TENTH AMENDED
FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS IN THE DISTRICT AND COUNTY COURTS OF FORT BEND COUNTY, TEXAS, PURSUANT TO ART. 26.04, ET SEQ., TEXAS RULES OF CRIMINAL PROCEDURE

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(Amended 11-15-2023)

PREAMBLE

This "TENTH AMENDED FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS IN THE DISTRICT AND COUNTY COURTS OF FORT BEND COUNTY, TEXAS, PURSUANT TO ART. 26.04, ET SEQ., TEXAS RULES OF CRIMINAL PROCEDURE", hereinafter referred to as the **"Plan"**, shall take the place of the **"NINTH AMENDED FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS IN THE DISTRICT AND COUNTY COURTS OF FORT BEND COUNTY, TEXAS PURSUANT TO ART.26.05, ET SEQ., TEXAS RULES OF CRIMINAL PROCEDURE** (adopted August 16, 2023, by the Fort Bend County Council of Judges), which previous Plan and Supplement have heretofore governed the appointment and payment of counsel for indigent adult defendants in felony and misdemeanor cases. This Plan, when adopted, shall apply to magistrate and probable cause hearings and to the setting of bonds and is adopted in order to comply with the provisions and requirements of Art 26.05, et seq., Texas Code of Criminal Procedure. In the event that the Task Force on Indigent Defense provides for requirements not contemplated by this Plan, this Plan shall be amended at the first opportunity. If there is any conflict between this Plan and any local rule that addresses the matters included herein, this Plan and the Texas Code of Criminal Procedure shall apply.

I.
PROMPT MAGISTRATION

A. Probable Cause Affidavit. At the time of the magistrate and probable cause hearings, the arresting officer for each arrestee shall have filed, at the time of booking into the jail, a printed (by computer or email) and concise probable cause affidavit with such additional information (offense report, etc.) as necessary for the magistrate judge to make the appropriate judgment. "Arrestee" is defined herein as a person who is arrested with or without an indictment or information having been filed and may sometimes be referred to herein as "Defendant." No one shall be booked into jail without a filed "Probable Cause Affidavit." Affidavits for a warrant for arrest must be faxed or delivered to the jail upon

arrest from the arresting agency. If not authorized to appoint counsel, the magistrate shall, without unnecessary delay but in no event longer than 24 hours after an Arrestee's arrest, transmit, or cause to be transmitted, to the proper appointing magistrate or appointing authority an Arrestee's request for counsel.

1. A magistrate judge conducting magistrate and probable cause hearings, as provided for in these rules, shall be a Judge, Associate Judge or an assigned Judge designated by the appropriate Local Administrative Judge of Fort Bend County in order to ensure consistent compliance with all local rules and the Texas Code of Criminal Procedure.

B. Magistrate Hearing. Each Arrestee shall be brought before the magistrate within 48 hours of arrest. (Art. 14.06(a), CCP). The morning after arrest, at a time established by the magistrate, every felony and misdemeanor Arrestee shall be brought to the magistrate jail courtroom, or other designated courtroom or place, for a magistrate to hold a probable cause hearing, to set bail and to determine the need for court appointed counsel. During the weekends, the magistrate shall hold magistrate and probable cause hearings at a time as determined by the magistrate, and the magistrate will timely advise the jail of such time and place in advance of the hearing(s). The jail shall have each Arrestee and the necessary files and papers ready for review by the magistrate at the jail courtroom, or other designated place, prior to the magistrate's arrival.

C. Procedure. At the magistrate probable cause hearing for the Arrestee, the magistrate shall make a written record of and comply with the provisions of this Plan and the requirements of the Texas Code of Criminal Procedure, including:

1. Following the requirements of Art. 15.17 Texas Code of Criminal Procedure;
2. Informing the Arrestee of the right to appointment of counsel, if the Arrestee is indigent;
3. Making a written record of the magistrate warnings;
4. Informing the Arrestee of the right to an attorney;
5. Inquiring of the Arrestee as to whether or not the Arrestee is requesting court appointed counsel;
6. Providing Arrestee with an affidavit of indigency and reasonable assistance in completing any necessary forms; and
7. If required, making a referral of the Arrestee to an appropriate local mental health or intellectual and developmental disability authority, as required by Art. 16.22 (a) Texas Code of Criminal Procedure.

The Magistrate shall use the **"Magistrate Warning"** form attached to this plan as **"Addendum I"**. The making of a record is satisfied by the use of the written form approved by the Fort Bend County Council of Judges.

D. Indigency. At such magistrate hearings, each Arrestee shall be provided an opportunity to request court appointed counsel. If the Arrestee is claiming indigency, the Arrestee shall complete and file a sworn affidavit of indigency with the magistrate, as set out herein as **"Addendum E".**

E. Appointment of Counsel. The magistrate will send all requests for appointment of counsel by an indigent Arrestee in felony cases, misdemeanor cases and in cases which both felony and misdemeanor charges are pending, to the Fort Bend County Indigent Defense Department (hereinafter referred to as "Indigent Defense").

1. Indigent Defense shall appoint attorneys from the approved, graduated list of attorneys not later than the end of the first working day after receipt of such request for appointment of counsel. Appointments shall be on a rotating basis, except as otherwise provided by law. If an indigent person is arrested pursuant to indictment, the appointment will be made not later than the end of the first working day after receipt of the request by the Judge in whose court the case is filed or by Indigent Defense.

2. Any Arrestee charged with Capital Murder shall have attorney(s) appointed by the trial court assigned the case from the Eleventh Administrative Region approved list of attorneys qualified to try Capital Cases. Preference in the appointment shall be given to those qualified attorneys who have practiced in Fort Bend County, have knowledge of Fort Bend County local rules and who comply with the requirements of paragraphs **VIII and IX of Addendum "A"** attached hereto.

3. Notice of appointment of counsel in all cases will be emailed to the appointed attorney. It is required that all attorneys on the approved list maintain a valid email address and provide such email address and current contact information to Indigent Defense so that notification of appointments can be facilitated. The notice of appointment shall include the defendant's name, date of birth, mailing addresses, phone number, e-mail address (if known), charge(s), and court date (if known).

F. Out of County Warrants. For a person arrested on an out-of-county warrant, the magistrate shall: ask if the person wants to request counsel; inform the person of the procedures for requesting counsel; and ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. [Art. 15.18(a-1), CCP]. Requests for counsel made by persons arrested on out-of-county warrants shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee in the county issuing the warrant. [Art. 15.18(a-1), CCP].

II.

INDIGENCY DETERMINATION STANDARDS

The financial standards set forth below shall be used in determining whether an Arrestee or defendant is considered indigent.

A. Generally. A person is considered indigent if their net household income does not exceed 130% of the federal poverty guideline for Annual Household Income (adjusted by number of persons in the household) as established and revised annually by the United States Department of Health and Human Services and published in the Federal Register. Those Poverty Guidelines may change from year to year and shall be calculated by Indigent Defense for each calendar year to be used during that calendar year.

B. Indigent Defense Role. Indigent Defense shall interview each Arrestee prior to the magistrate hearing and shall provide to the magistrate the following information:

1. Financial information regarding the Arrestee's available income from all sources, including but not limited to, spouse and contributions from family members;

2. Financial information regarding dependents whom they are financially responsible for that are under the age of 18, in addition to dependents above the age of 18 that are enrolled in high school/ college whom they are still financially responsible for;

3. Arrestee's expenses, including but not limited to, living expenses, child support and alimony obligations, childcare, medical expenses and transportation expenses;

4. Assets including, but not limited to, cash, savings and checking accounts, stocks, bonds, certificates of deposit, IRA's, retirement accounts, equity in real estate, personal property, bitcoin and trust accounts;

5. Information on whether or not the Arrestee is fluent in English, and if not, the language spoken by the Arrestee; and, whether or not the Arrestee is deaf. Indigent Defense shall, upon learning that an Arrestee is deaf or unable to communicate in English, arrange for a qualified licensed interpreter to be present when the Arrestee is taken before the magistrate; and

6. Information on whether or not there is reason to believe that the Arrestee, if committed to the custody of the Fort Bend County Sheriff, has a mental illness, or is a person with mental retardation. The Sheriff shall not later than 12 hours after obtaining custody of the defendant, provide written or electronic notice to the magistrate regarding the defendant's suspected mental illness. All other provisions of 16.22 shall be adhered to by the Sheriff and magistrate.

III.

MINIMUM ATTORNEY QUALIFICATIONS FOR INDIGENT APPOINTMENT

To be approved for inclusion on the list of attorneys qualified for appointment under this Plan for criminal cases in Fort Bend County, an attorney must complete the **"Fort Bend County Application & Attorney Profile for Criminal Appointments,"** attached hereto as **"Addendum C",** and be in compliance with the following requirements:

A. CLE Requirement. Complete the required hours of CLE pertaining to the defense of defendants in criminal cases (whether felony as outlined in **"Addendum A"** or misdemeanor as outlined in **"Addendum B"**) in the preceding calendar year, as required by the Plan. The reporting period will begin on January 1, 2023, and on the same day of each year thereafter.

1. Required continuing legal education may be satisfied by completing activities accredited under Section 4, Article XI, State Bar Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing; or

2. By providing evidence of current certification (in good standing) of the attorney's certification in criminal law by the Texas Board of Legal Specialization.

3. Continuing legal education activity completed within a one-year period immediately preceding the adoption of this Plan may be used to meet the educational requirements for 2023.

4. Continuing legal education activity completed during any reporting period in excess of the minimum fifteen (15) hour requirement for such period may be applied to the following period's requirement. The carryover provision applies to one year only.

B. Application. To be initially approved for inclusion on the list of attorneys qualified for appointment under this Plan for criminal cases in Fort Bend County, each attorney shall submit "**Addendum C**" by October 15th for the 12 months ending on September 30th (15 days prior to October 15th). [Art. 26.04(j)(4), CCP]. Failure to submit "**Addendum C**" by October 15th will result in the denial of the attorney's application. Those applications submitted in accordance with this section shall be approved or denied by the judiciary within sixty (60) days from the closing of October 15th. The judiciary shall have the ability to extend the time to review applications by majority vote of the Fort Bend County Council of Judges.

C. Recertification. To continue placement on the appointment list, each attorney must annually submit an affidavit, attached hereto as **"Addendum H",** to Indigent Defense, or designee, detailing the continuing legal education activities in criminal law

which have been completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in criminal law using said Addendum.

D. Residency and Waiver. Each attorney must maintain their primary residence in Fort Bend County, Texas; or maintain their principal law office in Fort Bend County, Texas, as listed on the State Bar of Texas website; or receive a waiver of this requirement by majority vote of the Fort Bend County Council of Judges.

IV.

PROMPT APPOINTMENT OF COUNSEL

A. Generally. Counsel for indigent Arrestees shall be appointed as soon as possible, but not later than the end of the first working day after the date on which the appointing judge, or person(s) designated by the judges to appoint counsel, receives an eligible defendant's request for counsel. [Article 1.051(c), CCP]

B. On Bond. If an indigent defendant is released from custody prior to the appointment of counsel under the procedure contained in this Plan, appointment of counsel is not required until the defendant's first court appearance, or when adversarial judicial proceedings are initiated, whichever comes first. [Article 1.051(j), CCP]

C. Waiver of Counsel. The Judge may not direct or encourage the Arrestee to communicate with the attorney representing the State until the Court advises the Arrestee of the right to counsel and the procedure for requesting appointed counsel, and until the defendant has been given a reasonable opportunity to request appointed counsel, unless the Arrestee has signed a valid, written waiver of the Arrestee's right to counsel, as hereinafter provided in **"Addendum E"**, attached hereto. [Art. 1.051(f-2), CCP]

D. Fort Bend Warrants. Persons arrested in other counties on local warrants shall be appointed as soon as possible, but not later than the end of the first working day after the date on which the County is in receipt of the request from the arresting county to appoint counsel for an eligible defendant. [Art. 1.051(c-1), CCP]

E. Out of County Warrants. Persons arrested on out-of-county warrants shall be appointed counsel by Fort Bend County if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest. [Art. 1.051(c-1), CCP]

F. Counsel Request Forms. If an Arrestee prefers to request counsel prior to the initial appearance before the magistrate, the forms required to request counsel may be obtained at the Texas Indigent Defense Commission's website at http://tidc.tamu.edu/public.net/. The Arrestee shall then submit this completed form to the appointing authority (the county in which the warrant was issued). (1 TAC § 174.51)

V.

ATTORNEY SELECTION PROCESS

All appointed counsel for criminal Arrestees in Fort Bend County, in the District and County Courts at Law, in both felony and misdemeanor cases, shall be selected pursuant to the requirements of the Texas Code of Criminal Procedure, Art. 26.04, et seq., and this Plan, using a system of rotation from a list of approved counsel. The list of approved counsel, attorney qualifications, and/or any additional changes to this Plan may be updated and/or revised from time to time as necessary.

A. Removal from Lists. Applications by attorneys who desire to be removed from consideration for appointment to represent indigent defendants shall be made on a "Request for Exclusion from Indigent Appointments, Fort Bend District and County Courts at Law," attached hereto as **"Addendum D".**

B. Graduated Lists. The District and County Court at Law Judges trying criminal cases, or a committee established by same, shall approve a graduated list or lists of attorneys for appointment in felony and misdemeanor cases. Such list or lists shall be filed with the District and County Clerks. The lists of attorneys shall be reviewed at least annually by the Fort Bend County Council of Judges, or the committee appointed by same. Additional counsel shall be added to the various graduated lists only after approval by the appropriate District or County Court at Law Judges, as the case may be.

C. Felony Appointments. In order to qualify as a court appointed attorney to represent indigent defendants in the District Courts, an attorney must meet the requirements set forth in **"Addendum A,"** attached hereto and made a part hereof by reference.

D. Misdemeanor Appointments. In order to qualify as a court appointed attorney to represent indigent defendants in the County Courts at Law, an attorney must meet the requirements set forth in **"Addendum B,"** attached hereto and made a part hereof by reference.

E. Continuing Responsibilities. An attorney who is appointed to represent an indigent defendant, regardless of the degree of offense, is expected to represent that defendant through all pretrial, post-trial and appellate levels. In the event an appointed attorney desires to withdraw from representing an indigent defendant through the appellate process, such attorney shall promptly, upon completion of post-trial matters, move to withdraw with good and satisfactory cause cited and bring such motion to the immediate attention of the judge.

F. Institute a fair, neutral, and non-discriminatory attorney selection process.

- Rotational method: Must appoint attorneys from among next five names on 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 [Art. 26.04 CCP]

- Public Defender: Must provide for the priority appointment any public defender's office [Art. 26.04(a) & (f), CCP], include the process for appointment of any public defender's office [Art. 26.04(a), CCP], and meet the requirements in Article 26.044, CCP.
- Alternative method [Art. 26.04(g)-(h), CCP]:
  - Must be established by vote of two-thirds of the judges
  - Must be approved by presiding judge of administrative judicial region
  - Must allocate appointments reasonably and impartially among qualified attorneys
  - For contract defender program, must meet contract defender standards (see 1 TAC §§174.10 – 174.25)

G. Adoption of Fee Schedules. Attorneys appointed by the Fort Bend County Council of Judges or Court to represent indigents shall receive such reasonable compensation as established by Order of the Board of District Judges of Fort Bend County and by Order of the Board of County Court at Law Judges of Fort Bend County. The fee schedules adopted by formal action of each of such Board of Judges shall comply with Art. 26.05(c) Texas Code of Criminal Procedure, and any other applicable law, and shall be sent to the Commissioners Court of Fort Bend County, Texas, as required by statute. Such fee schedules are attached hereto as **"Addendum F"** and **"Addendum G,"** and referenced in Section VII of this Plan.

H. Reasonable and Necessary Expenses. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses shall be as provided by Art. 26.05(d) Texas Code of Criminal Procedure and only upon written motion and prior approval of the trial judge. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses without prior written approval, as provided by Art. 26.052(h) Texas Code of Criminal Procedure, shall be paid pursuant to said statute. A timely, complete, and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement.

VI.

STANDARDS AND RESPONSIBILITIES FOR ATTORNEYS

A. Initial Contact Requirements. An attorney appointed to represent indigents shall make every reasonable effort to contact the defendant not later than the end of the first working day after appointment and interview the defendant as soon afterwards as practicable. In-person or secure video conferencing with incarcerated defendants is preferred during this initial contact. Sending only a letter to an incarcerated defendant in this circumstance should only be used as a last alternative. A certificate of contact must be e-filed with the clerk's office in the corresponding appointed case file, no later than seventy-two (72) hours after the appointment.

B. Phone and Email Requirements. An attorney who appears on the approved list

of attorneys qualified to receive appointments to represent indigents must maintain a place of business with a phone that is answered during regular business hours and from 8:00 a.m. to 5:00 p.m. on the weekends and holidays. Such attorney shall make arrangements so that the attorney may be promptly located and notified of appointment or hearing settings. Attorneys on the approved list must maintain an email address which shall be operational 24 hours a day, seven days a week. These phone numbers and email addresses shall be included on the Fort Bend County Applicant & Attorney Profile for Criminal Appointments (see "**Addendum C**") and shall be the official contact information utilized by the Court to inform counsel of appointment or court hearings. Any change in this contact information must be given in writing to Indigent Defense within 24-hours of the change.

C. Legal Requirements. Attorneys appearing on the approved list shall comply with all laws, rules, procedure and ethical provisions for providing reasonable assistance of counsel to their client.

D. Ethical Requirements. Attorneys appearing on the approved list shall maintain the highest standard of ethical conduct and always be completely candid with the Court.

E. Removal and Sanction by Judges. A judge may replace an appointed attorney if the appointed attorney does not make an effort to contact the defendant by the end of the first working day, and/or does not interview the defendant as soon as possible, and/or for any other good cause, as determined by the Judge. The Court may sanction an attorney for violation of these standards.

F. Removal from Appointment Lists. Counsel may be suspended or removed from the appointment list if they are found to be ineffective by a Court or for other good cause shown. A Court may temporarily suspend counsel from receiving appointments until a final determination on the suspension can be made by the Fort Bend County Council of Judges that includes an opportunity for counsel to respond.

G. TIDC Requirements. Counsel shall timely complete and submit their attorney time report in a format as prescribed by the Texas Indigent Defense Commission not later than October 15th of each year. Failure to comply can result in suspension or removal from the appointment list.

VII.

FEE AND EXPENSE PAYMENT PROCESS

A. Generally. Payment for Appointed Counsel in Criminal cases shall be in accordance with a schedule of fees adopted by the Judges pursuant to Art. 26.05(b), Texas Code of Criminal Procedure, copies of which are attached hereto as **"Addendum F"** and **"Addendum G"**. The schedules may be modified from time to time by the appropriate Board of Judges.

