WEBB COUNTY
JUVENILE INDIGENT DEFENSE PLAN
Revisions effective 11/10/2010

1. PROMPT DETENTION HEARING

A. A child taken into custody must be taken to the Webb County Juvenile Detention Center without unnecessary delay pursuant to section 52.025, Family Code. The intake juvenile detention officer shall process the child according to the requirements of section 53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a weekend or listed holidays approved by commissioners court, in which case the detention hearing shall be held on the first working day after the child is taken into custody.

B. If the child is not represented by counsel at the detention hearing, the court shall inform the parties of the child's right to counsel and to appointed counsel if they are indigent, and of the child's right to remain silent as to the alleged conduct.

C. The court shall provide the attorney for the child access to all written matter to be considered by the court in making the detention decision.

2. APPOINTMENT FOR COUNSEL FOR JUVENILES IN DETENTION

A. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s). However, in these cases the court must immediately appoint counsel or a guardian ad-litem to represent the child.

B. The Webb County Public Defender's Office shall be appointed to represent juvenile respondents in all juvenile detention hearings except when the juvenile respondent has retained an attorney, or when a case involves multiple juvenile respondents. When a case involves multiple juvenile respondents, the Webb County Public Defender's Office shall be appointed to represent only one of the juvenile and private counsel shall be appointed to represent the remaining juvenile respondents. At the point of in-take, the juvenile probation office shall assist parents in completing a form establishing the financial means of the parent(s) in order to declare themselves indigent or the parent(s) will notify the Court of their capacity and intention to retain an attorney. Guidelines to determine indigency are set out on Section 12.

C. If the juvenile has met the indigency requirements, the public defender's office shall be appointed for all subsequent detention proceedings except in those cases where there are multiple juvenile respondents and the courts have appointed private counsel to represent them during the initial detention hearing. All appointments to cases seeking the juvenile adjudication are subject to the procedures outlined in Section 8.PROCEDURES FOR APPOINTING COUNSEL.

D. If indigency is not established, the parents/custodian shall be informed by the probation officer that they must retain an attorney for the upcoming detention hearing, or, the probation officer shall also inform the juvenile's parents/custodian of their right to request for a court appointed attorney before a juvenile referee/judge at the initial detention hearing. Based on evidence presented by the parents/custodian, the judge may appoint the public defender's office or instruct the parents to retain a lawyer for the next detention hearing. Guidelines to determine indigency are set out on Section 12.

E. If the child was not represented by an attorney at the detention hearing and determination was made to detain the child, the child shall immediately be entitled to representation by an attorney.

3. APPOINTMENT OF COUNSEL FOR JUVENILES NOT IN DETENTION

A. The probation officer shall provide information concerning the appointment of attorneys for juveniles and forms to request court appointment of an attorney to the juvenile and the juvenile's parents during the intake conference. When the Juvenile Department issues its preliminary report to the County Attorney's office, the probation officer shall include the request for appointment of counsel and any other declarations of indigency or intent to retain private counsel.

B. Any initial judicial pronouncement declaring a family to be indigent shall be considered presumptive and no further indigency hearings are necessary unless material facts are presented to the Juvenile Court Judge at a later hearing.

C. When the County Attorney's office files a petition for adjudication, discretionary transfer, or motions to modify disposition, the County Clerk's office is instructed to verify each filing to include an order appointing counsel and said order be forwarded to the Webb County Indigent Defense Services Department, hereafter referred to as WCIDS for appointment of attorney in accordance with section 5.06 A and to be sent to the corresponding judge for signature. After the appointment is made, the County Clerk shall prepare return of service for all parties including the lawyer before the setting of any juvenile case.

D. If not detained, counsel must be appointed on or before the 5th working day after the date of the petition for adjudication, motion to modify, or discretionary transfer hearing was served.

4. QUALIFICATIONS FOR APPOINTMENTS IN THE JUVENILE COURT

A. An attorney must be a member in good standing of the State Bar of Texas.

B. An attorney must reside in Webb County or maintain his/her principal office in Webb County. A post office address alone will not satisfy this requirement.

C. An attorney must have a secretary, receptionist, answering service or a regularly monitored answering machine.

D. An attorney must have a fax machine and email address.

E. An attorney must have the ability to produce typed motions or orders.

F. An attorney must have on file with the Webb County Indigent Defense Services (WIDS) a completed application for the juvenile public appointment list approved by the Webb County Juvenile Board.

G. An attorney shall promptly notify the WCIDS Office of any changes to the information contained in the application for the juvenile public appointment list.

