

Brazoria County Juvenile Board Indigence Defense Plan 2010

Preamble

In order to fulfill its obligation to the citizens and youth of Brazoria County, Texas, the Brazoria County Juvenile Board adopts the following Brazoria County Juvenile Board Indigence Defense Plan for 2010 and all subsequent years as amended. This plan, as well as any accompanying form, is subject to amendment, modification or change as voted on by the Brazoria County Juvenile Board at such times as the Board deems appropriate.

I. Prompt Detention Hearings

- A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according to the requirement of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide documents in the form of Forms "A," and "C" if a request for court appointed counsel is made. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed Brazoria County holiday in which case the detention hearing shall be held on the first working day after the child is taken into custody.
- B. Prior to the detention hearing the court or the court's designee shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct as per §54.01 (b), Texas Family Code, as amended per attached Form "H."
- C. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.
- D. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision.

II. Indigence Determination Standards:

- A. Definitions, as used in this rule:
 - i. "Indigent" means a person who is not financially able to employ counsel. "Partially Indigent" means a person who is partially able to employ counsel or who the court determines has the ability to reimburse the county in appropriate installments for the expenses of court appointed counsel or for the attorney for the

day.

- ii. “Net household income” in the case of a child is the income of the child’s parents or other person determined responsible for the support of the child. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the person determined responsible for the support of the child has no income or lesser income.

If child’s parents or other person determined responsible for the support of the child was employed at the time of the juvenile’s detention or apprehension and there is a reasonable probability that person can be employed in a same or similar position, or if that person was found by the Court to be intentionally unemployed or under-employed, the court may consider the income the parents of the juvenile or other person determined responsible for the support of the juvenile made, or reasonably can make, in determining net household income or indigency.

- iii. “Household” means all individuals who are actually dependent on the child’s parent(s) or person(s) deemed responsible for the support of the child, for financial support.
- iv. “The cost of obtaining competent private legal representation” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.
- v. “Attorney for the Day” or “Contract Attorney” means an attorney that is appointed by the court, meeting the requirements of attorney’s eligible to represent juveniles (consistent with the charges pending against them) and who are appointed for up to a day or more to handle multiple juvenile matters on any particular docket.

B. Eligibility for Appointment:

- i. A child is presumed indigent if any of the following conditions or factors are present:
 1. At the time of requesting appointed counsel, a child is presumed indigent if the child’s parent(s) or other person(s) determined responsible for the support of the child is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

2. The net household income of the child's parent(s) or other person(s) determined responsible for the support of the child does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
 3. The child's parent(s) or other person(s) determined responsible for the support of the child is currently serving a sentence in a correctional institution, 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; or
- ii. The child who does not meet any of the standards above shall nevertheless be considered indigent, or partially so, if the child's parent(s) or other person(s) responsible for the child is unable to retain private counsel without substantial hardship. In considering if obtaining private counsel will create a substantial hardship, the Court shall take into account:
1. the nature of the charge(s);
 2. anticipated complexity of the defense;
 3. the estimated cost of obtaining competent private legal representation for the matter(s) charged;
 4. the amount needed for the support of the child, the child's parent(s)/person(s) responsible, and other dependents of the child's parent(s)/person(s) responsible;
 5. child's parent(s)' income or the income of other person(s) determined responsible for the support of the child;
 6. source of income;
 7. assets and property owned by the child, child's parent(s), or other person(s) determined responsible for support of the child;
 8. outstanding obligations;
 9. necessary expenses; and
 10. the number and ages of any siblings of the child.
- iii. Factors NOT to be considered in determining indigence:
1. The resources available to friends or relatives of the child, other than the child's parent(s) or other person(s) deemed responsible for the child, may

not be considered in determining whether the child is indigent.

2. Only the child's parent(s) or other person(s) responsible for the child and the child's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.
- iv. If the child's parent(s) or other person(s) deemed responsible for the child was employed at the time of the referral to juvenile and there is a reasonable probability that the child's parent(s) or other person(s) deemed responsible for the child can be employed in a same or similar position, or if the child's parent(s) or other person(s) deemed responsible for the child was intentionally unemployed or underemployed, the Court may consider the income of the child's parent(s) or other person(s) deemed responsible for the child made, or reasonably can make, in determining indigency.