B. Denial of Fee. If a judge disapproves the requested amount of payment, the judge

shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount, pursuant to Art. 26.05(c), Texas Code of Criminal Procedure.

C. Reasonable and Necessary Expenses.

1. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses **with prior** Court approval shall be as provided by Art. 26.05(d) and Art. 26.052(f) and (g) Texas Code of Criminal Procedure and only upon written motion and prior approval of the trial judge. A timely, complete, and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement by appointed counsel, including a certification by said counsel that the expenses were duly rendered by the said claimant.

2. The appointment of and reimbursement for reasonable and necessary investigation, mental health, and other expert witness expenses **without** prior written approval, as provided by Art. 26.05(d) Texas Code of Criminal Procedure, shall be paid pursuant to said statute, and Art. 26.052(h) Texas Code of Criminal Procedure. A timely, complete, and true statement of expenses incurred by the person appointed shall be submitted to the trial judge with the request for reimbursement by appointed counsel, including a certification by said counsel that the expenses were duly rendered by the said claimant.

3. A request for advance payment of investigative and expert expenses may be made by appointed counsel **Ex Parte**. Appointed counsel may file with the trial judge a pretrial, ex parte, and confidential request for advance payment of investigative and expert expenses. The request for such expenses must state, as applicable:

- **a.** The type of investigation to be conducted or the type of expert to be retained;
- **b.** The 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 or each expert.

The Judge may grant such **Ex Parte** request for advance payment of expenses, in whole or in part, if the request is reasonable. If the Judge denies in whole or in part the request for expenses, the Judge 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 exhibit to the record.

4. Unreasonable or unnecessary expenses will not be approved.

VIII.
MISCELLANEOUS

ATTACHED FORMS:

Addendum A:	Qualifications of Appointed Counsel for Indigent Defendants Fort Bend County District Courts
Addendum B:	Qualifications of Appointed Counsel for Indigent Defendants Fort Bend County Courts at Law
Addendum C:	Fort Bend County Application & Attorney Profile for Criminal Appointments
Addendum D:	Request for Exclusion from Indigent Appointments District and Fort Bend County Courts at Law
Addendum E:	Affidavit and Request for Appointed Counsel or Waiver of Counsel
Addendum F:	Attorney Fee / Expense Claim and Certification – Fair Defense Act (and District Court Fee Schedule)
Addendum G:	Attorney Fee/Expense Claim and Certification (County Courts at Law Fee Schedule)
Addendum H:	Fort Bend County Recertification & Attorney Profile for Criminal Appointments
Addendum I:	Magistrate's Warning; Texas Code of Criminal Pro., Art. 15.17
Addendum J:	Fort Bend County Public Defender's Office Policies and Procedure

The above and foregoing "**TENTH AMENDED FORT BEND COUNTY ADULT PLAN AND LOCAL RULES FOR THE APPOINTMENT OF COUNSEL TO INDIGENT DEFENDANTS IN THE DISTRICT AND COUNTY COURTS OF FORT BEND COUNTY, TEXAS, PURSUANT TO ART. 26.05, ET SEQ., TEXAS RULES OF CRIMINAL PROCEDURE**" with relevance to the respective caseloads of each court was considered at a regularly called Fort Bend County Council of Judges Meeting by those judges whose jurisdiction includes criminal (felony and misdemeanor) cases, as set out below.

APPROVED and ADOPTED this the 15TH day of November, 2023.

District Court Judges:

Hon. Surendran Pattel
Judge, 240th District Court

Hon. Steve Rogers
Judge, 268th District Court

Hon. Monica Rawlins
Judge, 328th District Court

Hon. Janet Buening Heppard
Judge, 387th District Court

Hon. Tameika Carter
Judge, 400th District Court

Hon. Christian Becerra
Judge, 434th District Court

Hon. Chad Bridges
Judge, 458th District Court

Hon. Kali Morgan
Judge, 505th District Court

County Court at Law Judges:

Hon. Christopher G. Morales
Judge, Fort Bend County Court at Law No. 1

Hon. Tyra Jones-McCollum
Judge, Fort Bend County Court at Law No. 2

Hon. Juli Mathew
Judge, Fort Bend County Court at Law No. 3

Hon. Toni Wallace
Judge, Fort Bend County Court at Law No. 4

Hon. Teana Watson
Judge, Fort Bend County Court at Law No. 5

Hon. Dean Hrbacek
Judge, Fort Bend County Court at Law No. 6

QUALIFICATIONS OF APPOINTED COUNSEL FOR INDIGENT DEFENDANTS FORT BEND COUNTY DISTRICT COURTS

ADDENDUM A

I.

All Matters Where the Death Penalty is Sought:

Death Penalty cases will be assigned from the 11th Administrative Region list.

II.

Generally as to all other Felonies:

1. Counsel must have a location in Fort Bend County where they can meet privately with appointed clients.
2. Counsel must be proficient in the use of Fort Bend County's e-Discovery portal and counsel must be able to e-File documents with the Fort Bend County District Clerk.
3. **Counsel must appear for ALL court settings on appointed cases.** If there is a scheduling conflict with a court setting, counsel must contact the Court prior to the setting.
4. Failure to appear without timely notice can result in removal from that case and removal from the appointment list. If another counsel will appear for appointed counsel, that appearance must be noted on the fee voucher. If another counsel appears for appointed counsel and performs any substantive legal work, they must be qualified to handle that level of offense.
5. Counsel must have a secretary, or a receptionist, answering service, or a cell phone with texting capabilities. Counsel must have an active e-mail account to receive court appointments and notices regarding procedural changes. Counsel must respond promptly to communications from the Court.

6. Counsel must register a phone number consistent with the requirement above with the Fort Bend County Sheriff to prevent any attorney-client phone calls with incarcerated clients from being recorded.
7. If the level of offense changes when a case is indicted and appointed counsel is not qualified for that level of offense, counsel shall contact the indigent defense department so that an attorney from the appropriate list can be substituted.
8. Proof of required experience can be shown through court documents. If those documents are unavailable due to an expunction or non-disclosure order, then affidavits are acceptable. Other significant experience in contested matters may be submitted for consideration.
9. Proof of qualification for a higher-level offense constitutes qualification for a lower level offense.
10. Counsel may be suspended or removed from the appointment list if they are found to be ineffective by a court; no longer meet the required qualifications under this plan; have not satisfactorily upheld their responsibilities under this plan; or for other good cause shown. The Courts may temporarily suspend counsel from receiving appointments until a final determination on the suspension can be made that includes an opportunity for counsel to respond. The procedure for removing counsel is outlined in the County's Tenth Amended District and County Courts Plan.
11. Counsel can request the Court for the appointment of a second chair. Upon the Court's approval, the second chair will be appointed, and Indigent Defense will be notified. Lead counsel will be responsible for the work of the second chair. The second chair will be paid at a lower rate than the lead counsel.

III.
Specific Requirements for Felony Appointments

All 3g Offenses:

Five (5) years licensed to practice law and

a. One (1) jury verdict as lead counsel in this level offense; or

b. Five (5) jury verdicts (with 3 verdicts as lead counsel) of any 1st degree felony offense

IV.

1st Degree Felonies (Other than above- listed Felony Offenses)

and offenses enhanced to a 1st Degree Penalty Range:

Four (4) years licensed to practice law and

a. One (1) jury verdict as lead counsel on a 1st degree felony indictment; or

b. Five (5) jury verdicts (3 verdicts as lead counsel) of any degree felony offenses

V.

2nd and 3rd Degree Felonies Not Described Above:

Two (2) years licensed to practice law and

a. One (l) jury verdict as lead counsel, on any felony indictment; or
b. Two (2) jury verdicts as co-counsel, on any felony indictments; or
c. Five (5) jury verdicts as lead counsel, on any misdemeanor offenses

VI.

State Jail Felonies, Motion to Revoke Probation or Motion to Adjudicate Guilt on Misdemeanors:

Two (2) years licensed to practice law and

a. One (1) jury verdict as lead counsel, on any felony indictment; or

b. Two (2) jury verdicts as co-counsel, on any felony indictments; or

c. Five (5) jury verdicts as lead counsel, on any misdemeanor offenses

VII.

Appeals – Non-Death Penalty

Three (3) years licensed to practice law and authored or co-authored three (3) appellate briefs.

VIII.

Continuing Legal Education - All Felony and Misdemeanor Non-Appellate Appointments:

In addition to the appropriate categories listed above:

a. Completion within the past three (3) calendar years of thirty (30) hours of CLE in Criminal Law, including courses on examination of expert witnesses and presentation of scientific evidence; and

b. Annually, after being approved on the Indigent Appointment List, completion of fifteen (15) hours of CLE in Criminal Law, including courses on examination of expert witnesses and presentation of scientific evidence

IX.

Appeals: All other Felony Convictions All Misdemeanor Convictions:

In addition to the appropriate categories listed above:

a. Completion within the past three (3) calendar years of thirty (30) hours of CLE in Criminal Law, including courses on appellate issues; and

b. Annually, after being approved on the Indigent Appointment List, completion of fifteen (15) hours of CLE in Criminal Law, including courses on appellate issues

QUALIFICATIONS OF APPOINTED COUNSEL FOR INDIGENT DEFENDANTS FORT BEND COUNTY COURTS AT LAW

ADDENDUM B

I.

ATTORNEY OF THE DAY APPOINTMENTS

(A). Attorney of the Day. The County Courts at Law may retain the services of an attorney, meeting the minimum requirements for Class A and B Misdemeanor Appointments under Section III(A) below, to assist with administrative functions during the dockets of the assigning Court.

II.

GENERAL REQUIREMENTS FOR ALL MISDEMEANOR APPOINTMENTS

(A). E-Discovery & E-File. Counsel must be proficient in the use of Fort Bend County's e-Discovery portal and counsel must be able to e-File documents with the Fort Bend County Clerk in all misdemeanor cases.

(B). Appearance of Counsel. Counsel must appear for ALL court settings on appointed cases. If there is a scheduling conflict with a court setting, counsel must contact the Court prior to the setting. Failure to appear without timely notice, in accordance with the plan and individual Court requirements, can result in removal from that case and/or removal from the appointment list. If another counsel will appear for appointed counsel, regardless if the counsel appearing is of the same firm as appointed counsel, that appearance must be noted on the fee voucher. If another counsel appears for appointed counsel and performs any substantive legal work, they must be qualified and approved under Section III(A) below.

(C). Second Chair Program. Counsel can request the Court for the appointment of a second chair. Upon the Court's approval, the second chair will be appointed, and Indigent Defense will be notified. Lead counsel will be responsible for delegation of work to the second chair. The second chair will be paid at a lower rate than lead counsel, as determined by the Court. The second chair must be a licensed attorney by the State Bar of Texas practicing criminal law less than 10 years and meet the requirements listed under

Section III(A) below.

III.

SPECIFIC REQUIREMENTS FOR MISDEMEANOR APPOINTMENTS

(A). To Qualify for Appointment to Class A or B Misdemeanors, Counsel shall meet the following requirements:

(1) A licensed attorney by the State Bar of Texas;

(2) First chaired one (1) jury trial to verdict or second chaired two (2) jury trials to verdict;

(3) Lead Counsel for three (3) evidentiary hearings may be substituted for requirement (b) above.

(4) Attended fifteen (15) hours of criminal law CLE within the previous calendar year;

(5) Met all other standards within the Tenth Amended Fort Bend County Adult Plan and Local Rules for the Appointment of Counsel to Indigent Defendants in the District and County Courts of Fort Bend County, Texas, Pursuant to Art. 26.04, ET Seq., Texas Rules of Criminal Procedure.

(B). To Qualify for Appointment to Class A or B Misdemeanors and the Defendant has a Suspected or Known Mental Health Condition, Counsel shall meet the following requirements:

(1) Meet the requirements under Section III. (A). above.

(2) Attended the six (6) hour Fort Bend County Criminal Justice Mental Health Seminar each year or watch the previous year's video located in the law library, or obtain ten (10) hours of mental health CLE within the previous calendar year.

APPROVED and ADOPTED this the 16th day of August, 2023.

County Court at Law Judges:

Christopher G. Morales
Judge, Fort Bend County Court at Law No. 1

Tyra Jones-McCollum
Judge, Fort Bend County Court at Law No. 2

Juli Mathew
Judge, Fort Bend County Court at Law No. 3

Toni Wallace
Judge, Fort Bend County Court at Law No. 4

Teana Watson
Judge, Fort Bend County Court at Law No. 5

Dean Hrbacek
Judge, Fort Bend County Court at Law No. 6

REQUEST FOR EXCLUSION FROM INDIGENT APPOINTMENTS
DISTRICT AND FORT BEND COUNTY COURTS AT LAW

ADDENDUM D

I,_____(print or type name), do hereby make the following statements under oath and request that my name be **EXCLUDED** from the list of licensed attorneys eligible for appointment to indigent defendants charged with criminal offenses in Fort Bend County, Texas, for the following reason(s): (check ALL that apply)

( ) I am disqualified from representing indigent defendants charged with criminal offenses in Fort Bend County due to my employment with a governmental entity;

( ) I am retired or not currently in the active practice of law in the State of Texas;

( ) I state that the following is good cause for my name to be **EXCLUDED** from the list of licensed attorneys eligible for court appointment to indigent defendants charged with criminal offenses in Fort Bend County, Texas, to wit:

_____

Executed this _____ day of _____, 20_____.

_____
Attorney Name
Bar Number: _____

AFFIDAVIT AND REQUEST FOR APPOINTED COUNSEL
OR
WAIVER OF COUNSEL

THE STATE OF TEXAS §

ADDENDUM E

COUNTY OF FORT BEND §

"My name is_____, and, having been duly sworn, I make this statement under oath. "I have been charged with the following offense(s):

OFFENSE:_____DEGREE:_____CAUSE #: _____

OFFENSE:_____DEGREE:_____CAUSE #: _____

OFFENSE:_____DEGREE:_____CAUSE #: _____

OFFENSE:_____DEGREE:_____CAUSE #: _____

"On this _____ day of _____, 20_____, I have been advised by the undersigned magistrate, or designee, of my right to representation by counsel in connection with the charge(s) pending against me." **AND (Defendant to initial only ONE selection below):**

_____**I DO REQUEST THE COURT TO APPOINT ME COUNSEL**
"I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me."

OR;

_____**I DO <u>NOT</u> REQUEST THE COURT TO APPOINT ME COUNSEL AND I WAIVE THE RIGHT TO APPOINTED COUNSEL**
"The magistrate has asked me if I want to request the appointment of counsel. I do not request the Court to appoint counsel for me at this time."

OR;

_____ **I ALREADY HAVE COUNSEL AND I WAIVE THE RIGHT TO APPOINTED COUNSEL**
"By my signature below, I certify to the Court that I already have an appointed / retained attorney representing me in respect to the above referenced offense(s)."

_____
DEFENDANT

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, on this the_____day of _____, 20_____, to certify which witness my hand.

_____
MAGISTRATE PRESIDING

_____
Printed Name

This document was translated verbatim from English to _____.

by:_____ _____
Name of Interpreter (please print) Signature of Interpreter

[ADDENDUM F]

DISTRICT COURT: _____

CAUSE NUMBER(S) / LIST ALL: _____ DEFENDANT: _____

ATTORNEY'S FEE / EXPENSE CLAIM AND CERTIFICATION – FAIR DEFENSE ACT

FEE SCHEDULE ADOPTED UNDER ARTICLES 26.05:38:30 38.31 C.C.P. AS AMENDED (REVISED: 12-19-02)

INSTRUCTIONS:

1. Itemize time spent in Court and note if time was spent for Docket Call.
2. Allocate time separately (if multiple indigent clients) for all fees claimed.
3. Bill time in .25 hour (fifteen minute) increments and carefully calculate totals.
4. Itemize (legibly all time expended, whether in or out of Court.
5. ALWAYS note on this form whether or not the defendant has been ordered to repay attorney's fees, or place "$0" in the blank provided.

* * *

THE COURT MAY APPROVE ADDITIONAL EXPENDITURES UPON GOOD CAUSE SHOWN AND RESERVES THE DISCRETION TO DEVIATE UPWARD OR DOWNWARD IN AWARDING AN ATTORNEY FEE (WHETHER BY THE HOUR OR BY THE TOTAL AWARDED FEE) DEPENDING ON THE TIME AND LABOR REQUIRED THE COMPLEXITY OF THE CASE. AND THE EXPERIENCE AND ABILITY OF THE APPOINTED COUNSEL

FEE SCHEDULE:

1. FELONY CASE – DISPOSITION	$100-200/HOUR
2. MAXIMUM FOR OUT-OF-COURT TIME	$1500
3. FELONY APPEAL	$100- 150/HOUR
4. CAPITAL MURDER (DEATH PENALTY)	
a. FIRST CHAIR	$35,000
b. SECOND CHAIR	$15,000
5. EACH DOCKET CALL (W/O DISPOSITION)	$ 50
6. TRANSLATOR/INTERPRETER – NOT TO EXCEED HOURLY RATE FOR APPOINTED COUNSEL IN FELONY CASE	
7. EXPERT AND/OR INVESTIGATIVE FEES SHALL BE PAID PURSUANT TO ART. 26.052(f)(g)(h)	* *

NAME – PRINT OR TYPE		
MAILING ADDRESS		
BARCODE NUMBER	**AMOUNT DEFENDANT ORDERED TO REPAY $**	
ATTORNEY CONTACTS WITH DEFENDANT	**IN PERSON?**	**BY TELPHONE?**

APPOINTED COUNSEL HOURLY WORKSHEET

Date	DOCKET CALL?	BRIEF DESCRIPTION OF WORK PERFORMED FOR THIS DEFENDANT ON ALL CASES APPOINTED (OR ATTACH A FULLY ITEMIZED STATEMENT OF WORK PEFORMED SUBJECT TO THE PENALTY PROVISIONS HEREIN)	HOURS (BY .25)
TOTAL – THIS PAGE ONLY			
GRAND TOTAL – THIS PAGE AND ALL SUBSEQUENT PAGES (IF ANY)			

CERTIFICATION BY ATTORNEY

In the date submitted, the undersigned Attorney at Law, under penalty of perjury states, to wit: that the attorney has competently represented the named defendant and has fully performed the services claimed above, and on all attached Subsequent Hourly Worksheets and/or itemized billing statements which are all incorporated herein by reference: that the attorney has not received and will not receive any money or valuable thing for representing the said defendant, unless such payment is disclosed in writing to the judge before whom his application is pending, and that no other request for payment fore the described services rendered has been paid.