H. An attorney shall promptly notify the WCIDS Office of any matter that would disqualify the attorney from receiving appointments under these guidelines or any other law, regulation or rule.

I. An attorney shall be knowledgeable in juvenile law and be aware of collateral consequences of a juvenile adjudication and disposition, including, but not limited to, issues involving T.Y.C. commitment criteria, use of juvenile adjudications in adult proceedings, license suspension, sex offender registration, school removals and expulsions, sealing of records, etc.

5. MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENTS:

A. An attorney who meets the requirements of this rule may be appointed to represent an indigent juvenile detained for or accused of engaging in delinquent conduct or conduct indicating a need for supervision, if the attorney is otherwise eligible under the plan developed under Section 51.101, Family Code. An attorney may be appointed under the Appointment of Counsel Plan. An attorney may be appointed under this rule only if the Attorney:

(1) Completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period. The first reporting period will begin on April 1, 2003, (initial period must include April 27, 2003, the effective date of the Task Force on Indigent Defense's rules relating to minimum continuing legal education requirements) and then on the first day of each reporting period thereafter. Continuing legal education may include activities accredited under Section 4, Article XII, State Bar of Rules, self-study, teaching at an accredited continuing legal education activity, attendance at a law school class or legal research-based writing.

(2) Is currently certified in juvenile law by the Texas Board of Legal Specialization.

B. REPORTING PERIOD

(i) Continuing legal education activity completed within a one-year period immediately preceding an attorney's initial reporting period maybe used to meet the educational requirements for the initial year.

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

(iii) To be included on the appointment list, each attorney must annually submit an affidavit to the county director of Indigent Defense Services detailing the juvenile continuing legal education activities completed in the prior year. Alternatively, an attorney may annually submit documentation showing the attorney is currently certified as a specialist in juvenile law.

C. EMERGENCY APPOINTMENT

If no attorney who meets these continuing legal education or board certification requirements is available by the time an attorney must be appointed in a case, another attorney may be appointed. The person making an appointment shall give priority to an attorney with experience in juvenile law.

6. COUNSEL QUALIFICATION LEVEL

A. CINS AND DELINQUENT CONDUCT PETITIONS WHERE TYC IS NOT AUTHORIZED OPTION

An attorney must be licensed to practice law in the State of Texas.

B. DELINQUENT CONDUCT PETITIONS WHERE TYC IS AN AUTHORIZED OPTION

1. An attorney must have been licensed to practice for one year.
2. An attorney must have been substantial and active participation in:

i. Two juvenile or criminal contested trials, and/or
ii. Five contested or uncontested adjudications or modifications, or five criminal pleas, or a combination of these.

C. DETERMINATE SENTENCING OR CERTIFICATION PROCEEDINGS

1. An attorney must have been licensed to practice for three years and
2. An attorney must:

i. Be board certified in juvenile or criminal law by the Texas Board of Legal Specialization, or

ii. Have substantial and active participation in two felony (juvenile or criminal) jury trials; or
iii Have prior experience in capital murder case(s).

3. The court, at its discretion, may deviate from the appointment list or rotation and appoint an attorney that the court determines is appropriate for a specific case. Notwithstanding the above, the appointed attorney will be second chaired by the Webb County Public Defender's Office and will be provided assistance by same.

4. After Certification, the juvenile court that has waived its jurisdiction will remand the defendant to the custody of the Webb County Sheriffs Department for booking and magistration purposes in accordance with the Code of Criminal Procedures.

5. The juvenile court will transfer the case in accordance with the rotation system approved by the district judges.

6. Post Certification appointment of attorney(s) will be determined by the existing policies for the appointment of counsel proceedings in accordance with the Code of Criminal Procedures Art. 26.04.

D. APPEALS

1. An attorney must have substantially participated in at least two juvenile, civil or criminal appeals.

7. PROCEDURES FOR INCLUSION OF ATTORNEYS ON THE APPOINTMENT LIST

A. All attorneys are qualified to take CINS and Delinquent Conduct Petitions. An attorney must complete the application form and submit verification of their continuing legal education hours. The form must include a statement declaring that the attorney has demonstrated that he/she meets all qualifications for representation of juveniles at each requested level of appointment.

B. Attorney's must supply the WCIDS Director with all of the information necessary of the attorney's qualifications to determine if the attorney meets the qualifications.

