

## **Harris County Juvenile Board Plan**

### **FAIR DEFENSE ACT**

#### **STANDARDS AND PROCEDURES FOR APPOINTMENT OF COUNSEL FOR JUVENILE RESPONDENTS**

The Harris County Juvenile Board adopts the following plan for appointment of counsel for indigent juvenile respondents. This plan supersedes any prior plan. The Juvenile Courts adopt an appointment of counsel plan that follows The Texas Family Code Sec. 51.102. It is effective on October 23, 2013.

The plan establishes:

- 1) Standards for determining indigency.
  - 2) Qualifications for attorneys to be on the appointment list.
  - 3) Procedures for inclusion and removal of attorneys from the list.
  - 4) Methods for assignment of attorneys.
  - 5) Fee schedule and attorney compensation.
1. **TERMINOLOGY:** As used in these procedures, the following terms and phrases will have the following meanings.
- 1.1 “Board” shall mean the Harris County Juvenile Board.
  - 1.2 “Judges” shall mean the Juvenile Judges trying cases in Harris County.
  - 1.3 “Referee” shall mean a duly appointed referee authorized to make attorney appointments to indigent individuals charged with juvenile offenses.
  - 1.4 The pronouns “he,” “him,” and “his” shall refer to individuals of both genders.
  - 1.5 “Respondent,” “Child,” and “Juvenile” shall refer to an individual charged with a juvenile offense.
  - 1.6 “Juvenile offense” shall mean conduct committed by a person ten (10) years of age or older and under seventeen (17) years of age that constitutes: (a) a misdemeanor punishable by

confinement or (b) a felony; or seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or indicating a need for supervision as a result of acts committed before becoming seventeen (17) years of age; or as defined in Section 54.02 (j) (1) – (5) of the Texas Family Code.

1.7 “TJJD” shall mean the Texas Juvenile Justice Department.

1.8 “CLE” shall mean Continuing Legal Education.

1.9 “Public Defender” shall mean the Public Defender’s Office in Harris County.

2.0 “HCPD slot” shall mean a Public Defender place-holder instead of an attorney name on a graduated list, which will be used to facilitate individual appointments of attorneys that are employed and designated by the Public Defender.

### **Indigence Determination Standards**

## **2. STANDARDS AND PROCEDURES FOR DETERMINING INDIGENCY**

2.1 A respondent is considered indigent for purposes of the Act if he is financially unable to hire counsel. There shall be a presumption of indigency if the income of the respondent and parent, guardian, or managing conservator is below 125% of the Federal Poverty Guidelines.

2.2 The judge or referee shall find respondent indigent and appoint counsel to represent him if the judge finds the respondent’s financial liabilities are more than his assets, or the respondent is financially unable to pay for an attorney qualified to represent the respondent for the offense which is charged.

2.3 A respondent who has been found indigent is presumed indigent for the duration of the proceedings unless there is a material change in the respondent’s financial circumstances.

2.4 For determining indigency, "Respondent" shall refer to the income and assets of the respondent and his parent, guardian, or managing conservator.

### **Prompt Detention Hearings**

## **3. WHEN THE RIGHT TO APPOINTED COUNSEL ATTACHES, WHETHER INDIGENT OR NOT**

3.1. Unless the juvenile court finds that the appointment of counsel is not feasible due to exigent circumstances, the juvenile court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing. If the juvenile is in custody and is not represented by retained counsel, at the first detention hearing: The judge or referee’s determination of indigency shall be based on information collected by the Juvenile Probation Department and/or based on evidence introduced at a hearing before the judge or referee. In

accordance with Section 54.01(a) of the Texas Family Code, if the juvenile is in custody, a detention hearing without a jury shall be held promptly, but not later than the second working day after the juvenile is taken into custody provided, however, that when a juvenile is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the juvenile is taken into custody. Prior to the detention hearing, the court shall inform the parents/guardians of the juvenile's right to counsel and to appointed counsel if indigent.

3.2. The judge or referee shall appoint an attorney to represent the respondent if he makes a finding of indigency; or the juvenile or his parents, guardian, or managing conservator request that an attorney be appointed to represent the juvenile; or the juvenile or his family has not hired an attorney to represent the juvenile. If the juvenile was not represented by an attorney at a detention hearing and a determination was made to detain the juvenile, the juvenile shall immediately be entitled to representation by an attorney.

3.3. The judge or referee shall appoint an attorney who meets the qualifications established under these standards to represent the juvenile based on the charges to be filed.