DATE SUBMITTED: _____ _____

ATTORNEY AT LAW

ORDER

The Court finds that the total sum of $_____ is reasonable and necessary attorney's fee and ORDERS it paid; **OR**

The Court REJECTS said claim for the following reason(s) _____

Entered this the_____- day of_____, 20_ _, _____

JUDGE PRESIDING

PAGE_____OF _____

ORIGINAL / CLERKS FILE – WHITE AUDITOR'S COPY - YELLOW

DEFANDANT _____ CAUSE NO. _____

SUBSEQUENT PAGE

APPOINTED COUNSEL HOURLY WORKSHEET

INSTRUCTIONS: List Date and denote Time in Tenths of an hour in appropriate category

APPEALS: List in Hours in "Out-of-Court" Column and identify appellate work performed under "Brief Description of Services"

DATE	GENERAL (BRIEF) DESCRIPTION OF SERVICES PERFORMED ON THE DATE FOR WHICH PAYMENT IS REQUESTED	HOURS IN COURT			HOURS OUT OF COURT
		COURT APPEARANCE NO TESTIMONY	PRE-TRIAL HEARING WITH	TRIAL WITH TESTIMON	
PAGE TOTALS: (INCLUDE ALL SUBSEQUENT PAGE TOTALS ON COVER PAGE)					

ORIGINAL / CLERK'S FILE – WHITE PAGE_____OF _____ AUDITOR'S COPY YELLOW

ATTORNEY'S FEE/EXPENSE CLAIM AND CERTIFICATION

Fee schedule adopted under Articles 26.05; 38.30; 38.31 C.C.P., as amended (Revised 11-01-2017)

ADDENDUM G

COUNTY COURT AT LAW NO.:_____ CAUSE NO.:_____ DATE SUBMITTED:_____

DEFENDANT:_____ CHARGE:_____

COMPANION CAUSE NUMBER(S):_____ OFFENSE LEVEL:_____

ATTORNEY PERSONAL INFORMATION	
NAME:	BAR CARD NUMBER:
MAILING ADDRESS:	TELEPHONE NUMBER:

INSTRUCTIONS

1. Time shall be billed in TENTH of an hour in each category.
2. One (1) defendant and one (1) charge shall be billed per Attorney's Fee/Expense Claim and Certification.
3. The entire form must be completed in ink and legible. In the alternative, an attorney may attach two (2) detailed itemized invoices that denote the same categories below, instead of handwriting a description of the work performed. Regardless of the submitted format, this form must be completed.
4. Submit paid bills for Investigators/Experts with this form. Expert and/or Investigative Fees shall be paid pursuant to CCP Art.§ 26.05(d) & §26.052(f)(g)(h).
5. APPEALS: List hours in "Out of Court" column and identify appellate work performed under "Brief Description of Services"

FEE SCHEDULE

Class A or B Misdemeanor Pay Rate: $65.00 - $175.00

1. Maximum for Out of Court Time (unless good cause is shown): $1500.00
2. Maximum for each Docket Call Without Disposition: $100.00
3. The Court may approve additional expenditures upon good cause shown and reserves the discretion to deviate upward or downward in awarding attorney's fees, depending on the time and labor required, the complexity of the case, and the experience and ability of the appointed attorney.

TOTAL HOURS: _____		**HOURS IN COURT**			**HOURS OUT OF COURT**
DATE	**BRIEF DESCRIPTION OF SERVICES PERFORMED**	**COURT APPEARANCES NO TESTIMONY**	**PRE-TRIAL HEARING WITH TESTIMONY**	**TRIAL WITH TESTIMONY**	
TOTAL FROM ALL SUBSEQUENT PAGES (IF ANY)					
GRAND TOTAL (THIS PAGE AND ALL SUBSEQUENT PAGES)					

PUNISHMENT ASSESSED (INCLUDE AMOUNT DEFENDANT ORDERED TO REPAY):

I, the undersigned Attorney at Law, swear or affirm to the Court and to the County Auditor that they may rely upon the information contained in this Appointed Counsel Hourly Worksheet (whether one or more pages) to make payment to me according to the fee schedule adopted by the Board of County Court at Law Judges and the Council of Judges pursuant to Article 26.05 C.C.P. I further swear or affirm that I have not received nor will I receive any other money or valuable thing for representing the accused in this case, except as otherwise specifically disclosed to the Court in writing.

SWORN TO AND SUBSCRIBED before me on this the _____day of _____, 20_____.

_____
ATTORNEY AT LAW (Signature)

_____
DEPUTY COUNTY CLERK (Signature)

The Court finds that the sum of $_____ is a reasonable and necessary Attorney's Fee/Expense Claim for performing the above stated services and **ORDERS** that same be paid from the General Fund of Fort Bend County, Texas // OR

The Court **REJECTS** said Attorney's Fee/Expense Claim for the following reason(s):_____

SIGNED this the _____day of _____, 20_____.

_____
JUDGE PRESIDING

Cause No: _____ **Defendant:** _____		**HOURS IN COURT**			**HOURS OUT OF COURT**
DATE	**BRIEF DESCRIPTION OF SERVICES PERFORMED**	**COURT APPEARANCES NO TESTIMONY**	**PRE-TRIAL HEARING WITH TESTIMONY**	**TRIAL WITH TESTIMONY**	
	Total Hours for this Page:				

FORT BEND COUNTY
RECERTIFICATION & ATTORNEY PROFILE FOR CRIMINAL APPOINTMENTS
ADDENDUM H

Please complete all fields listed below prior to returning the form to the Indigent Defense Department. You may use additional pages if necessary.

ATTORNEY'S GENERAL INFORMATION

Name: _____ Law Firm (if any affiliation): _____

Business Physical Address: _____

Business Mailing Address: _____

Home Address: _____

Telephone No.: _____ Cell No.: _____

Email Address: _____ SBN: _____

Web Page: _____ Other Media Pages: _____

Fax No.: _____ Number of Years in Practice: _____

Do you speak a foreign language? Yes: ☐ // No: ☐ // Fluent Languages: _____

STATE BAR STATUS AND EXPERIENCE

Has your status with the Texas State Bar (or with any other bar you have been admitted) changed in any way including any reprimands or suspensions (both active and suspended)? Yes: ☐ // No: ☐ // If yes, please explain:

_____

Since your last certification to the appointment list have you been sanctioned by a Court or the State Bar of Texas or any other State Bar or found to be ineffective by a Court of Record? Yes: ☐ // No: ☐ // If yes, please explain:

_____

Are there any other circumstances that might negatively impact your ability to practice law. For example: pending criminal charges, convictions or probations involving crimes of moral turpitude. Yes: ☐ // No: ☐ // If yes, please explain: _____

Please list any Board Certifications you hold: _____

Current criminal caseload: _____ Percentage of criminal practice: _____ Total caseload: _____

Current level of cases you have been approved for appointment: _____

Level of cases you are seeking for appointment: _____

Have you ever practiced immigration law or provided immigration advice/counsel? Yes: ☐ // No: ☐
If yes, would you be willing to work with defendants that have immigration issues, in addition to the criminal charges: Yes: ☐ // No: ☐

ADDITIONAL REQUIRED INFORMATION

Please attach to this application:

1. Any other documents or statements that describe anything that you wish to include for consideration that you feel makes you uniquely qualified to accept re-appointments in Fort Bend County cases (e.g. participation in criminal law mentoring programs; prosecutorial experience; AV rated by Martindale-Hubbell, awards, or any other recognition for professional competence); and
2. A copy of your entire profile page from the Texas State Bar website and your full CLE transcript indicating you have complete at least fifteen (15) hours pertaining to the defense of defendants in criminal cases, in the preceding calendar year, as required by the current the Ninth Amended Fort Bend County Adult Plan and Local Rules For the Appointment of Counsel to Indigent Defendants In the District and County Courts of Fort Bend County, Texas, Pursuant to Art. 26.04, ET Seq., Texas Rules of Criminal Procedure; or
3. A copy of your entire profile page from the Texas State Bar website and your full Texas Board of Legal Specialization in Criminal Law transcript, effective for the calendar year for which this Recertification applies.

I certify that I continue to possess all the necessary qualifications, as set forth in the Ninth Amended Fort Bend County Adult Plan and Local Rules For the Appointment of Counsel to Indigent Defendants In the District and County Courts of Fort Bend County, Texas, Pursuant to Art. 26.04, ET Seq., Texas Rules of Criminal Procedure and all addendums attached thereto for continued appointment as an attorney for indigent defendants in Fort Bend County in the following categories:

_____

By my signature below, I swear or affirm that the information provided in this application is true and correct. I understand that I have a continuing duty to alert the Courts if any of my above answers change in a way that would affect my ability to receive appointments. I further understand that I must keep my contact information up to date with the Fort Bend County Indigent Defense Department. Failure to correct any answer or provide up to date contact information may result in my immediate removal from my requested appointment list(s). (Please retain a copy for your records).

_____ _____
Attorney's Signature Date

SUBSCRIBED AND SWORN to before me, _____ on the _____ day of _____, 20____.

_____
Notary Signature
Notary Public in and for the State of Texas Seal:

THE STATE OF TEXAS §

COUNTY OF FORT BEND §

MAGISTRATE WARNING

Texas Code of Criminal Pro., Art. 15.17

ADDENDUM I

Before me, the undersigned magistrate of the State of Texas, on this day personally appeared _____ in the custody of _____, a Peace Officer, and said person was given the following warning and admonitions by me:

(1) You are charged with the offense(s) of _____

_____

An affidavit charging you with this offense has / has not been filed in this court.

(2) You have a right to hire an attorney and have him / her present prior to and during any interview and questioning by peace officers or attorneys representing the State. If you are too poor to afford an attorney, you have the right to request the appointment of an attorney to be present prior to and during any such interview and questioning. You may have reasonable time and opportunity to consult your attorney if you desire.

(3) You have the right to remain silent.

(4) You are not required to make a statement, and any statement you make can be used against you in Court.

(5) You have the right to stop any interview or questioning at any time.

(6) You may have the right to have an examining trial.

(7) The procedure for requesting a court appointed attorney is as follows:

(a) You must complete a Pre-Trial Intervention Interview Report to determine if you qualify for a court appointed attorney:
(b) The Pre-Trial officer will help you complete the report;
(c) An Application for Counsel and Order must be completed and signed;
(d) You must qualify financially to be eligible for a court appointed attorney;
(e) If you meet the indigence standards, then you will qualify for court appointed attorney;
(f) If you qualify for and request a court appointed attorney you will be provided with the name and phone number of the attorney when the appointment is made; and
(g) The court appointed attorney should contact you within 24 hours of the attorney's appointment.

THE ACCUSED **DOES / DOES NOT** WANT APPOINTED COUNSEL.
Circle One

Your bail is set at $ _____

_____ Bail is Denied

_____
Person Warned/Defendant

_____
Magistrate

Fort Bend County Jail
Place of Warning

_____
Magistrate Printed Name

WITNESS:

1410 Richmond Parkway

Richmond, Texas 77469

_____
Name

_____
Time

_____
Address

_____
Date

_____
City

REMARKS:

_____

_____

ADDENDUM J

FORT BEND COUNTY
MENTAL HEALTH DIVISION
PUBLIC DEFENDER DEPARTMENT

Policy and Procedures Manual

(May, 2010)
(Revised October, 2012)
(Revised January, 2015)
(October 2015 Amended)
(Revised April 2018)

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FORT BEND COUNTY
MENTAL HEALTH DIVISION
PUBLIC DEFENDER DEPARTMENT
Policy and Procedures Manual

This manual is designed to function as the working guide to the operation and utilization of the Fort Bend County Public Defender Department (Mental Health Division). The policies and procedures outlined in this manual have been developed by the Public Defender under the guidance of the Fort Bend County Commissioner's Court. These guidelines are subject to the organizational agreement between the Public Defender and the Commissioner's Court. Policies and procedures described in this manual are subject to change on an "as needed" basis as the needs and capabilities of the department and the county change.
As employees of Fort Bend County, all members of the MH Division are subject to the policies set forth in the Fort Bend County Employee Information Manual. The manual is available on the internet, and the policies contained therein are part of the terms and conditions of employment.

I. PERSONNEL

Detailed job descriptions for each position in the Public Defender Department Mental Health Division are attached as Appendix "A" to this document. The MH DIVISION consists of:

A) Attorneys
- **a. Chief Public Defender**
- **b. Mental Health Division Chief**
- **c. Attorney I**

B) Social Work Staff
- **a. Social Worker**
- **b. Lead Case Worker**
- **c. Case Worker**

C) Support Staff
- **a. Office Coordinator**

D) Conduct/Ethical Guidelines

As employees of attorneys, staff members are bound by the same ethical standards as attorneys. First and foremost, this includes the attorney-client privilege. Anything we learn from a client is confidential and will not be shared with anyone outside this department without the clients' permission. This includes friends and family of the client.

Secondly, all members of the MH DIVISION should be respectful of the witnesses and other parties that we come across during the course of our representation of a client. While there will be individuals who will make it difficult, always go into the situation as respectfully as possible. You should also show respect to the victims and/or law enforcement personnel who agree to speak with us. Finally, you should seek a parent or guardian's permission before speaking to a juvenile witness or victim. Also be mindful that our clients should not have direct contact with a victim/complaining witness as this can be considered intimidation of a witness.

E) Sick/Vacation/Cover Leave

Sick and vacation leave are to be governed under the guidelines and policies of Fort Bend County, and may also be found in the Fort Bend County Employee Information Manual; Section 709 (Sick Leave) and Section 513 (Vacation).
"Cover leave" is to be governed by the MH DIVISION. Whenever an attorney or a member of the support staff are requesting leave, either sick or vacation, they will try to the best of their ability

to have another attorney or support staff covers their court docket or department duties. A "cover request" is to be filled out, if possible, by both the employee requesting leave and the employee accepting covering duties. The "cover request" is then to be submitted to the MH Division Chief for approval. A copy of the "cover request" is attached as Appendix "B".

F) Outside Employment

Employees may not accept or continue outside employment that would give rise to, or the appearance of, a conflict of interest without the Chief Public Defender or MH Division Chief's approval (see Fort Bend County Employee Information Manual, Section 605 (Outside Employment) and Section 602 (Conflict of Interest). Employees may not accept or continue legal employment involving restricted clients (inmates/ clients, inmate's/ client's immediate families, or individuals referred by inmates/ clients or their families) or restricted defendants (state and federal governments, state agencies, cities, municipalities, and counties) or legal employment in an area of law with high potential for conflict (Deportation, Expungements, Family Law, Immigration, and Misdemeanor Appeals) without the MH Division Chief's approval.

Employees may accept outside employment in an area with low potential for conflict with the Mental Health Division - Public Defender Department except when such employment gives rise to or may give rise to a conflict of interest or the appearance of impropriety. In those instances, the employee must obtain the Chief Public Defender or MH Division Chief's approval.

If the nature of an employee's outside employment changes such that it becomes, or the employee learns that it is or may be a conflict of interest to continue such employment, the employee must notify the Chief Public Defender or MH Division Chief and obtain his or her approval for continuing said employment.

The use of county assets in support of outside employment is strictly prohibited. This prohibition includes local and long distance telephone use and both incoming and outgoing calls. Outside employment is not to be conducted while on county time or on county property.

II. TRAINING

Training is an integral part in developing personnel who can provide vigorous and zealous defense of their clients. Although all department personnel share a responsibility of providing services to the client, these needs are most keenly felt at the attorney and social worker and caseworker positions. An overview of the training program for these positions follows. This plan is subject to modification depending upon the skills and training already possessed by new employees.

A) Attorney Training

a. Training Program and Practice Guidelines

The best way of learning various aspects of criminal defense work is to observe an experienced attorney as he works. The MH Division Chief and the Attorney I will meet regularly to discuss various aspect of working as a public defender. These would include:

i. Introducing the Attorney I to the judges, court personnel and other individuals in Fort Bend County's criminal justice system;
ii. The MH Division Chief will show the Attorney I the location of the various courts, departments and jail facilities of Fort Bend, including jail operations and visitation;
iii. The MH Division Chief will take the Attorney I to the District Attorney's Office, introduce them to the members of that office and instruct the new attorney in the

interaction between the MH DIVISION and the Assistant District Attorney (ADA), such as viewing client files and plea negotiations;

iv. The Attorney I will attend court hearings with the MH Division Chief and participate in any cases that go to trial;

v. The MH Division Chief and the Attorney I will meet to discuss each other's cases with the MH Division Chief providing guidance and insight on how the Attorney I should proceed on a particular case; and

vi. The MH Division Chief will be available to answer questions that the Attorney I might have about various aspects of MH DIVISION procedures.

The purpose of having this program is to provide guidance and instruction to the Attorney I. In short, the Attorney I will be responsible for his/her assigned cases, subject to the MH Division Chief's insight.

B) Continuing Legal Education

Under the Texas Fair Defense Act, as adopted by Fort Bend County, any attorney requesting appointments to represent indigent defendants must have at least ten (10) hours of continuing legal education in the field of criminal law each calendar year and be an active member of the State Bar of Texas to maintain eligibility to receive appointments. In addition, attorneys for the MH DIVISION will complete at least three (3) hours of CLE in the area of Mental Health to be increased as more programs and CLE become available.

The MH DIVISION will cover all expenses in sending its attorneys to CLE seminars in order to meet with appointment requirements. The MH DIVISION also maintains a library of legal manuals and materials centering on improving trial skills, criminal procedure, mental health and immigration issues.

C) Social Worker Training

As with the attorney training, social work training is often done with "on the job training". The Social Worker and Case Workers will be receiving some training and guidance from the MH Division Chief. The following activities will be part of the training:

i. The MH Division Chief will show the Social Workers and Case Workers the location of various courts, offices, mental health agencies and jail facilities in Fort Bend County and introduce them to appropriate staff.

ii. The MH Division Chief will introduce the Social Workers and Case Workers to judges, District Attorney's Office staff, and attorneys on the Mental Health Wheel.

iii. The Social Workers and Case Workers will observe the MH Division Chief and Attorney I during court proceedings. They will also observe attorney visits in the jail setting.

iv. The MH Division Chief and Attorney I will meet weekly with the Social Workers and Case Workers to discuss cases and provide guidance and assistance to staff.

v. The MH Division Chief and Attorney I will be available to answer questions from staff regarding policies or procedures within the MH DIVISION and/or Fort Bend County.

The MH Division Chief will meet regularly with the Social Workers and Case Workers to discuss their roles, ways to enhance the department, and the quality of services provided to our clients and the community.