C. Indigence Proceedings:

- i. The Court can require the child and the child's parent(s) or other person(s) responsible for the child to respond to questions about the child's household financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided in Forms "A" and "C." This information will be obtained and transmitted to the Court or Court's designee at the first personal contact with the parent(s) of the child or that person responsible for the child to determine the eligibility of the juvenile to receive court appointed counsel .
- ii. Information gathered for determining indigence, both in the affidavit of indigence and through oral examination, may not be for any purpose other than:
 1. Determining if child is (or is not) indigent; or
 2. Impeaching direct testimony of the child or the child's parent(s)/person(s) responsible regarding the child's indigence.
- iii. A request by the Court for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in these rules.
- iv. A child determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the child's or the child's parents or other person determined responsible for the support of the child financial circumstances occurs.
 1. A child's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court. The child'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 child's parent(s)/person(s) responsible and the child's financial circumstances; or
 - b. Additional information regarding the child's parent(s)/person(s) responsible and the child's financial circumstances that shows that they do not meet any of the standards for indigence contained in these rules.
2. If a child 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.
- v. If the court determines that a child's parent(s) or other person(s) responsible for the child 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 child's parent(s) or other person(s) responsible for the child to pay during the pendency of the charges or, if found to have engaged in delinquent conduct or CINS, as court costs the amount that it finds the child's parent(s) or other person(s) responsible for the child is able to pay in such manner as the Court may deem appropriate.

III. Minimum Attorney Qualifications

A. The Juvenile Board shall establish attorney appointment lists for the following categories of offenses. Attorneys may apply for and be placed on multiple lists in accordance with Form "E." To be eligible for an appointment list, an attorney must meet the following minimum requirements:

- i. ***Basic Requirements for All Attorneys:*** All attorneys on the appointment list must be:
 1. A member in good standing of the State Bar of Texas;
 2. A member in good standing of the Brazoria County Bar Association;
 3. A person of good moral character, and;
 4. Complete a minimum of ten (10) hours of certified C.L.E. credits annually in criminal and/or juvenile law. No self-study hours will be counted. Continuing legal education activity completed within a one-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 reporting period in excess of the minimum ten (10) hour requirement for such period may be applied to the following period's

requirement. The carryover provision applies to one year only. Completion of the required ten (10) hours will be certified to the Verification Officer on or before the 1st day of each December by filing a sworn annual certification form "I" with the Verification Officer; or is currently certified in criminal law or juvenile by the Texas Board of Legal Specialization; or is over seventy (70) years of age, exempt from CLE Requirements by the State Bar of Texas, and has been approved to handle First Degree Felonies under the Brazoria County Indigent Defense Plan for at least six (6) consecutive years immediately prior to the start of the year the attorney is applying for.

5. Must be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition.
6. May not have been the recipient of any public disciplinary action by the State Bar of Texas or any other attorney licensing authority of any state or the United States within the last ten (10) years;
7. Maintain an office, or have a conference room or suitable meeting room (other than in a public building), in Brazoria County, Texas where a client can meet with the attorney. Maintain a current listing in a telephone directory for Pearland, Alvin, Angleton, West Columbia, Brazosport Area, Sweeny, or Brazoria.
8. An attorney must have the ability to produce typed motions and orders;
9. An attorney shall notify the Verification Officer 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 juveniles. The verification officer shall promptly notify the juvenile board chairman of same for any action to be taken by the board.

ii. Where the delinquent conduct alleged is Capital Murder (No Death Penalty by statute), the appointed attorney must:

1. Be Board certified in criminal law or juvenile, or;
2. Have at least five (5) years experience in criminal and/or juvenile litigation and tried to verdict as lead counsel at least eight (8) felony cases, excluding State Jail felonies, within the last five (5) years.