C. The director of WCIDS shall maintain lists of qualified attorneys in alphabetical order, to be used by the appointing court or designee for 25% of the appointments at the juvenile level, and where a conflict or multiple defenders require appointment of additional counsel. Upon a finding of indigency, the intake clerk shall inform the appointing court of the next five names on the wheel. The attorney, who is selected, except for the public defender, shall be removed from the wheel lists until all other attorneys on the lists have been appointed a defendant. An attorney remains on the lists as next attorney until assigned a defendant.

D. The Director of WCIDS will evaluate applications to determine if each applicant is qualified for respective juvenile lists. The juvenile board will review and may approve by majority vote qualified applicants for each juvenile list.

E. Each time an attorney is added, a new list will be supplied to the appointing judges.

8. PROCEDURES FOR APPOINTING COUNSEL

A. The director of Indigent Defense Services shall maintain lists of qualified attorneys by alphabetical order, to be used by the appointing court or designee and will implement the automated system for court appointed attorneys once the software is in place for 25% of the appointments for juvenile cases and where conflicts or multiple respondents require appointment of additional counsel. The list shall include the name of the Webb County Public Defender such that the public defender shall receive no more than 75% of all juvenile petitions appointments. Upon a person being declared indigent, the IDS office shall inform the appointing court to the next 5 names on the wheel. The attorney who is selected, except for the public defender shall be removed from the wheel list until all other attorneys on the list have been appointed a respondent. An attorney remains on the list as next attorney until assigned a case.

B. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

C. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory.

D. The juvenile referee/judge may replace an attorney who fails to contact the juvenile on the first working day after the date of appointment or fails to interview the juvenile as soon as practicable.

E. Should appointed counsel withdraw due to conflict of interest or any other reason except that the respondent has obtained counsel, the appointing judge or designee shall inform the Trial Court of the next five names for the Court to replace same.

9. DISTRIBUTION OF CASES

A. An attorney may receive an appointment for the highest level of offense for which he or she is qualified and for each lower level of offense.

B. New attorneys or attorneys being reinstated will be added to the end of the list as it exists at the time they are added.

C. Appointments will be made by following a rotation of the names of attorneys and meeting the requirements of Article 26.04(a) CCP

10. REMOVAL GROUNDS

A. GROUNDS FOR REMOVAL FROM THE JUVENILE PUBLIC APPOINTMENT LIST

1. An attorney shall be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:

   (a) conviction or deferred adjudication for any felony, or

   (b) conviction or deferred adjudication for any crime of moral turpitude, or

   (c) being under indictment or being formally charged with a felony or crime of moral turpitude, or

   (d) intentional misrepresentation by the attorney on the application for public appointment

2. An attorney may be removed from the juvenile public appointment list and from any case to which the attorney has been appointed for the following:

   (a) failing to perform the attorney's duties owed to the juvenile, or

   (b) a finding by a court that the attorney provided ineffective assistance of counsel, or

   (c) failing to maintain compliance with each of the juvenile public appointment list guidelines, or

   (d) if after a hearing it is shown that the attorney submitted a claim for services not performed by the attorney, or

   (e) for good cause at the discretion of the juvenile board.

3. Removals from the list shall be for a minimum of one year. Removals from the list may be probated. For removals or probated removals, the Juvenile Board may require the completion of rehabilitative measures as a condition of the probation or re-application. For good cause, the Juvenile Board may remove an attorney from the list for a period longer than one year or permanently.

B. An attorney who was removed from the juvenile appointment list for the reasons stated in Item A, (a), (b), (c), or (d) above may be immediately reinstated upon providing proof that the charges were dismissed or that the attorney was acquitted.

C. An attorney who was removed from the juvenile misdemeanor public appointment list for any reason may apply for reinstatement to the list upon the expiration of one year from the date the attorney was removed from the list unless the Juvenile Board removed the attorney for a longer period of time.

11. PROCEDURES FOR REMOVAL OF ATTORNEYS FROM THE APPOINTMENT LIST

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

B. An attorney may be temporarily removed from the appointment list by request of the attorney to the juvenile judge provided that the attorney specifically sets out the dates the attorney will not be available to receive appointments.

12. DETERMINATION OF INDIGENCY

A. The income of the juvenile and the child's parent or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies for a court appointed attorney.

B. A juvenile or a juvenile's parent or other person responsible for the support of the juvenile shall complete a sworn questionnaire and provide supporting documentation if ordered to do so. If a finding of indigency is made, the court shall appoint counsel.

C. An indigent is any person with a household income at or below 125% of the latest poverty guidelines as established and revised annually by the United States Department of Health and Human Services, and whose liquid assets do not exceed $15,000.