D) Continuing Education for Social Workers and Case Workers

According to the Texas State Board of Social Worker Examiners, Title 22, Texas Administrative Code, Chapter 781, §781.508:

(a) A licensee must complete a total of 30 clock-hours of continuing education biennially obtained from board approved continuing education providers.

(b) As part of the required 30 clock-hours, a licensee must complete a minimum of six clock hours of continuing education in professional ethics and social work values during the biennial renewal period.

Social Workers with the MH DIVISION will be requested to complete six (6) hours of continuing education (of the 30 total required) in the areas of mental health or criminal justice to increase their knowledge of our client population.

For continuing education that is pertinent for licensing purposes and relevant to the work Social Workers are doing for the MH DIVISION, the MH DIVISION will cover reasonable fees for seminars or workshops. Continuing education expenses for Case Workers who come from other disciplines than social work will be covered if they are relevant to their position at the MH DIVISION.

III. SOCIAL SERVICES

The Mental Health Division of the Public Defender's office provides not only quality legal representation to our clients but also provides social services. This will include assisting clients with finding and securing services to meet each of their personal needs such as housing, mental health treatment, financial assistance, and substance abuse services. The mental health social services team shall work collaboratively with the probation department, district attorney, mental health treatment providers and such other players who are stakeholders in the client's success in the criminal justice system.

A) Duties and Responsibilities

a. Initial Contact

Each member of the social services team should make every effort to make contact with the client assigned to their case load in an expeditious manner. It is recommended that when assigned a client who is in custody that contact be made within one week. A client who is out of custody should be contacted within two weeks.

b. Defender Data

All information gleaned from the clients at initial intake and subsequent meetings or appointments shall be recorded in Defender Data. It is imperative that every effort should be made to keep the clients latest and most current information up to date (i.e. contact information, changes in service providers or medications).

c. Court Hearing Worksheets

Court hearing work sheets should be completed for each client on their court date. If the client is not on probation a court hearing worksheet should be prepared for the attorney of record and for the District Attorney. The court hearing work sheet should reflect the clients current state of residence, a phone number, current medications, services provided, current referrals and services needed. There should be a portion that reflects your clients overall well-being.

d. Jail Visit

Arrange to visit clients in jail twice a month. At some point the clients will be on probation or in need of your services. Regular visits and initial contacts build a relationship with the client which meets our end goal to avoid recidivism and makes a difference in the lives of the client.

e. Regular Visits with Clients

Face to face contact with clients should be made at least once a month outside of court during the first six months of release from jail or being placed on probation to assure the client is stable and doing well. Contact by phone or email can be used to also to stay in contact with the client. After six months of probation or release from incarceration, if the client is stable, then face to face contact can be done every sixty (60) days.

f. Calendar

The Outlook Calendar should be used to post upcoming appointments with clients, meetings, etc. and to reserve the use of the county vehicle. With these postings the MH Division Chief and other office personnel will be notified of when you will be out of the office and of your return.

g. Client services : Priority

The goal of the MH Division is to help as many people with a priority population diagnosis with referrals for services. This may include actual transporting a client to an agency or service provider. The MH Division will need to prioritize as to who will receive services first. Our first priority is to help clients that are in crisis; second - help clients being released back into the community from the jail; third - clients that are on probation or are pending disposition of charges. Clients who have been incarcerated within the last six months should be served first; followed by clients who were served by the department but not in the last six months; then other members of the community.

B) Travel

The county vehicle should be used to transport existing clients, meet with clients, or service providers. To maximize the use of the county vehicle coordinate with colleagues on transporting clients to an agency, court, probation, Social Security, etc. which may be on the same date or when the vehicle may not be available. Prioritize the needs of the client before transporting (i.e. physicians/hospital; transport to group home from jail; probation; etc.) Minimize the use of personal vehicles.

C) Clock In/Out

Those who are required to clock in/out should do so by using the phone on your desk. Clocking in by cell phone should be used only if you are out in the field working with a client and arrangements have been made with the MH Division Chief or Administrative Coordinator (Section 404 – Pay Procedures of FBC Employee Information Manual). **Notify the front desk of all departures. If you are in the field at the close of business call the office to report your status.**

D) Staff Meetings

The MH Division Chief, attorneys and social services teams will have a monthly meeting or more if needed to discuss/staff the status of clients.

IV. THE PRACTICE OF LAW - ASSIGNMENT OF CASES

A) Assignment and Flow of Cases

In order to provide the most efficient use of resources and facilitate the speedy representation of the client, cases should be processed in the following manner. These guidelines are subject to ongoing review and change when necessary to insure that service to the client is represented in a timely and cost-effective manner. All referred clients must meet the guidelines for indigence established by Fort Bend County.

1) **Intake Process/Procedure for Referral**

The case flow process within the MH DIVISION begins when the Notice of Appointment is first received from the Senate Bill 7 (SB7) Coordinator. The SB7 Coordinator will assign misdemeanor and felony cases for those with a notation of mental health on a rotation basis. Cases will be assigned to MH DIVISION unless there is a conflict of interest or until a maximum of 100 felony cases and 300 misdemeanor cases per year are assigned. Other clients will be accepted at the discretion of the MH Division Chief.

Methods for referral of clients apart from the "slots" or rotation order will include referrals directly from Fort Bend County Court at Law Judges.

2) **Screening Process**
All referred clients will have a confirmed Axis I diagnosis of a major mental illness, including paranoid schizophrenic, bi-polar, major depression and schizoaffective disorder. At the time of referral from court administration, if there is no confirmed diagnosis from the jail staff, a state of Texas Mental Health Hospital, Texana , MHIDD VA, private source or other mental health authority, a social worker or case worker from MH Division will meet with the client for an assessment. At the discretion of the MH Division Chief, if a client referred from the SB7 Coordinator does not meet these guidelines or if there is a conflict of interest, the client will be returned to the SB7 Coordinator for reassignment to an appointed private attorney.

3) **Priority Population Initiated**
The appointment is given to the office coordinator, who takes the information from the appointment form to open up a physical case file and enter the client's info into the case management system, Defender Data.

4) **Initial Contact with Client by Social Services**
Upon appointment of a new case a social worker or case worker from MH DIVISION will meet with the client for an assessment within one week if the client is in custody or within two weeks if the client is out of custody. The assessment will include: relevant history, psychosocial history, noted symptoms, substance abuse history and a recommendation as to appropriate referral for treatment and/or economic needs

B) Caseload Standards

The MH Division Chief shall review caseload standards quarterly to determine numbers and complexity of cases for each lawyer. The number of arrests varies during the year, depending on the weather and other factors. In any quarter, the MH Division Chief shall have pending no more than 50 (i.e. Pre-disposition) active files. In any quarter, the Attorney I shall have pending no more than 85 active files. If, during any quarter, the case load exceeds this number, the MH Division Chief, in his/her discretion, will contact the SB7 Coordinator and the judges of the two mental health courts to remove the MHPD from the rotation. If any exception to the caseload standards is authorized by the MH Division Chief, the MH Division Chief will notify the Oversight Board in writing.

If the client is in custody, the office coordinator creates a folder for the lawyer assigned. The folder will be generated from the following windows off the County Website system as well as the Tiburon inmate search page. It will include the standard questionnaire forms used by the MH DIVISION as well as blank forms for medical release authorization. The folder will be delivered to the attorney for visitation within one business day.

If the client was released from custody on bond, the office coordinator will make a client packet consisting of the same information found in the jail packet. The office coordinator will calendar all court dates and attorneys and case workers will be responsible for notifying clients on bond of their court dates. This can be done via: 1) letter or 2) having a client sign a "Notice of Court Setting" form which lists the court date and time.

C) Conflict Checks

A lawyer cannot effectively represent a client when a conflict of interest exists. In criminal defense work, that conflict most often arises when you have been appointed to represent someone and you already represent the victim, a co-defendant, or adverse witness in the case. In order to avoid that situation, a conflict check is to be conducted on each case early in the appointment process.

The office coordinator, or the attorney assigned to the case, should enter in the names of the client, victim(s), co-defendant(s), if any, and any known witnesses into the conflict checking software if available. If additional victims, witnesses, etc. are later uncovered, they should also be entered into the software program to see if a conflict arises.

In the event a potential conflict is uncovered, the attorney needs to view the nature of the conflict and then make a professional judgment as to whether withdrawal is required. If in doubt, the attorney should discuss it with the MH Division Chief for guidance.

D) Procedures for Handling Conflict of Interest Cases

1. The following situations constitute a conflict of interest, requiring the assignment of outside counsel. Those situations shall include but are not limited to:

a. When lawyer is appointed to provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved;

b. When the defendant was represented at the trial level by an individual within the same defender agency and it is asserted by the client or appears arguable to the attorney that trial counsel provided ineffective representation;

2. If a conflict of interest exists, it exists for the entire department, and assigning the case to another attorney within that entire agency will not cure the conflict.

3. As soon as a case is identified as meeting the definition of "conflict of interest case" the case shall be immediately identified and assigned to counsel outside the MH DIVISION and returned to the trial court. The MH Division Chief shall conduct a prompt review of each case to make a timely decision as to whether a conflict of interest is probable.

4. If a conflict of interest is found to exist or is probable, the MH Division Chief shall contact the trial court immediately and ask that a member of the private bar represent the client.

E) Establishing an Effective Attorney – Client Relationship

Establishing an effective attorney – client relationship is integral to a successful outcome in a case. When dealing with clients in this department, it is important to remember several key things. First, your client didn't pay or choose your services, you were appointed as his/her attorney. This can lead to a great deal of suspicion on the part of the client. Second, your client is in a situation that, whether he/she admits it or not, is frightening to him/her. In our unique department, all the clients have a major mental health diagnosis and this can exacerbate such feelings.

Both of these feelings can seriously complicate having an effective attorney-client relationship, especially when they lead to hostility on the part of the client. In some cases, you will not be able to overcome these obstacles. However, in the majority of cases, it is possible to build a relationship based on a degree of trust on the client's part. Once you have accomplished that, it becomes possible to get the client to listen to your advice on the case. Without overcoming the client's innate skepticism of a court – appointed attorney or public defender, you will not be able to serve your client to the best of your ability.

This will seem like an obvious point, but the best way to establish an effective attorney – client relationship is to spend time communicating with your client, whether it is in the jail or over the phone. In the most serious cases, it is best to start with face-to-face contact. However, in a great many cases the client will have received the news that you are going to be representing him/her before you get the file. Talking to the client before you get the file is a judgment call, but remember that the client may have important information that needs to be acted on quickly. Granted, it is hard to know the value of the information when you haven't seen the file, but it might be best to err on the side of caution and speak to the client.

It is always important to remember what you are trying to accomplish: the best outcome for the client, based on the situation that exists. There are times when this will involve trying to get the client to accept the "best" alternative (or at perhaps the "least worst" alternative). If you've built an effective relationship with the client, it can be easier to convince them that your opinion on their situation needs to be taken into account.

The way to do this is to be honest with the client. If your objective evaluation of the case leads you to a conclusion that you know the client will not like, it is nonetheless your obligation to give him your opinion. You can build trust with a client by keeping the promises you make to him. The flip side of this is to not make promises that you can't keep. If you tell the client that you're going to accept his calls, accept them. If he wants a copy of the arrest affidavit, make sure it gets sent to him. Send him copies of the investigation so he knows what you know. If he's got some ridiculous offer to make to the prosecution, make sure you inform the District Attorney. No attorney can promise a client an outcome of the case, but you can promise to work hard and then show the client you mean it. A little attention to the client can pay big dividends.

1. The Initial Client Interview

The initial client interview will depend in large part on the amount of information you have about the case. Unfortunately, there are going to be cases where you don't have the arrest affidavit, despite the best efforts of the support staff. If you have the arrest affidavit, you are in a better position to ask questions relevant to the case. If you don't, you'll have to try and get as much from the client as you can.

It's best to start any client interview with the same basic information, introduce yourself, and assure your client that the attorney/client privilege will protect the confidentiality of anything he tells you, the charge and the possible range of punishment. Emphasize that you're doing the latter only for informational purposes and not because you think he's guilty. Tell him you just want him to know the possible consequences for someone in his position. Always interview a client alone if possible. Family members tend to interfere with the interview process and influence the client's answers to your important questions.

Next, it can be helpful to get some general background information from the client. If he is married or not, has any children, how far he got in school, is he employed, any medical problems, etc. This can also be useful to help establish some trust on the part of the

client-never forget that he/she didn't get to pick his/her attorney. All of this may account for nothing in the long term, but there's no way to know what's important at the start.

2. Special Needs Clients (See Section 46 of the Code of Criminal Procedure)
Special needs clients are typically those who are mentally ill or mentally retarded. All of our clients are mentally ill. A client's mental health problems can affect a case in several different ways, but the two most important are sanity and competency. Sanity, of course, deals with the client's mental status at the time the offense was allegedly committed. Competency is an issue of fairness and can arise at any time. A client might be competent when you first see him, then deteriorate and become incompetent. While the Code of Criminal Procedure permits other parties to raise the issue of incompetency, as a practical matter that responsibility falls on the shoulders of the person who has the most contact with the defendant: the defense attorney. The best preparation for this is to read *Mental Illness, Your Client and the Criminal Law*. Much of the information that follows is taken from that publication which is available within the MH DIVISION's library materials.

Determining whether your client is mentally ill is not always easy. Sometimes, the client who is up front about hearing voices is malingering (the term of art for faking). Generally speaking, the mentally ill will seek to hide this from people around them. They will often be able to a pass a superficial interview. However, the more time you spend with the client, the more likely it is that signs of mental illness will show up. Among these can be:

a. The type and facts of the offense
Many of the mentally ill will not have a place to live. Consequently, crimes like criminal trespass, criminal mischief and other similar crimes may be a sign of mental illness. Obviously, this isn't always true but repeated arrests for the same thing can be a warning sign. The arrest affidavit may also yield some clues in that one that describes strange behavior on the part of the client is also suggestive of mental illness.

b. Behavioral/Physiological Clues
A mentally ill person, including one who is on medication, can appear slow, inattentive or sluggish. Other signs to look for are rapid eye blinking, vacant stares, tics or tremors, or unusual facial expressions. The client might be excessively uncooperative, very agitated or tense.

c. The nature of the client's conversations
When asking the client to relate what their version of events are, pay attention to whether they are making sense. Oftentimes, a person with mental illness will not be able to maintain a logical flow to their conversation.

d. Use of mental health terms
The client may refer to counselors or caseworkers, previous treatment at MHIDD or the State Hospital. They may mention medications that are used to treat mental illness. DO NOT IGNORE ANY OF THESE!

e. Paranoid statements

f. Speech/Language problems

These could include incoherence, nonsensical speech or non sequiturs. They may change the subject in mid-sentence, speak tangentially or persistently repeat themselves. They could exhibit rapid, racing speech. Some could give monosyllabic answers; others could give rambling, empty answers.

g. Memory and attention issues

Look for limited attention span, selective inattention on some issues or no memory. These can also be signs of head injury.

h. Inappropriate emotional tone

Fear and concern are natural for someone in jail or charged with a criminal offense. However, suspicion, hostility, irritability or depression might suggest mental illness. Especially note that having little or no emotion or being flat can also be a sign.

i. What to look for during the interview:

As noted before, many of the mentally ill will try and hide it because they don't want to go to a mental hospital or be forced to take medication. They may also fear being victimized in the jail. Others may have never been diagnosed or treated and not know they have a mental illness. Be aware that the jail environment itself can cause a client's condition to deteriorate.

If your client will discuss his/her history with you, you can ask directly about their condition and treatment, both past and present. Ask if they've ever been diagnosed and what kind of medications they may be taking or have taken in the past. Ask if they've ever been hospitalized for a mental health problem.

It is important to know the names of some of the state hospitals. The one most common for this area would be Austin State Hospital (ASH), but others include Vernon's, Big Spring and Kerrville. A client who has been to one of those institutions could be mentally ill.

If your client won't be forthcoming about his/her situation, be more tactful in your approach. Ask if they've been on medication. Did they attend special classes in school and why? Do they get disability or SSI income? Have they ever been to ASH?

It is important to be patient. You must speak simply and be ready to repeat the same question over and over again to get an answer. Let your client know when you don't understand. Don't let yourself get frustrated because it is important to build a relationship of trust with your client. Don't argue with your client if they say bizarre things: instead, ask them to follow up on what they've said.

j. Incompetency

After a finding of incompetency it may take two or three months for a bed to be available at a State Hospital. Many clients quickly return to competency after a brief regimen of psych medication. It is the policy of this department to visit incompetent clients at least once a week after a finding of

incompetence. The visit may be done by a case worker or social worker. If the client appears to have returned to competence, an additional evaluation can be done by a psychiatrist and perhaps avoid a trip to a State Hospital.

k. Ex Parte Mental Health Evaluation

There are times when it may be appropriate to file for a mental health evaluation on an ex parte basis. Typically, this will be in a case where you're concerned about whether your client is exaggerating (the term of art is "malingering") and you don't want to risk the prosecution getting this information. There may also be cases where you find the assistance of a defense expert can provide useful information. Regardless of the reason, it is appropriate to approach the trial court on an ex part basis. For more information on doing that, please see the section on "Use of Experts."

l. Articles 16.22 and 17.032 – The PR Option

Articles 16.22 and 17.032 are innovative statutes that support a growing need or diversion of appropriate individuals with mental illness and/or mental retardation from the criminal justice system through the use of personal bonds.

The first step in any evaluation for release on personal bond under Articles 16.22 or 17.032 of the Texas Code of Criminal Procedure is the simple recognition of mental illness or mental retardation. In some cases, a defendant's behavior may flag the need to pursue whether he or she has a mental illness. In other cases, jail personnel may discover during intake that a defendant's name appears on a list of prior MHIDD clients.

When determining appropriateness for release on personal bond, the required recommendations regarding appropriate treatment should take the following clinical issues into account: Complexity of mental health needs; Availability of services; Willingness to accept treatment; Availability of support systems; Risk assessment; and Service planning. Motions are available from the MH Division Chief.

F) Immigrants/Non-citizens

In addition to whatever criminal penalties may be assessed, immigrants and non-citizens face possible deportation if convicted of certain offenses. Detailed information on these is beyond the scope of this manual, but our department maintains an immigration attorney. This resources should be consulted when you encounter this situation.

G) Reviewing the District Attorney's File

Once the attorney has received the case file, he or she should begin the investigation process. The assigned attorney should review dicovery, including the information and the affidavit for arrest. If the client is in jail, and a client interview has not already been conducted, the attorney should go to the jail to conduct an in-person interview.