iii. Where the delinquent conduct alleged is a First Degree Felony, the appointed attorney must:

1. Be Board certified in criminal or juvenile law, who are therefore qualified to handle all First Degree Felonies and any lesser offenses for purposes of this plan, or;
2. Have at least four (4) years prior experience in criminal and/or juvenile litigation, and;

3. Tried to conclusion at least four (4) felony jury trials as lead counsel within the last ten (10) years.
- iv. Where the delinquent conduct alleged is a Second Degree Felony, the appointed attorney must:
1. Have at least three (3) years experience in criminal and/or juvenile litigation, and;
 2. Prior experience in two (2) or more felony jury trials as lead counsel within the last ten (10) years.
- v. Where the delinquent conduct alleged is a Third Degree Felony or State Jail Felony, the appointed attorney must:
1. Have at least one (1) year prior experience in criminal and/or juvenile litigation, and;
 2. Have prior experience as lead counsel in at least three (3) criminal and/or juvenile jury trials, excluding Class C misdemeanors, within the last five (5) years.
- vi. Where the delinquent conduct alleged is a misdemeanor or the determination of whether a child in need of supervision, the appointed attorney must:
1. Meet basic requirements for all attorneys, and,
 2. be familiar with the docket call procedures for all County Courts at Law.
- vii. Appellate Appointments:
1. When the adjudication is Capital Murder (No Death Penalty by Statute), the appointed attorney must:
 - a. Be Board Certified in criminal law or juvenile, or;
 - b. Have personally authored at least five (5) criminal and/or juvenile appellate briefs within the last seven (7) years.
 2. When the adjudication is a First and Second Degree Felony, the appointed attorney must:
 - a. have at least three (3) years experience in criminal and/or juvenile litigation or appellate practice; and,
 - b. at least two (2) appellate briefs filed in criminal and/or juvenile cases within the last five (5) years.
 3. When the adjudication is a Third Degree Felony or a State Jail Felony, Misdemeanors and Children In Need of Supervision, the appointed attorney must:

- a. Have at least two (2) years prior experience in criminal and/or juvenile litigation and at least one (1) brief filed in a criminal or juvenile case within the last five (5) years; or;
- b. Otherwise be deemed qualified by a majority vote of judges handling criminal cases.

B. Approval for Appointment Lists - An attorney must be approved by a majority of the Juvenile Board for each appointment list for which the attorney applies.

C. Removal from Appointment List - The Juvenile Board will monitor attorney performance on a continuing basis to assure the competency of attorneys on the list. An attorney may be removed or suspended, as appropriate, from one or more appointment lists by a majority vote of the judges at any posted Juvenile Board Meeting or for failure to file Annual Certification Form "T" attached.

D. Reinstatement to Appointment Lists:

- i. An attorney who was removed from the appointment list for non-completion of the required CLE hours may be immediately reinstated upon providing proof that the attorney has completed the required hours so long as the attorney otherwise meets the other qualifications under this Plan and filing form "T" attached.
- ii. An attorney who has been removed from the appointment list for any other reason and who wishes to be reinstated must apply through the original application process.

E. Duties of Appointed Counsel - Appointed Counsel shall:

- i. Notify the Court or the Court's designee in writing within 72 hours of their receipt of appointment by the Court in accordance with Form "F" attached;
- ii. Make every reasonable effort to:
 1. Contact the child by the end of the first day after the date on which the attorney is appointed; and
 2. Interview the child as soon as practicable after the attorney is appointed;
- iii. Represent the child until:
 1. The case is terminated;
 2. The family retains an attorney;
 3. The attorney is relieved of his duties by the court or replaced by other retained or appointed counsel;
- iv. Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense that may be reasonably and arguably available to the child;

