. If an attorney does not timely submit any of the above documents, the Tarrant County Juvenile Board may suspend, remove, or deny approval for an attorney to be included on the juvenile court appointment list.

Removal from the Appointment Wheel

05/17/2023

- A. An attorney shall be removed from the juvenile appointment list and from any case to which the attorney has been appointed for:
1. conviction or deferred adjudication for any felony,
 2. conviction or deferred adjudication for any crime of moral turpitude,
 3. being under indictment or formally charged with a felony or crime of moral turpitude, or
 4. intentional misrepresentation by the attorney on the application for public appointment.
- B. An attorney may be removed from the juvenile appointment list and from any case to which the attorney has been appointed for:
1. failing to perform the attorney's duties owed to the juvenile,
 2. a finding by a court that the attorney provided ineffective assistance of counsel,
 3. failing to maintain compliance with each of the juvenile public appointment list guidelines,
 4. if, after a hearing, it is shown that the attorney submitted a claim for services not performed by the attorney, or
 5. for good cause at the discretion of the Tarrant County Juvenile Board.
- C. Removals from the list shall be for a minimum of one year. Removals from the list may be probated. For removals or probated removals, the Tarrant County Juvenile Board may require the completion of rehabilitative measures as a condition of the probation or reapplication. For good cause, the Tarrant County Juvenile Board may remove an attorney from the list for a period longer than one year or permanently.
- D. An attorney who was removed from the juvenile appointment list for the reasons stated in Item A (1-4) above may be immediately reinstated upon providing proof either that (1) the charges were dismissed, (2) the attorney was acquitted, or (3) that the attorney was found not to have provided ineffective assistance of counsel by a higher court in the same case as the attorney was previously found ineffective by a lower court.

- E. An attorney who was removed from the juvenile appointment list for any reason may apply for reinstatement to the list upon the expiration of one year from the date the attorney was removed from the list unless the Tarrant County Juvenile Board removed the attorney for a longer period.
- F. The Tarrant County Juvenile Board may remove an attorney from the appointment list if:
1. the attorney requests removal from the appointment list,
 2. the attorney does not have the qualifications required for appointment,
 3. the attorney fails to perform the duties required by the Texas Fair Defense Act,
 - 4 for any of the grounds of removal from the juvenile appointment list included in this plan, or
 5. for good cause.
- G. An attorney may be temporarily removed from the appointment list by request of the attorney to the court if the attorney requests a temporary pause in appointments.