The attorney should next arrange to go and view the DA case file. It is usually best to call or e-mail the Assistant District Attorney (ADA) in charge of the case to arrange a time to view the file. If no file has been brought over to the DA's office, then there will be nothing to view. As a general rule, if your client is in jail and has been there for 30 days or more and the DA's office still has not filed an indictment, you should request a PR

bond for your client to obtain his/her release. While there is no guarantee that you will be able to get your client released, it is about all you can do at this point to get them out of jail.

The District Attorney's Office has an "open file" policy, which means that you can review all the materials they have: police reports, lab reports, etc.

H) Bond Setting and Reduction

Motions regarding bail generally fall into two categories: reducing bail or getting bail set. What motion to file depends on what you're trying to accomplish; most of the time, that's going to be asking a court to reduce your client's bail. In situations where your client is asking for a bail reduction, first look at what amount of bail s/he currently has. There's nothing that prevents you from asking that the bail be reduced, and it can be useful to go ahead and file the motion, particularly if you have a difficult client.

If the client's bail seems high, the next step is to ask the client how much bail s/he believes they can make. If the client can't make bail, you should tell him/her that getting bail reduced, while possible, isn't going to get them out of jail. There are some clients who will hope that winning a series of bail reductions will ultimately lead to an amount of bail they can make. Experience will teach you that this is not the case.

In preparation for the bail reduction hearing, you should have your client contact several bail bond companies with an eye towards finding out how much they would charge for bail that the client could afford, and the best way to do this is by quoting prices from one or more bonding companies. You should also contact family members, employers, etc., who might be able to testify favorably for the client.

At the hearing, it is permissible to have the client testify for the limited purpose of the bail reduction motion without waiving his/her privilege against self-incrimination and in most cases, the client will have to as you will not be able to locate anyone who can testify for the client. You should prepare the client by telling him/her that you will be asking them questions about where s/he would live, employment opportunities, financial status, health problems, etc. If s/he has a criminal record or has had previous bond forfeitures, rest assured that the prosecutor will ask your client about it. Note also that the rules of evidence do not apply to a bail reduction hearing, although evidence from the State that denies your client the right to confront the witnesses against him/her is probably objectionable on that basis.

There are a few other things to note. There are a lot of myths about bail that float around the jail. No client is entitled to bail s/he can make, nor are they entitled to a bail reduction after 90 days in jail (this is often confused with being entitled to bail you can make or a personal bond if the State hasn't filed an information/indictment within the legal time frame). Remember that you are under no obligation to file a motion that you believe will be a waste of the court's time. Consequently, you should counsel with your client if his/her ideas about bail are unreasonable. The other side of this is that filing a motion to reduce bail that you know is futile may help your relationship with a difficult client.

Motions to set bail are typically used in cases where a client is in jail for allegedly violating his/her community supervision. If the client is on deferred adjudication community supervision, s/he is entitled to bail, as s/he has not yet been convicted. Some

judges will set the bail at the same amount it was prior to the client being placed on deferred. Others will require a hearing. Be sure and check on the practice of the particular court that has jurisdiction over the client's case.

In cases where the client is on adjudicated community supervision, bail is at the discretion of the court. Unless the prosecutor agrees to some bail amount, you will have to file a motion and get a hearing set in order to have a chance to get bail set. Again, you can prepare for the hearing much like the bail reduction hearing. Your goal should be to give the court some compelling reasons to set bail in your client's case.

Regardless of what kind of community supervision your client is on, you should think twice about getting bail set. If the client is in on technical violations, it may be that any money s/he could spend on bail would be better spent at the community supervision and corrections department getting caught up on what s/he owes them. However, never have a client or their family pay any money to Community Supervision and Corrections Department (CSCD) or Adult Probation without making sure that the prosecutor will agree to dismiss the motion to revoke. If money is paid and there is no such agreement, there is no way for the family to get the money back. Never have money paid without knowing it will help the client's situation.

I) Obtaining a Plea Recommendation

It is a fact of life in criminal law practice that only a small percentage of criminal cases will go to a jury trial. The overwhelming majority are either dismissed or disposed of via plea-bargain. Your role as attorney and counselor is to make sure that your client is fully informed of the charges, the possible consequences if convicted, and any plea offers made by the District Attorney. While you are charged to counsel your client on the pros and cons of any offer, it is not your decision to make whether to accept any particular offer. With experience you will learn that clients will sometimes take plea bargains they would most likely be better off rejecting and refusing offers you believe they should accept. You must always remember that regardless of the client's decision, they are the ones who will live with the consequences so as long as you keep them informed and worked to get them the best offer possible, you have done your job.

V. THE PRACTICE OF LAW – FROM CASE INVESTIGATION TO TRIAL

At this point you have interviewed your client, hopefully secured his/her release from jail, reviewed the District Attorney's file and obtained a plea recommendation. The next step is to conduct your case investigation. An independent investigation of the facts of an alleged offense is a duty a criminal defense attorney owes to each client. Existing case law suggests that this means more than simply reviewing the prosecution's file. More importantly, it is your obligation to give the client all the information about the case that you can. Since it is ultimately up to the client to decide how to plead, the only way s/he can make an intelligent decision is if s/he has as much information as possible. It is the attorney's responsibility to provide him/her that information.

A) Preparing an Investigative Request – Role of the Investigator

Our particular grant does not include expenses for investigators. In any case in which it appears that investigation is needed, this department will request appointment of an investigator from the court. This will be done with the approval of the MH Division Chief.

B) Interviewing Potential Witnesses

Interviewing witnesses is best left to an investigator, but if you need to question a witness yourself, never do it alone. If a witness tells you one thing in an interview, then testifies differently at trial, you will not be able to impeach their testimony yourself because you won't be able to testify. You will need someone, either the investigator or another attorney, to witness the conversation. By so doing, you will be able to have them testify, should it become necessary. Of course, there is nothing wrong with going with an investigator or another individual to participate in the questioning of the witness.

All interviews should be conducted in a professional and respectful manner. In almost every case, we will need to stay on good terms with the witness in order to maintain their cooperation. All interviews should be recorded, with the knowledge of everyone on the tape, unless thc witness specifically asks that it not be done. Emphasize that recording the conversation protects both sides against any false claims that might be made about what happened during the course of the interview. If the witness will still not agree, proceed but with someone else present.

Although it has never been an issue, the staff is not to put themselves in a situation where they might be concerned about their personal safety. The MH DIVISION represents people who are charged with criminal activity and some witnesses may be hostile or in less than safe environments. For this reason, it is important that everyone be aware of their surroundings and to formulate possible exit strategies for their own safety. The MH DIVISION does not expect any staff member to put themselves "in harm's way" for any client.

C) Issuing/Delivering Subpoenas

Subpoenas can be used in different ways. Most commonly, they are used to get a witness to come to court. The best practice is to subpoena all the witnesses you might need regardless of how willing they are to participate. If a witness, who is under subpoena, tells you s/he will show up and then doesn't, you can have the court issue a writ of attachment, which means the sheriff's department will go looking for them, but only if there is a valid subpoena in the court's file. Having the witness under subpoena is without question the safest thing to do and protects both you and the client. For a subpoena to be valid; it must request that a witness appear on a certain date and time. There are instances where this department uses subpoenas prior to trial. This will almost always involve records of some sort. We frequently use subpoenas "duces tecum" without a hearing date to attempt to get records. We are usually successful with these, but it is important to note that issuing a subpoena that requires the custodian to comply "instanter" has no validity and is subject to being quashed. Furthermore, if the party fails to comply with the subpoena, you have to wait to compel compliance. In situations like this, it might be best to have the case set for a pre trial hearing. You can then subpoena the records to the hearing. If not then, it will have to wait until the trial date.

1. Out of State Subpoenas

Criminal defendants can subpoena witnesses in other states, but the process is significantly more complicated than in-state subpoenas. It will require paperwork filed in a district court-equivalent in the state where the witness resides. It is best to start the process as soon as possible

because of the length of time it can take. If you find that you need to subpoena a witness from out-of-state, notify the MH Division Chief as soon as possible.

D) Pre-Trial Motion Preparation

The Fort Bend District Attorney's office has had an "open file" policy in place for several years in regards to their criminal cases. While most discovery is filed, it is still a good idea to view the DA's file.

In all cases, the MH DIVISION maintains a set of standard "pre-trial" motions for use in practice. While these motions are generally sufficient for most cases there are some situations where additional motions may need to be filed. A comprehensive list of these motions can be obtained from the MH Division Chief.

1. Motions to Suppress and Hearing

Suppression motions can be fruitful in a couple of different ways. First, of course, is the opportunity to exclude exculpatory evidence. Second, you can get the witnesses committed to a version of the facts.

The first decision will be whether to pursue the suppression issue pre-trial or wait to raise the issue during a trial. There are costs and benefits to each decision. If you raise the issue pre-trial and lose, the court's ruling can be appealed even if the defendant accepts a plea bargain (note that the defendant can waive that right if s/he signs all of the plea paper work typically available in the courts. Read it carefully and make sure the record reflects that the defendant can appeal the motion to suppress, assuming that's part of the deal). Of course, most prosecutors will not be happy about your client's appeal, so you may find him/her less willing to show the same kind of discretion s/he might in a pre-trial setting. If you lose the issue at trial, you can always raise it on appeal.

If you decide to raise the issue pre-trial, it is your responsibility to get the motion filed and a hearing set. Generally speaking, a motion to suppress evidence serves to shift the burden to the State to show that what happened was legal. Your preparation and presentation will be the key to any chance of success you might have. In cases where the defendant faces serious consequences, it is the best practice to go ahead and file suppression motions even though you know you're going to lose. It is best to have those things on the record and it will protect you from future ineffective assistance claims.

E) "Case Specific" Motions

Having standard motions for our cases does not preclude preparation of case specific motions and attorneys are encouraged to prepare case specific motions when necessary.

F) Legal Research

Legal research as discussed in this section deals with research of the law as it affects your case. The MH DIVISION works to maintain a library that is current not only with the most recent case law, but also having practitioner manuals, legal articles and motion practice files. We also have access to Lexis/Nexis, internet sites and resources, and the Fort Bend County law library.

Another invaluable resource is the other attorneys within the department as well as a number of the private practice criminal defense lawyers in town. Lastly, there are several excellent criminal defense associations such as TCDLA, NACDL and FBDLA which can provide benefits to its members.

VI. THE PRACTICE OF LAW – TRIAL

A) Trial Skills

While law school prepared you for learning about the law, it probably gave you little if any experience in the "practice" of criminal law. Trial skills are an important and necessary part of being an effective criminal defense lawyer, but the reality is that most of your cases will be settled either through dismissal or plea-bargain. However, the more effective you are at trial can greatly influence the quality of plea offers you are able to obtain for your clients. With that in mind, the goal of this department is to provide you with graduated training in the various aspects of trial work.

VII. CASELOAD ALLOCATION

The ability to provide zealous and effective representation of indigent citizens accused of crimes depends on the skill of the attorney, the quality of the support staff, adequate funding for investigators and experts, and sufficient time to adequately investigate, research and prepare the case. In order to allow sufficient time to be allocated to any individual case, the attorneys and support staff must not be responsible for representing too many clients at any one time, lest the representation of all should suffer. Counterbalancing the needs of the client is the need to be mindful of the limited resources available to the defense of indigent citizens. The caseload standards and allocation plan for fairly distributing cases amongst the attorneys of the public defender department seeks to maximize the number of cases that can be handled by the department while still maintaining a quality defense in line with ethical and professional standards.

A) Caseload Standards

Department Caseload standards (Developed through reference to other case management standards used by public defender and legal aid offices, including the National Legal Aid and Defender Association {NLADA}. These standards may be reevaluated later based upon actual experience by the MH DIVISION.

a. Types of Cases

i. Misdemeanors – Class A & B

ii. Felonies – State Jail, 3rd Degree, 2nd Degree, 1st Degree

b. Caseload Limits

i. 200 Cases/year for the MH Division Chief and 300 Cases/year for the Attorney I

ii. These standards may be modified by agreement of the Commissioner's Court and the MH DIVISION based upon:

1. Number and type of support personnel;
2. Actual mix of cases;
3. Experience and position level of attorney; and
4. Actual experience.

c. Case Tracking

i. Computer software program to track and monitor caseloads to determine most viable numbers will be implemented.

ii. Records to be kept regarding number of each grade misdemeanor assigned to department will be implemented.

B) Caseload Distribution and Court Assignments Amongst Attorneys

The Public Defender Mental Health Division is designed to provide indigent defense services for mentally ill individuals charged with misdemeanors and felonies. The particular case assignments shall be determined by the MH Division Chief.

VIII. APPEALS

A) General Information

An appeal is the legal method used to review the validity of a conviction. Compared to the number of cases in the criminal justice system, the number of appeals is very small. There are a couple of reasons for this. First, when someone pleads guilty in a plea bargain situation they give up their right to appeal except in very limited circumstances. Second, of our clients who go to trial and lose, not all of them wish to pursue an appeal. The decision to appeal is left to the client.

Every appeal is heard by a court of appeals. There are fourteen courts of appeals in Texas. The one which hears cases from Fort Bend County is in Houston. Court of Appeals must hear all the cases which come to them; they have no discretion. Once they reach a decision, the case can be appealed to the Court of Criminal Appeals, the highest court in Texas which hears criminal cases. Unlike the court of Appeals, the Court of Criminal Appeals can pick and choose which cases it will hear. When it chooses to hear a case, it grants discretionary review. For the purposes of our departments, the Court of Criminal Appeals is the highest court to which we can go.

B) How to Appeal

No appeal will be taken without permission from the MH Division Chief. A request on behalf of the client will be made to the trial judge in which the case was heard, and that Judge will then appoint a private attorney to handle the case. That attorney will then become attorney of record for the client. <u>At this point, the MH DIVISION is not set up to handle appeals.</u>

C) Motion for New Trial (MFNT)

The timetable just discussed applies to almost all cases, with one exception. In some cases a Motion for New Trial is filed in the trial court and this will pass back the start of the appeal. It only affects when the notice of appeal must be filed. A motion for new trial (MFNT) is a mini-appeal to the trial judge which lists mistakes the trial attorney believed happened during the trial If the judge grants it, the case is back where it started; i.e., awaiting trial.

The MFNT trial must be filed within 30 days of the date of sentencing. The trial judge must rule on it within 75 days of sentencing. If the judge doesn't make a ruling, the law considers it overruled after 75 days have passed. The defendant must then file notice of appeal within 90 days of sentencing. Once notice of appeals is given, and all the other paperwork is done, the timetable runs normally.

IX. CASE MANAGEMENT/ PERFORMANCE GUIDELINES

The provision of criminal defense services is not one that easily lends itself to pure numerical analysis. While the process of determining the dollars and cents it costs to provide defense services for "x" number of cases is ascertainable, determining the actual quality of those services is more difficult. The Constitution guarantees all citizens accused of jailable offenses the effective representation of counsel. Mindful of that guarantee, the goal should be to provide a high quality of representation at a reasonable cost and not the bare minimum at lowest possible cost. While there is no one standard to determine effective representation, the Public Defender should seek to measure, to the extent possible, those items that the department and the Commissioner's Court agree provide some measure of the success in providing criminal defense services, as required by the grant establishing these services. These measurements and reports are subject to ongoing revision based upon the capabilities of the equipment available to capture the information and the determination of the parties as to what constitutes valid measurement criteria.

For more objective measurements of the MH Division's performance, reports relaying the following information are under development. In the event that the computer software used by the department is unable to prepare this information, alternative reports shall be developed.

A) Effectiveness of Representation

1. Monthly case flow

i. Number of cases received;
ii. Number of cases closed; and
iii. Pending case load

2. Length of time from:

i. Arrest to appointment;
ii. Arrest to complaint signed by D.A.'s Office;
iii. Arrest to release from custody with judgment or dismissal;
iv. Appointment of case to release from custody with judgment or dismissal; and
v. Appointment to disposition of case

X. USE OF EXPERTS

Owing to the diversity of criminal offenses that may be prosecuted, there are many situations that will arise where the attorney may be ill-equipped to zealously defend their client because of a lack of training in certain specialties. While the particular specialties required will vary from case to case, they most often will be medical, psychological, or involve forensic testing in numerous areas. The cost in using such experts can vary widely depending upon the particular discipline, geographical location of the expert, and their background. Attorneys should never hesitate to try and arrange for expert assistance if truly required, but should be mindful of expense in determining who to use. If the state has an expert, you probably need one too.

A) When is an expert appropriate?

1. Detailed policies regarding the use of an expert will be developed by the MH Division Chief. For the present time, these summarized guidelines are to be used.

2. Types of cases that experts are most likely to be of benefit:

a. Mental Illness / Competency
b. Drug Analysis
c. DWI / Intoxilyzer

B) **How to obtain an expert**

1. **Locating potential expert witnesses**
   a. **Referrals from other attorneys; and**
   b. **Referrals from professional organizations**
2. **Interviewing and evaluating**
3. **Allow sufficient time to obtain subpoena**
4. **Motion to court**
   a. **Preparation of motion;**
   b. **What to include; and**
   c. **Obtaining funds**
      i. Estimating costs for evaluation;
      ii. Travel;
      iii. Courtroom testimony (time and travel); and
      iv. Be prepared to make multiple requests for funds (i.e. once for investigation, again for testimony, etc.).

C) **How to most effectively utilize the expert?**

1. **Try to use local people when qualified and available;**
2. **Work to minimize travel time; and**
3. **Assist the expert as much as possible in obtaining records or client information, to the extent applicable.**

APPENDIX A

Our job descriptions will follow…..