- v. Be prepared to present any legal defense that may be reasonably and arguably available to the child;
- vi. Be prepared to negotiate with the prosecutor for the most favorable solution of the case as can be achieved through a plea agreement;
- vii. Be prepared to try the case to conclusion either with or without a jury;
- viii. 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;
- ix. Maintain reasonable communication and keep the child and the child's family informed of the status of the case;
- x. Advise the child and the child's family (consistent with attorney client privilege) 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;
- xi. Perform the attorney's duty owed to the child in accordance with these procedures, the requirements of the Code of Criminal Procedure and the Family Code, and applicable rules of ethics; and
- xii. Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

IV. Prompt Appointment of Counsel:

A. Appointment of Counsel for Children in Detention:

- i. Prior to the detention hearing the Court or it's designee shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct in accordance with Form "C" and "G" attached.
- ii. Prior to the initial detention hearing, the court shall provide the attorney for the child with access to all written matter to be considered by the court in making the detention decision.
- iii. If there is no parent or other responsible adult present, the court must appoint counsel or a guardian ad litem for the child.
- iv. If the juvenile is detained, the child has an immediate right to counsel. If counsel has not already been appointed, the court must either appoint counsel or direct the juvenile's parent or other responsible adult to retain an attorney promptly. The court may enforce an order to retain counsel by appointing an attorney to represent the child and requiring that the child's parent or other

responsible adult reimburse the court for attorneys' fees.

v. Upon appointment, the court coordinator or designee, or the Verification Officer shall notify the appointed attorney by fax, e-mail, or personal contact of the appointment and the scheduled hearing time and date in accordance with Form "F" attached.

vi. The appointed attorney shall make every reasonable effort to contact a child in detention by the end of the third working day after receiving the notice of appointment or to inform the court that the appointment cannot be accepted. Contacting the child in detention may be by personal visit (including contact during a detention hearing), by phone, or by video teleconference. Contacting the court may be by fax, email, phone or personal visit. A court-appointed attorney shall contact the child, in one of the ways mentioned above, no less than once every ten working days while the child remains in detention.

vii. An attorney appointed for a detention hearing 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 Court may replace an attorney who had previously represented a child at a prior detention hearing for good cause.

viii. Court-appointed attorneys shall make every effort to comply with the Texas State Bar Code of Ethics for communication with a client.

ix. Notwithstanding the above, if a parent or the person responsible for the juvenile informs the court or juvenile department of their intent to seek court-appointed counsel, the application or request to do so will be deemed complete when all necessary information, including proof of income and a financial information sheet has been completed, then the juvenile department will forward such Application and supporting documentation within 5 working days of receipt of same, but not later than the date of filing of the petition.

B. Appointment of Counsel for Children not Detained at Intake

i. If the child is released from detention and if a petition to adjudicate or a motion to modify is filed, the juvenile court will use the financial forms gathered at intake to make a determination of indigence. If no financial information is available, the juvenile court shall promptly summon the child's parent/guardian/custodian to the court so that financial information may be gathered for a determination of indigence.

ii. If the court makes a finding of indigence, the court shall appoint an attorney on or before the fifth working day after:

a. The date a petition for adjudication or discretionary transfer hearing has

been served on the child; or

b. A motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed.

iii. If the family does not qualify for appointed counsel or if the parent or guardian is not available, and the family fails to provide an attorney, the juvenile court may appoint an attorney in any case in which it deems representation necessary to protect the interests of the child.

iv. The court clerk shall notify the juvenile court upon the filing of and return of service of a motion to modify or the return of service of a petition for adjudication or discretionary transfer.

C. Attorney for the Day/Contract Attorney Program

i. Notwithstanding the foregoing sections of the “Brazoria County Juvenile Indigence Defense Plan, nothing contained in this plan is intended to prevent any child’s parent or other person responsible for the child, whether indigent or not, from having access to the legal services of the contract attorney or attorney for the day that are available at the respective Court’s adjudication and disposition docket.

ii. Attorney for the Day Procedure:

a. At the conclusion of the docket call for the adjudication and disposition docket, the Court shall, on the record, admonish the juveniles and their parents or persons responsible for the child in the use of the Attorney for the Day or Contract Attorney, including but not limited to those issues and matters set forth in Form “H.” The Court shall specifically explain the limitations of the use of the attorney for the day or contract attorney.