3.4. **Appointment of counsel when the juvenile *is not in custody*.** The juvenile court shall determine whether the respondent and his family are indigent on or before the filing of a petition for adjudication; or a petition for discretionary transfer; or a motion to modify disposition that seeks to have the respondent committed to the TJJD or confined in a secure facility.

3.5. If an indigent juvenile respondent is served with a petition or such a motion to modify is filed, the court shall appoint an attorney to represent the juvenile after the motion to modify is filed or the petition is served on the respondent.

3.6. The juvenile courts may assign indigency determinations and hearings required under this section to the detention center referee.

3.7. A juvenile court or referee may appoint counsel for a non-indigent juvenile if either the parent(s), guardian, or managing conservator refuse to retain counsel for the juvenile or request the juvenile court or referee to appoint counsel for the juvenile. In both cases, the court or referee shall require either reimbursement to the county for any attorneys' fees expended, or order payment directly to the attorney providing representation.

## **Minimum Attorney Qualifications**

## **4. APPOINTMENT OF COUNSEL TO REPRESENT INDIGENT JUVENILE RESPONDENTS – General Provisions:**

4.1. An attorney assigned to represent a juvenile respondent shall represent a respondent until the respondent is acquitted, appeals are exhausted, or the court relieves the attorney and/or replaces the attorney with other counsel. The juvenile board's plan for appointment of counsel recognizes the differences in qualifications and experience necessary for appointments to cases in which the allegation is conduct indicating a need for supervision; or delinquent conduct where commitment to TJJD is not an authorized disposition; or delinquent conduct where commitment to TJJD without a determinate sentence is an authorized disposition; or those cases in which determinate sentence proceedings have been initiated, or where proceedings for discretionary transfer to criminal court have been initiated.

## **5. LISTS OF QUALIFIED ATTORNEYS**

5.1. **MASTER LIST:** To be considered for placement on the Master List, each attorney must submit a completed application form and meet all of the following baseline criteria. An attorney must:

5.1.1 Be licensed and in good standing with the State Bar of Texas.

5.1.2 Have practiced law for at least one (1) year.

5.1.3 Have passed the juvenile certification test if one is offered; or attended an orientation course offered by the juvenile courts if one is offered.

5.1.4 Have observed adjudication, disposition, certification, and detention hearings in the courts in the juvenile trial division and the detention center.

5.1.5 Have exhibited a commitment to providing quality representation to juvenile respondents.

5.1.6 Have demonstrated professionalism and reliability when interacting with juvenile court judges and staff.

5.1.7 Have averaged twelve (12) hours a year of continuing legal education courses or other training relating to juvenile law.

5.1.8 Have been approved by a secret ballot by a majority of the Harris County Juvenile Court judges.

5.2 All qualifications must be documented.

## **6. GRADUATED LISTS:**

6.1. **Class C List:** Attorneys may represent juvenile respondents in cases involving 1) conduct indicating a need for supervision and 2) delinquent conduct when commitment to TJJD is not an

authorized disposition. To be eligible for **Class C** appointments, an attorney must meet the baseline criteria for inclusion on the **Master List**.

6.2. **Class B List**: Attorneys may represent juvenile respondents in cases of delinquent conduct in which commitment to TJJD without a determinate sentence is an authorized disposition. To be eligible for **Class B** appointments, in addition to meeting the baseline criteria for inclusion on the **Master List**, an attorney must have at least three (3) years experience in juvenile litigation; and handled fifty (50) misdemeanor juvenile stipulations or tried to conclusion four (4) juvenile trials.

6.3. **Class A List**: Attorneys may represent juvenile respondents in cases in which determinate sentence proceedings or proceedings for discretionary transfer to criminal court have been initiated. To be eligible for **Class A** appointments, in addition to meeting the baseline criteria for inclusion on the **Master List**, an attorney must have at least four (4) years experience in juvenile litigation; and handled one hundred (100) juvenile stipulations, including six (6) juvenile trials.

6.4. **Appellate List**: Attorneys may be appointed to represent juvenile respondents on appellate matters. In addition to the baseline criteria, appellate lawyers must be on the **Class A List**, and meet one of the following criteria:

Be board certified in juvenile law by the Texas Board of Legal Specialization or

Have personally authored and filed at least three (3) appellate briefs.

## **Attorney Selection Process**

### **7. COMPILATION OF MASTER LIST**

7.1. **Attorney Application and Approval**: Attorneys must complete and submit an application for inclusion on the Master List. Attorneys meeting the baseline criteria and who have been approved by a majority of the district court judges trying juvenile cases in Harris County will be placed on the Master List, until a subsequent Master List is prepared by the Juvenile Judges.