Chief Public Defender

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851
Supervisor:	-	FLSA Status:	E
Supervises:	Mental Health Division Chief Attorney II Attorney I Investigator Caseworker Social Worker Administrative Coordinator Office Coordinator Secretary	Job Grade:	17
SIP/DOT:	N/A	Policy Group:	P/M

Job Summary: Performs legal defense work for clients needing publicly assisted representation in serious criminal cases accepted by the Public Defender, including felony and misdemeanor charges. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Ensures the functions and services of the Public Defender's Office are provided in accordance with the requirements of State and Federal Constitutions, State and Federal Law, and State Bar of Texas ethical rules
- Plans, organizes, directs, and manages the day-to-day operations of the Public Defender's Office
- Participates in felony trials of all degrees as a lead attorney in both jury and non-jury matters
- Supervises planning, development, preparation and monitoring of annual budget and statistical reports
- Develops and maintains good working relationships with the judges of assigned courts while continuing to act as a vigorous advocate for the rights of clients being represented
- Directs and controls the organization, staffing, administration and evaluation of all authorized activities of the Public Defender's Office
- Supervises the work of subordinate attorneys in felony and misdemeanor cases
- Responsible for the selection, training, evaluation, promotion and termination of attorneys and other staff

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

- Makes presentations to social and civic groups, incarcerated persons, and other organizations to publicize, promote, and explain the public defender program
- Represents the Public Defender's Office in appropriate public and professional meetings and conferences, in interactions with state and municipal officials, County and State bar associations, and citizen groups
- Performs other duties as assigned
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Knowledge:	Doctor of Jurisprudence.
Experience:	5 to 8 years practicing criminal law, including two years of mid to senior level supervisory or management experience. Experience with cases in felony, misdemeanor, and mental health courts.
Skills and Abilities:	Highly advanced research and writing skills, including trial advocacy, legal research and library skills. Verbal and written communication, supervisory, management and organizational skills; interpersonal skills and ability to deal effectively with the public, other employees and elected officials. Must have high degree of case evaluation and advocacy skills, expertise in trial of criminal cases, advanced knowledge of the rules of evidence, case law, penal code and code of criminal procedure.

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

Special Requirements: Licensed by Supreme Court of Texas. Current active membership in the State Bar of Texas

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Equipment Used:

Telephone	Personal Computer
Mainframe Computer	Fax Machine
Calculator	Photocopier
Automobile	Audio and Video Recording Equipment
Typewriter	

Contacts: Daily contact with criminal defendants, victims, police, co-workers, department employees, the public, and elected officials in person or on the telephone to negotiate, persuade, exchange routine information, instructs and makes presentations as applicable; frequent contact with employees in other departments in person or on the telephone to request information.

Supervision Required: Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.

Physical Demands: Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.

Work Environment: Work is performed primarily in a climate-controlled private office. Provides 24-hour on-call assistance to county officials and law enforcement officials. Noise level is quiet.

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Mental Health Division Chief

Job Title:	Mental Health Division Chief	Job Code:	J16023
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Public Defender Advisory Board	FLSA Status:	E
Supervises:	Attorney Social Worker Case Worker Office Coordinator	Job Grade:	16
SIP/DOT:	N/A	Policy Group:	P/M

Job Summary: Provides legal representation in misdemeanor **or felony** proceedings where the defendants are indigent and suffering from mental illness. Serves as lead counsel in mental health cases. Oversees and participates in preparation, presentation and disposition of mental health cases. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Reviews all indigent cases where defendant has been diagnosed with a mental illness. Review psychological and psychiatric records.
- Participates in development and implementation of policies, procedures and programs. Ensures activities are consistent with goals and objectives. Directs efforts to develop and improve day-to-day operations, work processes and customer service.
- Participates in the planning, development, preparation and monitoring of annual budget and statistical reports.
- Represents indigent adults in felony and misdemeanor hearings for the most complex litigation. Directs and advises department legal staff on issues of law and disposition of cases. Resolves problem case negotiations.
- Researches and answers legal issues related to law for various county departments, district judges, external attorneys and outside agencies.
- Performs advance legal work, including research, case preparation, and court appearances, as lead counsel on selected cases, including cases of particular difficulty or sensitivity. Prepares and argues legal briefs for felony and misdemeanor cases. Serves as lead counsel.

Job Title:	Mental Health Division Chief	Job Code:	J16023
Department:	Mental Health Public Defender Department	Department Number:	4851

- Represents the department at community and business gatherings and makes presentations and conducts seminars and training for groups and organizations. Functions as resource person for advice and assistance to attorneys and law enforcement agencies.

- Meets with judges regarding court administration of the indigent misdemeanor and felony mental health case loads.

- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Knowledge:	Doctor of Jurisprudence from an accredited law school.
Experience:	Five to eight years experience in public or juvenile defense case work, including two years of mid- to senior level supervisory or management experience involved in the management process and policy making functions of a law office. Experience with cases in felony, misdemeanor and mental health courts.
Skills and Abilities:	Highly advanced research and writing skills, including trial advocacy, legal research and library skills. Verbal and written communication; budgetary, supervisory, management and organizational skills; interpersonal skills and ability to deal effectively with the public, other employees and elected officials; skilled in problem solving and decision-making. Must have high degree of case evaluation and advocacy skills. Knowledge of trial procedures and rules of evidence. Advanced knowledge of state and federal laws, codes and regulations pertaining to area of assignment; knowledge of philosophy and practices of public defense.

Job Title:	Mental Health Division Chief	Job Code:	J16023
Department:	Mental Health Public Defender Department	Department Number:	4851

Special Requirements: Licensed to practice law in the State of Texas.

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Equipment Used:

Telephone	Computer
Audio/Visual Equipment	Photocopier
Fax Machine	Calculator
Automobile	

Contacts: Daily contact with co-workers, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.

Supervision Required: Sets standards and establishes guidelines subject to organizational parameters.

Physical Demands: Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.

Work Environment: Work is performed primarily in a climate-controlled private office. Noise level is quiet to moderate.

Job Title:	Mental Health Division Chief	Job Code:	J16023
Department:	Mental Health Public Defender Department	Department Number:	4851

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Attorney I

Job Title:	Attorney I	Job Code:	J13062
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Director	FLSA Status:	E
Supervises:	N/A	Job Grade:	13
SIP/DOT:	N/A	Policy Group:	P/M

Job Summary: Reviews, investigates, and provides legal representation for or ensures Indigent mentally ill clients are represented in misdemeanor and felony court proceedings and ensures their constitutional rights are upheld. Participates in preparation, presentation and disposition of cases. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Performs legal research. Searches resources and studies legal records and documents to obtain information applicable to case or issue under consideration.
- Drafts briefs, motions, orders, subpoenas, contracts and other legal documents, as well as correspondence and reports.
- Takes depositions, responds to discovery requests, oversees the creation and issuance of legal documents including subpoenas, motions, orders, writs, warrants, contracts, official polices, and other related documents.
- Prepares cases for trial. Collects, organizes and prepares evidence, information and other legal materials.
- Represents indigent adults in misdemeanor hearings and court appearances.
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Job Title:	Attorney I	Job Code:	J13062
Department:	Mental Health Public Defender Department	Department Number:	4851

Knowledge: Doctor of Jurisprudence degree from an accredited law school.

Experience: One year experience in public or juvenile defense case work.

Skills and Abilities: Advanced computer, research and writing skills, including trial advocacy, legal research and library skills. Verbal and written communication and organizational skills; interpersonal skills and ability to deal effectively with the public, other employees and elected officials; skilled in problem solving and decision-making. Must have high degree of case evaluation and advocacy skills. Knowledge of trial procedures and rules of evidence. Advanced knowledge of state and federal laws, codes and regulations pertaining to area of assignment; knowledge of philosophy and practices of public defense.

Special Requirements: Licensed to practice law in the State of Texas.

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Equipment Used:

Telephone	Personal Computer
Mainframe Computer	Fax Machine
Photocopier	Calculator
Audio/Video Equipment	Camera

Job Title:	Attorney I	Job Code:	J13062
Department:	Mental Health Public Defender Department	Department Number:	4851

Contacts:	Daily contact with co-workers, attorneys, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.
Supervision Required:	Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.
Physical Demands:	Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.
Work Environment:	Work is performed primarily in a climate-controlled private office. Noise level is quiet to moderate.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Social Worker

Job Title:	Social Worker	Job Code:	J10074
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Director	FLSA Status:	E
Supervises:	N/A	Job Grade:	10
SIP/DOT:	N/A	Policy Group:	P/M

Job Summary: Provides social work services to clients and families to include case management, psychosocial and/or resource needs assessments. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Conducts client and/or family psychosocial and/or resource needs assessment and obtains maximum benefit from all available sources.
- Develops and implements client/family service plans and monitors progress. Conducts periodic and final assessments to determine progress, client barriers, follow-up needs and client outcomes.
- Provides brief counseling and crisis intervention to individuals and/or their Families to increase their ability to overcome and prevent crisis and promote progress toward self-sufficiency and health and well being.
- Reviews case matters as well as gathers necessary medical information for proper representation to the court; intervenes for competency matters, compliance with CCP, psychiatric referrals and evaluations.
- Provides short or long-term case management and service coordination to ensure maximum self-sufficiency and non-institutional living. Utilizes community resources to assist client in learning to live as a self-sufficient member of the community, including but not limited to medical resources, local, state and federal agencies, community-based agencies and other resources.
- Participates in community collaboration for resource development and elimination of duplication of services.
- Provides client/family education, training and advocacy; Serves as advocate for defendant.
- Maintains current knowledge about resource availability, service costs, and budgetary parameters and remains fiscally responsible in carrying out all case management functions and activities.

Job Title:	Social Worker	Job Code:	J10074
Department:	Mental Health Public Defender Department	Department Number:	4851

- Participates in evaluative and quality assurance activities designed to monitor the appropriateness and effectiveness of both the service delivery system in which case management operates as well as the case manager's own management services. Ensures full professional accountability.
- Writes informational reports, compiles data/information in accordance with professional standards and policies.
- Participates in case reviews involving client/family and other service providers.
- Refers citizens to appropriate agency or program.
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Knowledge:	Master's Degree in Social Work
Experience:	Two years social work experience counseling individuals in crisis/trauma situations.
Skills and Abilities:	Strong computer, management, supervisory and organizational skills; interpersonal skills and ability to deal effectively with clients, the public, other employees and elected officials. Good written and verbal communication skills; ability to complete assignments within tight deadlines and under high-pressure circumstances; knowledge of policies, practices, procedures and terminology of assigned functions. Skilled in counseling and providing crisis and other assistance to clients; assessing the medical, psychosocial and environmental status of clients.

Job Title:	Social Worker	Job Code:	J10074
Department:	Mental Health Public Defender Department	Department Number:	4851

Special Requirements: Licensed Master Social Worker (LMSW) and/or Licensed Professional Counselor.

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Equipment Used:

Telephone	Computer
Fax Machine	Photocopier
Calculator	Automobile

Contacts: Daily contact with co-workers, attorneys, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.

Supervision Required: Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.

Physical Demands: Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.

Work Environment: Work is performed primarily in a climate-controlled open office area, shared with other employees and open to public and office traffic; Noise level is moderate.

Job Title:	Social Worker	Job Code:	J10074
Department:	Mental Health Public Defender Department	Department Number:	4851

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Lead Caseworker

Job Title:	Lead Caseworker	Job Code:	J09XXX
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Director	FLSA Status:	NE
Supervises:	N/A	Job Grade:	9
SIP/DOT:	N/A	Policy Group:	A/C

Job Summary: Determines applicants' eligibility for a variety for social services available and/or provides other social services related to crisis intervention and short-term case management. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Assesses clients needs, including review of diagnosis, medications, obtaining records and prior assessments, arrange psychiatric and medical appointments
- Networks with outside agencies and advocates for clients to ensure continuity of care upon release
- Provide crisis intervention as needed; help clients cope with addictions, substance abuse, family, parenting, stress, self esteem and suicidal thoughts
- Transports and supervises clients at court proceedings, medical appointments and emergencies, as needed
- Assists in training of new employees on policies and procedures of the Mental Health Public Defender's Office
- Investigates available services within the County to use as reference for the department
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Job Title:	Lead Caseworker	Job Code:	J09XXX
Department:	Mental Health Public Defender Department	Department Number:	4851

Knowledge:	High School Diploma/GED; Bachelor's degree with major coursework in Social Work or related field preferred
Experience:	Two years experience in social services related work.
Skills and Abilities:	Strong computer, management, supervisory and organizational skills; interpersonal skills and ability to deal effectively with clients, the public, other employees and elected officials. Good written and verbal communication skills; ability to complete assignments within tight deadlines and under high-pressure circumstances; knowledge of policies, practices, procedures and terminology of assigned functions. Skilled in counseling and providing crisis and other assistance to clients; assessing the medical, psychosocial and environmental status of clients.
Special Requirements:	Valid Drivers License.
Essential Behavioral Expectations:	Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.
Equipment Used:	Telephone, Computer, Fax Machine, Photocopier, Calculator, Automobile

Job Title:	Lead Caseworker	Job Code:	J09XXX
Department:	Mental Health Public Defender Department	Department Number:	4851

Contacts:	Daily contact with co-workers, attorneys, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.
Supervision Required:	Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.
Physical Demands:	Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.
Work Environment:	Work is performed primarily in a climate-controlled open office area, shared with other employees and open to public and office traffic; Noise level is moderate.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Caseworker

Job Title:	Caseworker	Job Code:	J08011
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Director	FLSA Status:	NE
Supervises:	N/A	Job Grade:	8
SIP/DOT:	N/A	Policy Group:	A/C

Job Summary: Determines applicants' eligibility for a variety for social services available and/or provides other social services related to crisis intervention and short-term case management. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Interviews clients, collects and completes required eligibility documentation, determines eligibility for social services assistance and monitors client progress and usage of assistance.
- Refers clients to clinical, other social service, education and/or health agencies as needed.
- May make home visits on an "as needed" basis for clients unable to come to the service site.
- Provides basic needs counseling and problem-solving assistance or case management services for clients. Conducts assessment of client needs; develops casework/service plans, monitors progress and follow-up. Provides social services related to crisis intervention.
- Coordinates with other service agencies, organizations, and vendors to provide appropriate services and information for clients as well as referrals. Services as an advocate on behalf of client.
- Interprets eligibility requirements, policy, and procedure to clients, other agencies, vendors, and government entities.
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Job Title:	Caseworker	Job Code:	J08011
Department:	Mental Health Public Defender Department	Department Number:	4851

Knowledge:	High School Diploma/GED; Bachelor's degree with major coursework in Social Work or related field preferred
Experience:	Two years experience in social services related work.
Skills and Abilities:	Strong computer, management, supervisory and organizational skills; interpersonal skills and ability to deal effectively with clients, the public, other employees and elected officials. Good written and verbal communication skills; ability to complete assignments within tight deadlines and under high-pressure circumstances; knowledge of policies, practices, procedures and terminology of assigned functions. Skilled in counseling and providing crisis and other assistance to clients; assessing the medical, psychosocial and environmental status of clients.
Special Requirements:	Valid Drivers License.
Essential Behavioral Expectations:	Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.
Equipment Used:	Telephone, Computer, Fax Machine, Photocopier, Calculator, Automobile

Job Title:	Caseworker	Job Code:	J08011
Department:	Mental Health Public Defender Department	Department Number:	4851

Contacts:	Daily contact with co-workers, attorneys, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.
Supervision Required:	Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.
Physical Demands:	Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.
Work Environment:	Work is performed primarily in a climate-controlled open office area, shared with other employees and open to public and office traffic; Noise level is moderate.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Job Title:	Administrative Assistant	Job Code:	J08000
Department:	Mental Health Public Defender Department	Department Number:	4851
Supervisor:	Director	FLSA Status:	NE
Supervises:	N/A	Job Grade:	8
SIP/DOT:	N/A	Policy Group:	A/C

Job Summary: Provides administrative and clerical support to department to ensure effective and productive work flow. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

- Applies functional knowledge to analyze and respond to matters requiring comprehensive knowledge of department policies and procedures
- Serves as the Department Coordinator for all related events, meetings and conferences and oversees the daily activities of the office.
- Analyzes and resolves difficult problems by using appropriate and defined methods for documenting or provides assistance to others on difficult assignments.
- Reports to and advises clients, customers, representatives of other counties, law enforcement agencies and businesses; documents actions taken in response to all inquiries, compiles information and generates monthly workload and performance reports.
- Performs various tasks involving processing of forms, letters, data entry/retrieval, equipment maintenance and inventory control. Coordinates and completes data collection, analysis, reporting, documentation or projects and other duties to ensure accurate and timely processing or development of required operational needs, goals and reports; participates in complex technical administrative projects with staff as directed; assists with specialized or difficult work activities of subordinates or other staff members.
- Acts as primary customer contact with outside organizations or other departments; responds to technical computer system and/or administrative questions and ensures necessary follow up.
- Responds to requests in person, by mail and by telephone; provides technical advice and assistance regarding documents required for all types of transactions.

Job Title:	Administrative Assistant	Job Code:	J08000
Department:	Mental Health Public Defender Department	Department Number:	4851

- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers.

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Knowledge: High School Diploma/GED

Experience: Four years of responsible office/clerical experience

Skills and Abilities: Highly advanced computer skills including word processing, spreadsheets, databases and variety of software applications. Excellent interpersonal skills and ability to deal effectively with the public, other employees, department and elected officials. Strong verbal and written communication and organization skills.

Special Requirements:

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Job Title:	Administrative Assistant	Job Code:	J08000
Department:	Mental Health Public Defender Department	Department Number:	4851

Equipment Used:	Telephone Calculator Fax Machine	Computer Photocopier

Contacts:	Daily contact with co-workers, attorneys, department employees, and the public/clients in writing, in person and/or on the telephone to provide service and/or information; frequent contact with employees in other departments, elected officials in person or on the telephone to provide service and/or information and to exchange routine information; contact with regulatory agencies in person or on the telephone to exchange routine information.
Supervision Required:	Uses independent judgment within established guidelines; needs assistance only for unusual, non-routine situations.
Physical Demands:	Daily use of hands and/or fingers to grasp, handle, pick-up, pinch, type or feel, reaching with hands or arms, sitting, talking and listening; occasional lifting of objects up to 30 pounds, climbing or balancing, standing and walking; frequent stooping, kneeling, crouching or crawling; close vision and the ability to adjust focus.
Work Environment:	Work is performed primarily in a climate-controlled open office area, shared with other employees and open to public and office traffic; Noise level is moderate.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

APPENDIX B

Fort Bend County Public Defender's Office
Mental Health Division
Absence Form

Employee Name: _____ Date of Request: _____
(PRINT)

Reason for Leave Request: _____

_____

It is my understanding that failure to return on the above date or failure to notify the County that I wish an extension can result in my separation from the County.

_____
Employee Signature

_____ _____
MH Division Chief Signature **Administrative Coordinator**

Remarks:_____

I, _____, hereby agree to cover any and all duties assigned to the above named employee in his/her absence.
(Printed Name of Employee Covering Absence)

_____ _____
Date **Signature**

APPENDIX C

ACKNOWLEDGEMENT FORM

Fort Bend County Mental Health Public Defender's Office

_____
Date

I, _____, have read, understand and received a copy of the Fort Bend County Mental Health Public Defender's Department Policy and Procedure Manual and understand I am expected to abide by the said policy.

