

**AMENDED  
ANGELINA COUNTY  
JUVENILE INDIGENT DEFENSE PLAN**

**I. DETENTION HEARING**

- A. Initial detention hearing – if the juvenile is detained and private counsel has not been retained, an attorney shall be appointed by the time of the initial detention hearing. The juvenile clerk shall notify by e-mail, fax or telephone the attorney of the appointment and that the juvenile is in detention.
- B. If a juvenile is released prior to the initial detention hearing, the probation officer shall inform the juvenile and the juvenile's 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 juvenile's parents upon request.
- C. If indigency is not established by affidavit, the parent, guardian, custodian, or other person may be held responsible, at the discretion of the court to reimburse the county for the cost of representation.

**II. APPOINTMENT OF COUNSEL FOR CHILDREN OUT OF CUSTODY**

- A. The court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the date a petition for adjudication or discretionary transfer hearing has been served on the child.
- B. The court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the filing of the motion to modify disposition.
- C. The 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 county attorney's office by the probation officer, the probation officer shall submit a request for the appointment of counsel to the juvenile court if the juvenile requests 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 immediately be submitted to the court. If indigency is established, the court shall make the attorney appointment and the juvenile clerk shall notify the attorney upon the filing of the petition.
- D. The District Clerk shall notify the juvenile clerk upon the filing of a motion to modify or the return of service of a petition for adjudication or discretionary transfer. The juvenile clerk shall verify that an attorney has been appointed within five working days after the date the motion to modify disposition has been filed or within five working days after the date a petition for adjudication or discretionary transfer has been served upon the juvenile. If an attorney has not been appointed, the juvenile clerk shall immediately notify the probation officer and the juvenile judge.

- E. If the court does determine indigency, the parent, guardian, custodian, or other person shall retain counsel within five additional days. Should the parent, guardian, custodian, or other person fail to act, the court shall appoint counsel at least 10 working days prior to any hearing. Such 10 days may be waived with the consent of the juvenile and the attorney. The cost for the appointed attorney may be taxed as costs in the discretion of the court. If after a finding of indigency, and after appointment of an attorney, a parent, guardian, custodian, or other person retains counsel, any cost accrued by the appointed counsel may be taxed as costs.

### **III. QUALIFICATIONS FOR APPOINTMENTS IN THE JUVENILE COURT**

- A. An attorney must be a member in good standing of the State Bar of Texas.
- B. An attorney must reside in Angelina County or maintain his/her principal business in Angelina County. (A post office address alone will not satisfy the requirement).
- C. An attorney must have an answering service or a regularly monitored answering machine.
- D. An attorney must have a functioning fax machine and/or an E-mail address, one of which is available 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 Juvenile Court a completed application for the juvenile public appointment list approved by the Angelina County Juvenile Board.
- G. An attorney shall promptly notify the Juvenile Court of any changes to the information Contained in the application for the juvenile public appointment list.
- H. An attorney shall promptly notify the Juvenile 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 TYC commitment criteria, use of juvenile adjudications in adult proceedings, license suspension, sex offender registration, school removals and expulsions, sealing of records, etc).
- J. In order to remain on the Indigent Defense Representation and Juvenile Court Public Appointment List, pursuant to our First Amended (2009) Local Rules of Angelina County for the Timely and Fair Appointment of Counsel for Indigent Defense and Amended Angelina County Juvenile Indigent Defense Plan, all attorneys must provide proof of completion of at least 6 CLE hours in criminal law per Title 1, §174.1 of the Texas Administrative Code for criminal appointments and 6 CLE hours in juvenile law per Title 1, §174.2 of the Texas Administrative Code for juvenile appointments. These must be completed and provided to the office of County Court at Law No. 2 by December 31<sup>st</sup> of each year.

- K. A copy of an attorney's annual State Bar of Texas Continuing Legal Education annual reporting form shall be filed each year with the Juvenile Court. The form shall be filed within thirty days of receipt by the attorney of the form from the State Bar of Texas.
- L. An attorney must have attended two detention hearings, two adjudication hearings, and two disposition hearings of the designated Juvenile Court or the Attorney must have actively received appointments in the designated Angelina County Juvenile court for a period of one year or more.
- M. An attorney shall comply with any additional requirements that may be later imposed by the Juvenile Board.