b. The use of the attorney for the day shall be limited to less serious offenses such as misdemeanors, children in need of supervision, contempt of court and such other non—aggravated felony charges or non sex offender registration charges as the Court may deem appropriate in the circumstances.

c. Prior to consulting with any contract attorney or attorney for the day, each child’s parent or other person responsible for the child, must review and execute the “Explanation of Rights,” as attached hereto as Form “H.”

d. This Plan and this Subsection C does not require any individual court to utilize the attorney for the day or contract attorney system and nothing in this plan or section is intended to confer a right of use of the attorney for the day or contract attorney systems.

e. The court may access a reimbursement fee as costs for each case that

utilizes the attorney for the day or contract attorney system, to offset the costs incurred by the County for providing this service. The court may have such reimbursement fee in its discretion in the interest of the juvenile and the financial circumstances of the juvenile's family.

V. Attorney Selection Process

A. The Court will identify which of the appointment lists, discussed in the attorney qualifications section, is most appropriate based on the accusations against the child and will appoint the attorney whose name is first on the list, unless good cause exists for appointing an attorney out of order. Good cause may include:

- i. The child requesting counsel does not understand English, in which case the judge will appoint the lawyer whose name appears next in order and speaks the child's language, if one is available;
- ii. The child 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;
- iii. An initial detention hearing is scheduled and the first attorney on the list is unavailable;
- iv. The next name on the appointment list does not maintain an office or a conference room to meet clients within at least fifteen (15) miles of the juvenile's residence if the juvenile resides in Brazoria County, Texas; or,
- v. Other good cause exists for varying from the list.

B. Once appointed, an 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.

C. Judicial Removal from Case:

- i. The judge presiding over a case involving a child may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
 1. Counsel's failure to appear at a court hearing;
 2. Counsel's failure to comply with the requirements imposed upon counsel by this plan;
 3. Current information about the child and the charges against the child indicate that another qualified attorney is more appropriate for the child under these rules;

4. The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
 5. The child requests an attorney, other than trial counsel, for appeal;
 6. The child shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the child; or,
 7. To ensure proper representation of the juvenile if the court deems the attorney appointed at a detention hearing is not qualified to handle the delinquent conduct charged as filed in the Petition alleging Delinquent conduct.
- ii. Appointment of Replacement Counsel - 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.

VI. Fee and Expense Payment Process:

A. Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the Juvenile Board.

B. Payment Process - No payment of attorney's fees will be made other than in accordance with the rules set forth below:

- i. An appointed attorney shall fill out and submit a fee voucher (Form "D" attached) to the court for services rendered at the time of the adjudication or disposition of the case, or the conclusion of an appeal, whichever ends the attorney's representation.
- ii. The judge presiding over the proceedings shall review the request for compensation and either approve or disapprove of the request.
 1. 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.
 2. 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 administrative judge of Brazoria County.

C. Payment of Expenses:

- i. Court appointed counsel will be reimbursed for reasonable and necessary

expenses incurred, including expenses for investigation and for mental health and other experts. Expenses incurred with and without prior approval shall be paid according to the procedures set forth below. Whenever possible prior court approval should be obtained before expenses are incurred. Travel expenses, time or mileage to and from the Courthouse are not paid by the Court or County and are not authorized.

ii. Procedure With Prior Court Approval:

1. Appointed Counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state the below, as applicable:
 - a. The type of investigation to be conducted or the type of expert to be retained;
 - b. 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
 - c. An itemized list of anticipated expenses for each investigation and/or each expert.
2. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:
 - a. State the reasons for the denial in writing;
 - b. Attach the denial to the confidential request; and
 - c. Submit the request and denial as a sealed exhibits to the record.

iii. Procedure Without Prior Court Approval:

1. Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

PASSED BY THE BRAZORIA COUNTY JUVENILE BOARD ON THIS 19th
DAY OF NOVEMBER, 2009.

/S/
MARC W. HOLDER, JUVENILE BOARD CHAIRMAN