Signature: _____

FORT BEND COUNTY
TRIAL DIVISON
PUBLIC DEFENDER DEPARTMENT



Policy and Procedures Manual

(Revised April 2018)

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FORT BEND COUNTY
MENTAL HEALTH DIVISION
PUBLIC DEFENDER DEPARTMENT
Policy and Procedures Manual

This manual is designed to function as the working guide to the operation and utilization of the Fort Bend County Public Defender Department (Mental Health Division). The policies and procedures outlined in this manual have been developed by the Public Defender under the guidance of the Fort Bend County Commissioner's Court. These guidelines are subject to the organizational agreement between the Public Defender and the Commissioner's Court. Policies and procedures described in this manual are subject to change on an "as needed" basis as the needs and capabilities of the department and the county change.
As employees of Fort Bend County, all members of the MH Division are subject to the policies set forth in the Fort Bend County Employee Information Manual. The manual is available on the internet, and the policies contained therein are part of the terms and conditions of employment.

I. PERSONNEL

Detailed job descriptions for each position in the Public Defender Department Mental Health Division are attached as Appendix "A" to this document. The MH DIVISION consists of:

A) Attorneys

- **a. Chief Public Defender**
- **b. TRIAL Division Chief**
- **c. Attorney I and Attorney II**

B) Immigration Attorney

C) Support Staff

- **a. Office Coordinator**

D) Conduct/Ethical Guidelines

As employees of attorneys, staff members are bound by the same ethical standards as attorneys. First and foremost, this includes the attorney-client privilege. Anything we learn from a client is confidential and will not be shared with anyone outside this department without the clients' permission. This includes friends and family of the client.

Secondly, all members of the MH DIVISION should be respectful of the witnesses and other parties that we come across during the course of our representation of a client. While there will be individuals who will make it difficult, always go into the situation as respectfully as possible. You should also show respect to the victims and/or law enforcement personnel who agree to speak with us. Finally, you should seek a parent or guardian's permission before speaking to a juvenile witness or victim. Also be mindful that our clients should not have direct contact with a victim/complaining witness as this can be considered intimidation of a witness.

E) Sick/Vacation/Cover Leave

Sick and vacation leave are to be governed under the guidelines and policies of Fort Bend County, and may also be found in the Fort Bend County Employee Information Manual; Section 709 (Sick Leave) and Section 513 (Vacation).
"Cover leave" is to be governed by the MH DIVISION. Whenever an attorney or a member of the support staff are requesting leave, either sick or vacation, they will try to the best of their ability to have another attorney or support staff covers their court docket or department duties. A "cover request" is to be filled out, if possible, by both the employee requesting leave and the employee

accepting covering duties. The "cover request" is then to be submitted to the MH Division Chief for approval. A copy of the "cover request" is attached as Appendix "B".

F) Outside Employment

Employees may not accept or continue outside employment that would give rise to, or the appearance of, a conflict of interest without the Chief Public Defender or MH Division Chief's approval (see Fort Bend County Employee Information Manual, Section 605 (Outside Employment) and Section 602 (Conflict of Interest). Employees may not accept or continue legal employment involving restricted clients (inmates/ clients, inmate's/ client's immediate families, or individuals referred by inmates/ clients or their families) or restricted defendants (state and federal governments, state agencies, cities, municipalities, and counties) or legal employment in an area of law with high potential for conflict (Deportation, Expungements, Family Law, Immigration, and Misdemeanor Appeals) without the MH Division Chief's approval.

Employees may accept outside employment in an area with low potential for conflict with the Mental Health Division - Public Defender Department except when such employment gives rise to or may give rise to a conflict of interest or the appearance of impropriety. In those instances, the employee must obtain the Chief Public Defender or MH Division Chief's approval.

If the nature of an employee's outside employment changes such that it becomes, or the employee learns that it is or may be a conflict of interest to continue such employment, the employee must notify the Chief Public Defender or MH Division Chief and obtain his or her approval for continuing said employment.

The use of county assets in support of outside employment is strictly prohibited. This prohibition includes local and long distance telephone use and both incoming and outgoing calls. Outside employment is not to be conducted while on county time or on county property.

II. TRAINING

Training is an integral part in developing personnel who can provide vigorous and zealous defense of their clients. Although all department personnel share a responsibility of providing services to the client, these needs are most keenly felt at the attorney and social worker and caseworker positions. An overview of the training program for these positions follows. This plan is subject to modification depending upon the skills and training already possessed by new employees.

A) Attorney Training

a. Training Program and Practice Guidelines

The best way of learning various aspects of criminal defense work is to observe an experienced attorney as he works. The Division Chief and the Attorneys will meet regularly to discuss various aspect of working as a public defender. These would include:

i. Introducing the Attorneys to the judges, court personnel and other individuals in Fort Bend County's criminal justice system;

ii. The Division Chief will show the Attorneys the location of the various courts, departments and jail facilities of Fort Bend, including jail operations and visitation;

iii. The Division Chief will take the Attorney I to the District Attorney's Office, introduce them to the members of that office and instruct the new attorney in the interaction between the DIVISION and the Assistant District Attorney (ADA), such as viewing client files and plea negotiations;

iv. The Attorneys will attend court hearings with the Division Chief and participate in any cases that go to trial;
v. The Division Chief and the Attorneys will meet to discuss each other's cases with the Division Chief providing guidance and insight on how the Attorneys should proceed on a particular case; and
vi. The Division Chief will be available to answer questions that the Attorney I might have about various aspects of DIVISION procedures.

The purpose of having this program is to provide guidance and instruction to the Attorney I. In short, the Attorney I will be responsible for his/her assigned cases, subject to the MH Division Chief's insight.

B) Continuing Legal Education

Under the Texas Fair Defense Act, as adopted by Fort Bend County, any attorney requesting appointments to represent indigent defendants must have at least ten (10) hours of continuing legal education in the field of criminal law each calendar year and be an active member of the State Bar of Texas to maintain eligibility to receive appointments. In addition, attorneys for the MH DIVISION will complete at least three (3) hours of CLE in the area of Mental Health to be increased as more programs and CLE become available.

The Public Defender Office will cover all expenses in sending its attorneys to CLE seminars in order to meet with appointment requirements. The PDO also maintains a library of legal manuals and materials centering on improving trial skills, criminal procedure, mental health and immigration issues.

B) Immigration Attorney Training

As with the other attorney training, Trial Division Chief will go over policies and procedure with Immigration Attorney.

Immigration Attorney will stay in touch with other immigration attorney across the State of Texas and keep abreast of any changes in immigration law.

IV. THE PRACTICE OF LAW - ASSIGNMENT OF CASES

A) Assignment and Flow of Cases

In order to provide the most efficient use of resources and facilitate the speedy representation of the client, cases should be processed in the following manner. These guidelines are subject to ongoing review and change when necessary to insure that service to the client is represented in a timely and cost-effective manner. All referred clients must meet the guidelines for indigence established by Fort Bend County.

1) **Intake Process/Procedure for Referral**

The case flow process within the DIVISION begins when the Notice of Appointment is first received from the Senate Bill 7 (SB7) Coordinator. The SB7 Coordinator will assign misdemeanor and felony cases for those with a notation of mental health on a rotation basis. Cases will be assigned to Trial Division unless it has been designated for MH DIVISION unless there is a conflict of interest or until a maximum of 100 felony cases and 300 misdemeanor cases per year are assigned. Other clients will be accepted at the discretion of the MH Division Chief. Methods for referral of clients apart from the

"slots" or rotation order will include referrals directly from Fort Bend County Court at Law Judges.

2) **Screening Process**
All referred clients will have a confirmed Axis I diagnosis of a major mental illness, including paranoid schizophrenic, bi-polar, major depression and schizoaffective disorder. At the time of referral from court administration, if there is no confirmed diagnosis from the jail staff, a state of Texas Mental Health Hospital, Texana , MHIDD VA, private source or other mental health authority, a social worker or case worker from MH Division will meet with the client for an assessment. At the discretion of the MH Division Chief, if a client referred from the SB7 Coordinator does not meet these guidelines or if there is a conflict of interest, the client will be returned to the SB7 Coordinator for reassignment to an appointed private attorney.

3) **Creation of Case**
The appointment is given to the office coordinator, who takes the information from the appointment form to open up a physical case file and enter the client's info into the case management system, Defender Data.

4) **Initial Contact with Client**
Upon appointment of a new case, Attorney must make contact within 24 to 48 hours after being assigned the case.

B) Caseload Standards

The Division Chief shall review caseload standards quarterly to determine numbers and complexity of cases for each lawyer. The number of arrests varies during the year, depending on the weather and other factors. In any quarter, the MH Division Chief shall have pending no more than 75 (i.e. Pre-disposition) active files. In any quarter, the Attorney I shall have pending no more than 90 active files. If, during any quarter, the case load exceeds this number, the MH Division Chief, in his/her discretion, will contact the SB7 Coordinator and the judges of the two mental health courts to remove the MHPD from the rotation. If any exception to the caseload standards is authorized by the MH Division Chief, the MH Division Chief will notify the Oversight Board in writing.

If the client is in custody, the office coordinator creates a folder for the lawyer assigned. The folder will be generated from the following windows off the County Website system as well as the Tiburon inmate search page. It will include the standard questionnaire forms used by the MH DIVISION as well as blank forms for medical release authorization. The folder will be delivered to the attorney for visitation within one business day.

If the client was released from custody on bond, the office coordinator will make a client packet consisting of the same information found in the jail packet. The office coordinator will calendar all court dates and attorneys and case workers will be responsible for notifying clients on bond of their court dates. This can be done via: 1) letter or 2) having a client sign a "Notice of Court Setting" form which lists the court date and time.

C) Conflict Checks

A lawyer cannot effectively represent a client when a conflict of interest exists. In criminal defense work, that conflict most often arises when you have been appointed to represent someone

and you already represent the victim, a co-defendant, or adverse witness in the case. In order to avoid that situation, a conflict check is to be conducted on each case early in the appointment process.

The office coordinator, or the attorney assigned to the case, should enter in the names of the client, victim(s), co-defendant(s), if any, and any known witnesses into the conflict checking software if available. If additional victims, witnesses, etc. are later uncovered, they should also be entered into the software program to see if a conflict arises.

In the event a potential conflict is uncovered, the attorney needs to view the nature of the conflict and then make a professional judgment as to whether withdrawal is required. If in doubt, the attorney should discuss it with the MH Division Chief for guidance.

D) Procedures for Handling Conflict of Interest Cases

1. The following situations constitute a conflict of interest, requiring the assignment of outside counsel. Those situations shall include but are not limited to:

a. When lawyer is appointed to provide representation to co-defendants, absent extraordinary circumstances warranting joint representation and the consent of all clients involved;

b. When the defendant was represented at the trial level by an individual within the same defender agency and it is asserted by the client or appears arguable to the attorney that trial counsel provided ineffective representation;

2. If a conflict of interest exists, it exists for the entire department, and assigning the case to another attorney within that entire agency will not cure the conflict.

3. As soon as a case is identified as meeting the definition of "conflict of interest case" the case shall be immediately identified and assigned to counsel outside the Public Defender Office and returned to the trial court. The Division Chief shall conduct a prompt review of each case to make a timely decision as to whether a conflict of interest is probable.

4. If a conflict of interest is found to exist or is probable, the MH Division Chief shall contact the trial court immediately and ask that a member of the private bar represent the client.

E) Establishing an Effective Attorney – Client Relationship

Establishing an effective attorney – client relationship is integral to a successful outcome in a case. When dealing with clients in this department, it is important to remember several key things. First, your client didn't pay or choose your services, you were appointed as his/her attorney. This can lead to a great deal of suspicion on the part of the client. Second, your client is in a situation that, whether he/she admits it or not, is frightening to him/her. In our unique department, all the clients have a major mental health diagnosis and this can exacerbate such feelings.

Both of these feelings can seriously complicate having an effective attorney-client relationship, especially when they lead to hostility on the part of the client. In some cases, you will not be able to overcome these obstacles. However, in the majority of cases, it is possible to build a

relationship based on a degree of trust on the client's part. Once you have accomplished that, it becomes possible to get the client to listen to your advice on the case. Without overcoming the client's innate skepticism of a court – appointed attorney or public defender, you will not be able to serve your client to the best of your ability.

This will seem like an obvious point, but the best way to establish an effective attorney – client relationship is to spend time communicating with your client, whether it is in the jail or over the phone. In the most serious cases, it is best to start with face-to-face contact. However, in a great many cases the client will have received the news that you are going to be representing him/her before you get the file. Talking to the client before you get the file is a judgment call, but remember that the client may have important information that needs to be acted on quickly. Granted, it is hard to know the value of the information when you haven't seen the file, but it might be best to err on the side of caution and speak to the client.

It is always important to remember what you are trying to accomplish: the best outcome for the client, based on the situation that exists. There are times when this will involve trying to get the client to accept the "best" alternative (or at perhaps the "least worst" alternative). If you've built an effective relationship with the client, it can be easier to convince them that your opinion on their situation needs to be taken into account.

The way to do this is to be honest with the client. If your objective evaluation of the case leads you to a conclusion that you know the client will not like, it is nonetheless your obligation to give him your opinion. You can build trust with a client by keeping the promises you make to him. The flip side of this is to not make promises that you can't keep. If you tell the client that you're going to accept his calls, accept them. If he wants a copy of the arrest affidavit, make sure it gets sent to him. Send him copies of the investigation so he knows what you know. If he's got some ridiculous offer to make to the prosecution, make sure you inform the District Attorney. No attorney can promise a client an outcome of the case, but you can promise to work hard and then show the client you mean it. A little attention to the client can pay big dividends.

1. The Initial Client Interview

The initial client interview will depend in large part on the amount of information you have about the case. Unfortunately, there are going to be cases where you don't have the arrest affidavit, despite the best efforts of the support staff. If you have the arrest affidavit, you are in a better position to ask questions relevant to the case. If you don't, you'll have to try and get as much from the client as you can.

It's best to start any client interview with the same basic information, introduce yourself, and assure your client that the attorney/client privilege will protect the confidentiality of anything he tells you, the charge and the possible range of punishment. Emphasize that you're doing the latter only for informational purposes and not because you think he's guilty. Tell him you just want him to know the possible consequences for someone in his position. Always interview a client alone if possible. Family members tend to interfere with the interview process and influence the client's answers to your important questions.

Next, it can be helpful to get some general background information from the client. If he is married or not, has any children, how far he got in school, is he employed, any medical problems, etc. This can also be useful to help establish some trust on the part of the client-never forget that he/she didn't get to pick his/her attorney. All of this may account for nothing in the long term, but there's no way to know what's important at the start.

2. Special Needs Clients (See Section 46 of the Code of Criminal Procedure)
Special needs clients are typically those who are mentally ill or mentally retarded. Not all of our clients are mentally ill. A client's mental health problems can affect a case in several different ways, but the two most important are sanity and competency. Sanity, of course, deals with the client's mental status at the time the offense was allegedly committed. Competency is an issue of fairness and can arise at any time. A client might be competent when you first see him, then deteriorate and become incompetent. While the Code of Criminal Procedure permits other parties to raise the issue of incompetency, as a practical matter that responsibility falls on the shoulders of the person who has the most contact with the defendant: the defense attorney. The best preparation for this is to read *Mental Illness, Your Client and the Criminal Law*. Much of the information that follows is taken from that publication which is available within the MH DIVISION's library materials. If Trial Attorney discovers client is mentally ill, transfer to MH Division.

F) Immigrants/Non-citizens
The Immigration Attorney shall be consulted on all non-citizen cases.

G) Reviewing the District Attorney's File
Once the attorney has received the case file, he or she should begin the investigation process. The assigned attorney should review discovery, including the information and the affidavit for arrest. If the client is in jail, and a client interview has not already been conducted, the attorney should go to the jail to conduct an in-person interview.

The attorney should next arrange to go and view the DA case file. It is usually best to call or e-mail the Assistant District Attorney (ADA) in charge of the case to arrange a time to view the file. If no file has been brought over to the DA's office, then there will be nothing to view. As a general rule, if your client is in jail and has been there for 30 days or more and the DA's office still has not filed an indictment, you should request a PR bond for your client to obtain his/her release. While there is no guarantee that you will be able to get your client released, it is about all you can do at this point to get them out of jail.

The District Attorney's Office has an "open file" policy, which means that you can review all the materials they have: police reports, lab reports, etc.

H) Bond Setting and Reduction
Motions regarding bail generally fall into two categories: reducing bail or getting bail set. What motion to file depends on what you're trying to accomplish; most of the time, that's going to be asking a court to reduce your client's bail. In situations where your client is asking for a bail reduction, first look at what amount of bail s/he currently has. There's nothing that prevents you from asking that the bail be reduced, and it can be useful to go ahead and file the motion, particularly if you have a difficult client.

If the client's bail seems high, the next step is to ask the client how much bail s/he believes they can make. If the client can't make bail, you should tell him/her that getting bail reduced, while possible, isn't going to get them out of jail. There are some clients who will hope that winning a series of bail reductions will ultimately lead to an amount of bail they can make. Experience will teach you that this is not the case.

In preparation for the bail reduction hearing, you should have your client contact several bail bond companies with an eye towards finding out how much they would charge for bail that the client could afford, and the best way to do this is by quoting prices from one or more bonding companies. You should also contact family members, employers, etc., who might be able to testify favorably for the client.

At the hearing, it is permissible to have the client testify for the limited purpose of the bail reduction motion without waiving his/her privilege against self-incrimination and in most cases, the client will have to as you will not be able to locate anyone who can testify for the client. You should prepare the client by telling him/her that you will be asking them questions about where s/he would live, employment opportunities, financial status, health problems, etc. If s/he has a criminal record or has had previous bond forfeitures, rest assured that the prosecutor will ask your client about it. Note also that the rules of evidence do not apply to a bail reduction hearing, although evidence from the State that denies your client the right to confront the witnesses against him/her is probably objectionable on that basis.

There are a few other things to note. There are a lot of myths about bail that float around the jail. No client is entitled to bail s/he can make, nor are they entitled to a bail reduction after 90 days in jail (this is often confused with being entitled to bail you can make or a personal bond if the State hasn't filed an information/indictment within the legal time frame). Remember that you are under no obligation to file a motion that you believe will be a waste of the court's time. Consequently, you should counsel with your client if his/her ideas about bail are unreasonable. The other side of this is that filing a motion to reduce bail that you know is futile may help your relationship with a difficult client.

Motions to set bail are typically used in cases where a client is in jail for allegedly violating his/her community supervision. If the client is on deferred adjudication community supervision, s/he is entitled to bail, as s/he has not yet been convicted. Some judges will set the bail at the same amount it was prior to the client being placed on deferred. Others will require a hearing. Be sure and check on the practice of the particular court that has jurisdiction over the client's case.