**IV. LEVEL ONE: ANY JUVENILE CASE NOT INVOLVING DETERMINATE SENTENCE OR CERTIFICATION PROCEEDINGS**

- A. An attorney must be a member in good standing of the State Bar of Texas.
- B. An attorney shall have observed at least two detention hearings, two adjudication hearings, and two disposition hearings.

**V. LEVEL TWO: QUALIFICATIONS REQUIRED FOR APPOINTMENTS FOR DETERMINATE SENTENCING OR CERTIFICATION PROCEEDINGS.**

- A. An attorney must have been licensed to practice for three years, and
- B. An attorney must:
  - 1. Be board certified in juvenile or criminal law by the Texas Board of Legal Specialization or
  - 2. Have substantial and active participation in at least two felony jury trial (juvenile or criminal).

**VI. LEVEL THREE: QUALIFICATIONS FOR APPOINTMENTS FOR APPEALS**

- A. An attorney qualified for trial appointment for any level can receive appellate appointment at that same level.

**VII. PROCEDURES FOR INCLUSION OF ATTORNEYS ON THE APPOINTMENT LIST**

- A. An attorney must complete the application form.
- B. An attorney must demonstrate that he/she meets all qualifications for representation of juvenile at each requested level or appointment.

- C. The attorney must be approved by the Juvenile Board of inclusion on the appointment list.

## **VIII. PROCEDURES FOR APPOINTING COUNSEL**

- A. The court shall appoint attorneys from among the available of 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.
- B. 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. 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 on the first working day after the date of appointment or fails to interview the juvenile as soon as practicable.

## **IX. DISTRIBUTION OF CASES**

- A. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.
- B. Appointments will be made by following a rotation of the names of attorneys and meeting the requirements of Article 26.04(a) CCP.

## **X. REMOVAL GROUNDS**

### **A. GROUNDS FOR REMOVAL FROM THE JUVENILE PUBLIC APPOINTMENT LIST**

- 1. An attorney shall be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:
  - a. conviction or deferred adjudication for any felony, or
  - b. conviction or deferred adjudication for any crime of moral turpitude, or
  - c. being under indictment or being formally charged with a felony or crime of moral turpitude, or
  - d. intentional misrepresentation by the attorney on the application for public appointment.
- 2. An attorney may be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:

- a. failing to perform the attorney's duties owed to the juvenile, or
  - b. a finding by a court that the attorney provided ineffective assistance of counsel, or
  - c. failing to maintain compliance with each of the juvenile public appointment list guidelines, or
  - d. if after a hearing it is shown that the attorney submitted a claim for services not performed by the attorney, or
  - e. for good cause at the discretion of the juvenile board.
3. 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 Juvenile Board may require the completion of rehabilitative measures as a condition of the probation or reapplication. For good cause, the Juvenile Board may remove an attorney from the list for a period longer than one year or permanently.
- B. An attorney who was removed from the juvenile appointment list for the reasons stated in item A, (1), a, b, or c above may be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted.
- C. An attorney who was removed from the juvenile public 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 Juvenile Board removed the attorney for a longer period of time.

## **XI. PROCEDURES FOR REMOVAL OF ATTORNEYS FROM THE APPOINTMENT LIST**

- A. The Juvenile Board may remove an attorney from the appointment list if:
- a. the attorney requests removal from the appointment list, or
  - b. the attorney does not have the qualifications required for appointment, or
  - c. the attorney fails to perform the duties required by the Texas Fair Defense Act, or
  - d. for any of the grounds of removal from the juvenile appointment list included in this plan, or
  - e. for good cause.

## XII. DETERMINATION OF INDIGENCY

- A. The income of the juvenile and the child's parent or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies for a court appointed attorney.
- B. A juvenile or a juvenile's parent or other person responsible for the support of the juvenile shall complete a sworn questionnaire and provide supporting documentation if ordered to do so. If a finding of indigency is made, the court shall appoint counsel.
- C. An indigent is any person with a household income at or below 125% of the latest poverty guidelines as established and revised annually by the United States Department of Health and Human Services, and whose liquid assets do not exceed \$15,000.
- D. A juvenile whose household income exceeds 125% of the latest poverty guidelines may still qualify for a court-appointed attorney if the court or its designee determines special circumstances exist, and 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 and any efforts the juvenile or the juvenile's family has made to retain an attorney.
- E. Transfer of Property – If the juvenile or the juvenile's parents or other person responsible for the support of the juvenile has transferred property after the date of the alleged commission of the offense, the court shall determine the reason for the transfer of property and shall determine whether adequate monetary consideration was received. If adequate monetary consideration was not received, the court shall presume that the transfer was made for the purpose of establishing eligibility unless the juvenile or the juvenile's parents or other person responsible for the support of the juvenile furnishes clear and convincing evidence that the transfer was made exclusively for another purpose. If a transfer was made either for the purpose of establishing eligibility or without adequate monetary consideration and the property is reconveyed to the juvenile or juvenile's parents or an adjustment is made by which the juvenile or the juvenile's parents receives full value, the juvenile or the juvenile's parents, if otherwise qualified, will be eligible to receive legal representation at State expense.
- F. Definitions – Terms used to determine eligibility for an indigent's defense shall have the following meanings:

Household income: The juvenile's or the juvenile's parents or other person responsible for support of the child household income shall be defined as the juvenile's income, the juvenile's parents' income and the income of any other person responsible for the support of the child, ~~and the income of all other persons related by birth, marriage or adoption who reside with the juvenile.~~ Income shall include the total cash receipts, before taxes,

from all resources, including money wages and the net receipts from nonfarm or farm self-employment. Further, income shall include regular payments from a governmental income maintenance program, alimony, child support, 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 government 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 which is received from tax refunds, gifts, one-time insurance payments or compensation for injury, non-cash benefits (Food Stamps, etc.).

- G. The guidelines established herein for the appointment of counsel also apply to the reimbursement of expense incurred for the purposes of investigation or expert testimony, as approved by the court.
- H. A juvenile who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or state may move for reconsideration of an indigency determination.

### **XIII. FORM REQUIRED FOR INDIGENCY**

- A. A juvenile, parent or person responsible for the support of the child who requests a determination of indigency and appointment of counsel shall:
  - 1. complete under oath a questionnaire concerning financial resources, or
  - 2. respond under oath regarding financial resources, or
  - 3. complete questionnaire and respond to examination.

### **XIV. FEE SCHEDULE FOR JUVENILE CASES**

- A. Fees shall be established by order of the Board of Judges of Angelina County.

### **XV. ATTORNEYS FEES**

- A. Counsel shall receive a payment form from the court for appearances.
- B. Counsel shall submit a payment request form itemizing services for evidentiary court appearances including jury trials. The form shall itemize the services provided and the dates of the services. The form shall set out separately the total time spent out of court and the total time spent in court representing the juvenile.

- C. If the judge disapproves the requested amount, the judge shall make written finding stating reason for approving an amount different from the requested amount.
- D. An attorney may appeal disapproval of attorney fees to the presiding judge of the administrative judicial region.
- E. The commissioners court shall pay the appointed counsel the amount approved by the presiding judge of the administrative judicial region that is in accordance with the fee schedule not later than 45 days after the date of an application for payment.

## **XVI. AMENDMENTS TO THE PLAN**

The plan may be amended by a majority vote of the members of the Juvenile Board.



STATE OF TEXAS

§

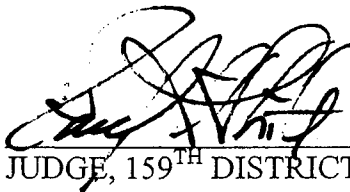
COUNTY OF ANGELINA

§

ORDER

On the 25<sup>th</sup> day of AUGUST, 2009, the Board

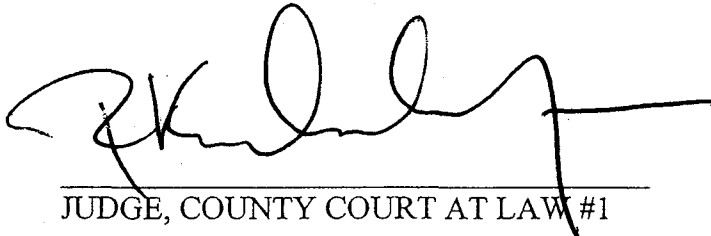
of Judges of Angelina County, Texas met and adopted the attached Amended Angelina County Juvenile Defense Plan, in accordance with the requirements of the Texas Fair Defense Act. This Amended Angelina County Juvenile Indigent Defense Plan rescinds all previous schedules.



JUDGE, 159<sup>TH</sup> DISTRICT COURT



JUDGE, 217<sup>TH</sup> DISTRICT COURT



JUDGE, COUNTY COURT AT LAW #1



JUDGE, COUNTY COURT AT LAW #2



JUDGE, ANGELINA COUNTY