D. A juvenile whose household income exceeds 125% of the latest poverty guidelines may still qualify for a court-appointed attorney if the court or its designee determines special circumstances exist, and may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. The court may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases and any efforts the juvenile or the juvenile's family has made to retain an attorney.

E. Terms used to determine eligibility for an indigent's defense shall have the following meanings:

1. Household income: The juvenile's or the juvenile's parents or other person responsible for support of the child household income shall be defined as the juvenile's income, the juvenile's parents' income and the income of any other person responsible for the support of the child and the income of all other persons related by birth, marriage or adoption who reside with the juvenile. Income shall include the total cash receipts, before taxes, from all resources, including money wages and the net receipts from non-farm or farm self-employment. Further, income shall include regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, annuities, and income from dividends, interest, rents, royalties or periodic receipts from estates or trusts, regular payments from social security, strike benefits from union funds, veteran's benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household, or foster care payments, benefits from a government income maintenance program (AFDC, SSI, unemployment compensation, or state or county general assistance or home relief), food or rent received in lieu of wages, money which is received from tax refunds, gifts, one-time insurance payments or compensation for injury, non-cash benefits (Food Stamps, etc.).

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

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

G. Webb County will apply the most recent United States Poverty Guideline Chart to determine indigence.

H. A juvenile who is determined by the court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or state may move for reconsideration of an indigency determination.

13. FORM REQUIRED FOR INDIGENCY

A. A juvenile, parent or person responsible for the support of the child who requests a determination of indigency and appointment of counsel shall:

1. complete under oath a questionnaire concerning financial resources, or
2. respond under oath regarding financial resources, or
3. complete questionnaire and respond to examination.

14. FEE SCHEDULE FOR JUVENILE MISDEMEANOR/FELONY CASES AND DETENTION HEARINGS

Detention Hearing	$100.00
Arraignments	$ 75.00/appearance
Evidentiary Hearings	$ 75.00 per hr. ($150.00 cap)
Out of Court time*	$ 50.00 per hr. (10 hrs max)
Pleas	$ 100.00 (Flat fee)
Trial*	$ 75.00 per hr. ($400.00 daily cap)

15. FEE SCHEDULE FOR JUVENILE MTMD AND CERTIFICATION HEARINGS

Detention Hearing	$ 100.00
Arraignments	$ 75.00/appearance
Evidentiary Hearings	$ 85.00 per hr
Out of Court Time*	$ 60.00 per hr (10 hrs max)
Plea	$ 500.00 (Flat fee)
Trial (certification hearing)	$ 85.00 per hr ($600.00 daily cap)

16. ATTORNEYS FEES

1. Counsel can download the voucher and the payment request form at www.webbcountytx.gov for uncontested dispositions.

2. Counsel shall submit the voucher and a payment request form itemizing services for evidentiary court appearances including jury trials. The form shall itemize the services provided and the dates of the services. The form shall set out separately the total time spent out of court and the total time spent in court representing the juvenile. Counsel shall provide copies of docket sheets with the requisition.

3. If the judge disapproves the requested amount, the judge shall make written findings stating reason for approving an amount different from the requested amount.

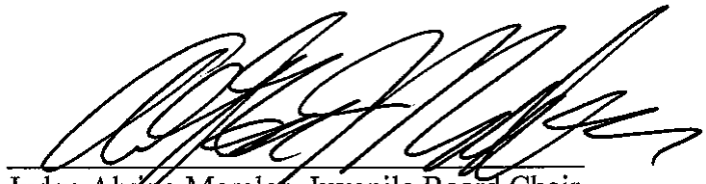
4. An attorney may appeal disapproval of attorney fees to the presiding judge of the administrative judicial region.

5. The commissioner's court shall pay the appointed counsel the amount approved by the presiding judge of the administrative judicial region that is in accordance with the fee schedule not later than 45 days after the date of an application for payment.

6. Any attorney who fails to submit a request for payment after 60 days from the date that the case has been resolved shall not be able to file any late requests for payments, unless approved by the juvenile court judge after good cause has been shown.

7. Appointed counsel may incur investigative or expert expense(s) up to $100.00 without prior approval of the Court. On presentation of a claim for reimbursement the Court shall order reimbursement of counsel for the expense(s), if the expense(s) are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expense(s) will not be approved.

This Juvenile Indigent Defense Plan was voted by unanimous vote by the Juvenile Board of Judges of Webb County, Texas on 11/10/2010.



Judge Alyino Morales, Juvenile Board Chair
County Court at Law I