In cases where the client is on adjudicated community supervision, bail is at the discretion of the court. Unless the prosecutor agrees to some bail amount, you will have to file a motion and get a hearing set in order to have a chance to get bail set. Again, you can prepare for the hearing much like the bail reduction hearing. Your goal should be to give the court some compelling reasons to set bail in your client's case.

Regardless of what kind of community supervision your client is on, you should think twice about getting bail set. If the client is in on technical violations, it may be that any money s/he could spend on bail would be better spent at the community supervision and corrections department getting caught up on what s/he owes them. However, never have a client or their family pay any money to Community Supervision and Corrections Department (CSCD) or Adult Probation without making sure that the prosecutor will agree to dismiss the motion to revoke. If money is paid and there is no such agreement, there is no way for the family to get the money back. Never have money paid without knowing it will help the client's situation.

I) Obtaining a Plea Recommendation

It is a fact of life in criminal law practice that only a small percentage of criminal cases will go to a jury trial. The overwhelming majority are either dismissed or disposed of via plea-bargain. Your role as attorney and counselor is to make sure that your client is fully informed of the charges, the possible consequences if convicted, and any plea offers made by the District Attorney. While you are charged to counsel your client on the pros and cons of any offer, it is not your decision to make whether to accept any particular offer. With experience you will learn that clients will sometimes take plea bargains they would most likely be better off rejecting and refusing offers you believe they should accept. You must always remember that regardless of the client's decision, they are the ones who will live with the consequences so as long as you keep them informed and worked to get them the best offer possible, you have done your job.

V. THE PRACTICE OF LAW – FROM CASE INVESTIGATION TO TRIAL

At this point you have interviewed your client, hopefully secured his/her release from jail, reviewed the District Attorney's file and obtained a plea recommendation. The next step is to conduct your case investigation. An independent investigation of the facts of an alleged offense is a duty a criminal defense attorney owes to each client. Existing case law suggests that this means more than simply reviewing the prosecution's file. More importantly, it is your obligation to give the client all the information about the case that you can. Since it is ultimately up to the client to decide how to plead, the only way s/he can make an intelligent decision is if s/he has as much information as possible. It is the attorney's responsibility to provide him/her that information.

A) Preparing an Investigative Request – Role of the Investigator

Two Investigators are part of our office. Use them in all cases where appropriate.

B) Interviewing Potential Witnesses

Interviewing witnesses is best left to an investigator, but if you need to question a witness yourself, never do it alone. If a witness tells you one thing in an interview, then testifies differently at trial, you will not be able to impeach their testimony yourself because you won't be able to testify. You will need someone, either the investigator or another attorney, to witness the conversation. By so doing, you will be able to have them testify, should it become necessary. Of course, there is nothing wrong with going with an investigator or another individual to participate in the questioning of the witness.

All interviews should be conducted in a professional and respectful manner. In almost every case, we will need to stay on good terms with the witness in order to maintain their cooperation. All interviews should be recorded, with the knowledge of everyone on the tape, unless the witness specifically asks that it not be done. Emphasize that recording the conversation protects both sides against any false claims that might be made about what happened during the course of the interview. If the witness will still not agree, proceed but with someone else present.

Although it has never been an issue, the staff is not to put themselves in a situation where they might be concerned about their personal safety. The DIVISION represents people who are charged with criminal activity and some witnesses may be hostile or in less than safe environments. For this reason, it is important that everyone be aware of their surroundings and to formulate possible

exit strategies for their own safety. The MH DIVISION does not expect any staff member to put themselves "in harm's way" for any client.

C) Issuing/Delivering Subpoenas

Subpoenas can be used in different ways. Most commonly, they are used to get a witness to come to court. The best practice is to subpoena all the witnesses you might need regardless of how willing they are to participate. If a witness, who is under subpoena, tells you s/he will show up and then doesn't, you can have the court issue a writ of attachment, which means the sheriff's department will go looking for them, but only if there is a valid subpoena in the court's file. Having the witness under subpoena is without question the safest thing to do and protects both you and the client. For a subpoena to be valid; it must request that a witness appear on a certain date and time. There are instances where this department uses subpoenas prior to trial. This will almost always involve records of some sort. We frequently use subpoenas "duces tecum" without a hearing date to attempt to get records. We are usually successful with these, but it is important to note that issuing a subpoena that requires the custodian to comply "instanter" has no validity and is subject to being quashed. Furthermore, if the party fails to comply with the subpoena, you have to wait to compel compliance. In situations like this, it might be best to have the case set for a pre trial hearing. You can then subpoena the records to the hearing. If not then, it will have to wait until the trial date.

1. Out of State Subpoenas

Criminal defendants can subpoena witnesses in other states, but the process is significantly more complicated than in-state subpoenas. It will require paperwork filed in a district court-equivalent in the state where the witness resides. It is best to start the process as soon as possible because of the length of time it can take. If you find that you need to subpoena a witness from out-of-state, notify the MH Division Chief as soon as possible.

D) Pre-Trial Motion Preparation

The Fort Bend District Attorney's office has had an "open file" policy in place for several years in regards to their criminal cases. While most discovery is filed, it is still a good idea to view the DA's file.

In all cases, the MH DIVISION maintains a set of standard "pre-trial" motions for use in practice. While these motions are generally sufficient for most cases there are some situations where additional motions may need to be filed. A comprehensive list of these motions can be obtained from the MH Division Chief.

1. Motions to Suppress and Hearing

Suppression motions can be fruitful in a couple of different ways. First, of course, is the opportunity to exclude exculpatory evidence. Second, you can get the witnesses committed to a version of the facts.

The first decision will be whether to pursue the suppression issue pre-trial or wait to raise the issue during a trial. There are costs and benefits to each decision. If you raise the issue pre-trial and lose, the court's ruling can be appealed even if the defendant accepts a plea bargain (note that the defendant can waive that right

if s/he signs all of the plea paper work typically available in the courts. Read it carefully and make sure the record reflects that the defendant can appeal the motion to suppress, assuming that's part of the deal). Of course, most prosecutors will not be happy about your client's appeal, so you may find him/her less willing to show the same kind of discretion s/he might in a pre-trial setting. If you lose the issue at trial, you can always raise it on appeal.

If you decide to raise the issue pre-trial, it is your responsibility to get the motion filed and a hearing set. Generally speaking, a motion to suppress evidence serves to shift the burden to the State to show that what happened was legal. Your preparation and presentation will be the key to any chance of success you might have. In cases where the defendant faces serious consequences, it is the best practice to go ahead and file suppression motions even though you know you're going to lose. It is best to have those things on the record and it will protect you from future ineffective assistance claims.

E) "Case Specific" Motions

Having standard motions for our cases does not preclude preparation of case specific motions and attorneys are encouraged to prepare case specific motions when necessary.

F) Legal Research

Legal research as discussed in this section deals with research of the law as it affects your case. The DIVISION works to maintain a library that is current not only with the most recent case law, but also having practitioner manuals, legal articles and motion practice files. We also have access to Lexis/Nexis, internet sites and resources, and the Fort Bend County law library.

Another invaluable resource is the other attorneys within the department as well as a number of the private practice criminal defense lawyers in town. Lastly, there are several excellent criminal defense associations such as TCDLA, NACDL and FBDLA which can provide benefits to its members.

VI. THE PRACTICE OF LAW – TRIAL

A) Trial Skills

While law school prepared you for learning about the law, it probably gave you little if any experience in the "practice" of criminal law. Trial skills are an important and necessary part of being an effective criminal defense lawyer, but the reality is that most of your cases will be settled either through dismissal or plea-bargain. However, the more effective you are at trial can greatly influence the quality of plea offers you are able to obtain for your clients. With that in mind, the goal of this department is to provide you with graduated training in the various aspects of trial work.

VII. CASELOAD ALLOCATION

The ability to provide zealous and effective representation of indigent citizens accused of crimes depends on the skill of the attorney, the quality of the support staff, adequate funding for investigators and experts, and sufficient time to adequately investigate, research and prepare the case. In order to allow sufficient time to be allocated to any individual case, the attorneys and support staff must not be responsible for representing too many clients at any one time, lest the representation of all should suffer. Counterbalancing the needs of the client is the need to be

mindful of the limited resources available to the defense of indigent citizens. The caseload standards and allocation plan for fairly distributing cases amongst the attorneys of the public defender department seeks to maximize the number of cases that can be handled by the department while still maintaining a quality defense in line with ethical and professional standards.

A) Caseload Standards

Department Caseload standards (Developed through reference to other case management standards used by public defender and legal aid offices, including the National Legal Aid and Defender Association {NLADA}. These standards may be reevaluated later based upon actual experience by the MH DIVISION.

a. Types of Cases

i. Misdemeanors – Class A & B

ii. Felonies – State Jail, 3rd Degree, 2nd Degree, 1st Degree

b. Caseload Limits

i. 200 Cases/year for the Division Chief and 300 Cases/year for the Attorney I

ii. These standards may be modified by agreement of the Commissioner's Court and the DIVISION based upon:

1. Number and type of support personnel;
2. Actual mix of cases;
3. Experience and position level of attorney; and
4. Actual experience.

c. Case Tracking

i. Computer software program to track and monitor caseloads to determine most viable numbers will be implemented.

ii. Records to be kept regarding number of each grade misdemeanor assigned to department will be implemented.

B) Caseload Distribution and Court Assignments Amongst Attorneys

The Public Defender is designed to provide indigent defense services for inidigent individuals charged with misdemeanors and felonies. The particular case assignments shall be determined by the Division Chief.

VIII. APPEALS

A) General Information

An appeal is the legal method used to review the validity of a conviction. Compared to the number of cases in the criminal justice system, the number of appeals is very small. There are a couple of reasons for this. First, when someone pleads guilty in a plea bargain situation they give up their right to appeal except in very limited circumstances. Second, of our clients who go to trial and lose, not all of them wish to pursue an appeal. The decision to appeal is left to the client.

Every appeal is heard by a court of appeals. There are fourteen courts of appeals in Texas. The one which hears cases from Fort Bend County is in Houston. Court of Appeals must hear all the cases which come to them; they have no discretion. Once they reach a decision, the case can be appealed to the Court of Criminal Appeals, the highest court in Texas which hears criminal cases. Unlike the court of Appeals, the Court of Criminal Appeals can pick and choose which

cases it will hear. When it chooses to hear a case, it grants discretionary review. For the purposes of our departments, the Court of Criminal Appeals is the highest court to which we can go.

B) How to Appeal

No appeal will be taken without permission from the MH Division Chief. A request on behalf of the client will be made to the trial judge in which the case was heard, and that Judge will then appoint a private attorney to handle the case. That attorney will then become attorney of record for the client. At this point, the MH DIVISION is not set up to handle appeals.

C) Motion for New Trial (MFNT)

The timetable just discussed applies to almost all cases, with one exception. In some cases a Motion for New Trial is filed in the trial court and this will pass back the start of the appeal. It only affects when the notice of appeal must be filed. A motion for new trial (MFNT) is a mini-appeal to the trial judge which lists mistakes the trial attorney believed happened during the trial If the judge grants it, the case is back where it started; i.e., awaiting trial.

The MFNT trial must be filed within 30 days of the date of sentencing. The trial judge must rule on it within 75 days of sentencing. If the judge doesn't make a ruling, the law considers it overruled after 75 days have passed. The defendant must then file notice of appeal within 90 days of sentencing. Once notice of appeals is given, and all the other paperwork is done, the timetable runs normally.

IX. CASE MANAGEMENT/ PERFORMANCE GUIDELINES

The provision of criminal defense services is not one that easily lends itself to pure numerical analysis. While the process of determining the dollars and cents it costs to provide defense services for "x" number of cases is ascertainable, determining the actual quality of those services is more difficult. The Constitution guarantees all citizens accused of jailable offenses the effective representation of counsel. Mindful of that guarantee, the goal should be to provide a high quality of representation at a reasonable cost and not the bare minimum at lowest possible cost. While there is no one standard to determine effective representation, the Public Defender should seek to measure, to the extent possible, those items that the department and the Commissioner's Court agree provide some measure of the success in providing criminal defense services, as required by the grant establishing these services. These measurements and reports are subject to ongoing revision based upon the capabilities of the equipment available to capture the information and the determination of the parties as to what constitutes valid measurement criteria.

For more objective measurements of the MH Division's performance, reports relaying the following information are under development. In the event that the computer software used by the department is unable to prepare this information, alternative reports shall be developed.

A) Effectiveness of Representation

1. Monthly case flow

i. Number of cases received;
ii. Number of cases closed; and
iii. Pending case load

2. Length of time from:

i. Arrest to appointment;
ii. Arrest to complaint signed by D.A.'s Office;
iii. Arrest to release from custody with judgment or dismissal;
iv. Appointment of case to release from custody with judgment or dismissal; and
v. Appointment to disposition of case

X. USE OF EXPERTS

Owing to the diversity of criminal offenses that may be prosecuted, there are many situations that will arise where the attorney may be ill-equipped to zealously defend their client because of a lack of training in certain specialties. While the particular specialties required will vary from case to case, they most often will be medical, psychological, or involve forensic testing in numerous areas. The cost in using such experts can vary widely depending upon the particular discipline, geographical location of the expert, and their background. Attorneys should never hesitate to try and arrange for expert assistance if truly required, but should be mindful of expense in determining who to use. If the state has an expert, you probably need one too.

A) When is an expert appropriate?

1. **Detailed policies regarding the use of an expert will be developed by the Division Chief.** For the present time, these summarized guidelines are to be used.
2. **Types of cases that experts are most likely to be of benefit:**
   - **a. Mental Illness / Competency**
   - **b. Drug Analysis**
   - **c. DWI / Intoxilyzer**

B) How to obtain an expert

1. **Locating potential expert witnesses**
   - **a. Referrals from other attorneys; and**
   - **b. Referrals from professional organizations**
2. **Interviewing and evaluating**
3. **Allow sufficient time to obtain subpoena**
4. **Motion to court**
   - **a. Preparation of motion;**
   - **b. What to include; and**
   - **c. Obtaining funds**
     - i. Estimating costs for evaluation;
     - ii. Travel;
     - iii. Courtroom testimony (time and travel); and
     - iv. Be prepared to make multiple requests for funds (i.e. once for investigation, again for testimony, etc.).

C) How to most effectively utilize the expert?

1. **Try to use local people when qualified and available;**
2. **Work to minimize travel time; and**
3. **Assist the expert as much as possible in obtaining records or client information, to the extent applicable.**

APPENDIX A
Our job descriptions will follow…..

Chief Public Defender

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851
Supervisor:	-	FLSA Status:	E
Supervises:	Mental Health Division Chief Attorney II Attorney I Investigator Caseworker Social Worker Administrative Coordinator Office Coordinator Secretary	Job Grade:	17
SIP/DOT:	N/A	Policy Group:	P/M

Job Summary: Performs legal defense work for clients needing publicly assisted representation in serious criminal cases accepted by the Public Defender, including felony and misdemeanor charges. Participates in planning of programs, policies or objectives for own work group and department.

Essential Duties and Responsibilities:

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

- Ensures the functions and services of the Public Defender's Office are provided in accordance with the requirements of State and Federal Constitutions, State and Federal Law, and State Bar of Texas ethical rules
- Plans, organizes, directs, and manages the day-to-day operations of the Public Defender's Office
- Participates in felony trials of all degrees as a lead attorney in both jury and non-jury matters
- Supervises planning, development, preparation and monitoring of annual budget and statistical reports
- Develops and maintains good working relationships with the judges of assigned courts while continuing to act as a vigorous advocate for the rights of clients being represented
- Directs and controls the organization, staffing, administration and evaluation of all authorized activities of the Public Defender's Office
- Supervises the work of subordinate attorneys in felony and misdemeanor cases
- Responsible for the selection, training, evaluation, promotion and termination of attorneys and other staff
- Makes presentations to social and civic groups, incarcerated persons, and other organizations to publicize, promote, and explain the public defender program
- Represents the Public Defender's Office in appropriate public and professional meetings and conferences, in interactions with state and municipal officials, County and State bar associations, and citizen groups
- Performs other duties as assigned
- Participates in activities and duties related to emergency management during a local state of disaster as directed by appropriate county managers

NOTE: The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

MINIMUM JOB REQUIREMENTS:

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

Knowledge: Doctor of Jurisprudence.

Experience: 5 to 8 years practicing criminal law, including two years of mid to senior level supervisory or management experience. Experience with cases in felony, misdemeanor, and mental health courts.

Skills and Abilities: Highly advanced research and writing skills, including trial advocacy, legal research and library skills. Verbal and written communication, supervisory, management and organizational skills; interpersonal skills and ability to deal effectively with the public, other employees and elected officials. Must have high degree of case evaluation and advocacy skills, expertise in trial of criminal cases, advanced knowledge of the rules of evidence, case law, penal code and code of criminal procedure.

Special Requirements: Licensed by Supreme Court of Texas. Current active membership in the State Bar of Texas

Essential Behavioral Expectations: Fort Bend County employees are expected to use professional courtesy, discretion and sound judgment when engaging in any contact with co-workers, customers, vendors, visitors and/or other Fort Bend County employees. Employees are also responsible for but not limited to, the following behavioral expectations: maintaining confidentiality of business knowledge and employee information, maintaining professional relations while engaging in job related tasks, cooperating with others to resolve conflict and achieve goals, maintaining a pleasant attitude while leaving personal business or issues/problems outside of the work place.

Equipment Used:

Telephone
Mainframe Computer
Calculator
Automobile
Typewriter
Personal Computer
Fax Machine
Photocopier
Audio and Video Recording Equipment

Job Title:	Chief Public Defender	Job Code:	J17009
Department:	Public Defender	Department Number:	4851

Contacts:	Daily contact with criminal defendants, victims, police, co-workers, department employees, the public, and elected officials in person or on the telephone to negotiate, persuade, exchange routine information, instructs and makes presentations as applicable; frequent contact with employees in other departments in person or on the telephone to request information.
Supervision Required:	Works under broadly defined guidelines; uses independent judgment to determine standards to apply or adjust.
Physical Demands:	Daily use of hands and/or fingers to grasp, handle, pick-up pinch, type or feel; Daily standing, walking, sitting, talking and listening; Frequent reaching with hands or arms; Occasional lifting of objects up to 40 pounds, climbing or balancing, stooping, crouching or kneeling; Close vision, ability to distinguish color, peripheral vision, and ability to adjust focus.
Work Environment:	Work is performed primarily in a climate-controlled private office. Provides 24-hour on-call assistance to county officials and law enforcement officials. Noise level is quiet.

Physical demands and work environment characteristics described are representative of those that must be met or are encountered by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.