7.2. **Voting Will Be by Secret Ballot**. Judges will vote “approved,” “not approved,” or “abstain” as to each applicant.

7.3. **Majority Vote for Inclusion**: A majority vote of “approved” is necessary for an attorney to be included on the **Master List**.

7.4. **Placement on Graduated Lists**: Applicants approved by a majority of the judges for the **Master List** will be placed on the graduated lists according to adopted criteria with the approval of the vote of a majority of the judges. The judges will make appointments for indigent respondents only from the graduated lists of approved attorneys.

7.5. **New Applications:** The judges will consider new applications periodically.

7.6. **Annual Update:** Attorneys shall report any material changes in their information before January 1<sup>st</sup> of each year. The Master List and graduated lists will be updated at least annually.

7.7. **Reporting of Continuing Legal Education activity:** An attorney's annual reporting period shall run from January 1<sup>st</sup> to December 31<sup>st</sup>. On or before December 31<sup>st</sup> of each year, attorneys must tender a copy of the State Bar of Texas Minimum Continuing Legal Education Annual Verification Report to the Administrative Offices of the District Courts accompanied by an affidavit verifying that the report is true and correct. If there are errors in the Verification Report, the attorney may amend the report by submitting any necessary supporting documentation, or affidavits.

7.7a **Percentage of practice time.** An attorney shall submit by October 15th each year a statement that describes the percentage of the attorney's practice time that was dedicated to work based on appointments accepted in this county for adult criminal cases and juvenile delinquency cases for the prior 12 months that begins on October 1 and ends on September 30. The report must be submitted through the applicable online form to the Texas Indigent Defense Commission.

7.8. **Public Defender:** The Public Defender shall be placed on the Master List and all graduated lists.

## **8. REMOVAL OF ATTORNEYS FROM THE MASTER LIST:**

A majority of the judges may remove an attorney from the Master List if the attorney does not fulfill his duties in representing indigent juvenile respondents; or if it is shown that the attorney submitted a claim for legal services not performed by the attorney; or if the attorney does not provide proof of completion of the minimum continuing legal education (CLE) required by the State Bar; or the attorney does not exhibit professionalism in his interactions with the juvenile court judges or staff.

## **9. SUBSEQUENT MASTER LIST:**

A subsequent Master List may be prepared at any time by approval of a majority of the District Court Judges trying Juvenile cases in Harris County. An attorney's placement on the Master List does not create a permanent entitlement to inclusion on any future list. Each Master List will be a new compilation of attorneys, which is separate and apart from any prior list.

9.1. **Attorney or Judge Request for Classification Review:** Attorneys asking the Juvenile Judges to reconsider their classification on the graduated lists shall submit a new application. The decision to perform a review of classification status must be made by a majority vote of Juvenile Judges. Upon review of the completed application, the Juvenile Judges may 1) upgrade applicant's classification; 2) downgrade applicant's classification; 3) leave applicant's

classification unchanged, or 4) remove applicant from the Master List. A majority of the Juvenile Judges may, on their own initiative, perform this reclassification at any time with notice to the attorney.

9.2. **Appeals**: An applicant may appeal his omission or removal from the **Master List**. At any time within **seven (7)** calendar days after an applicant receives notice of his omission or removal from the Master List, the applicant may give written notice of appeal to the Central Appointment Coordinator. Upon receipt of a notice of appeal, the Central Appointment Coordinator shall verify the accuracy of the votes for the applicant and the accuracy of an attorney's omission or removal from the **Master List**. If a review of the votes and **Master List** indicates an error, the Central Appointment Coordinator shall make the necessary corrections or modifications. Within **fourteen (14)** calendar days receipt of applicant's notice of appeal, the Central Appointment Coordinator shall notify the applicant of his status as to the **Master List**. An applicant omitted or removed from the Master List is presumptively ineligible for appointments during the appeal process.

## **10. METHOD FOR ASSIGNMENT OF ATTORNEYS AND PROCEDURES:**

10.1. **INDIVIDUAL CASE APPOINTMENT METHOD**: A public attorney, employed and designated by the Public Defender, or a private attorney, acting as an independent contractor and compensated with public funds, is appointed to provide legal representation and services to an indigent juvenile respondent.

10.2. **TERM APPOINTMENT METHOD**: A public attorney, employed and designated by the Public Defender, or a private attorney, acting as an independent contractor and compensated with public funds, is assigned to provide legal representation and services to indigent juvenile respondents who appear before a court for a specified period of time.

10.3. **COMBINATION METHOD**: The court may use any combination of the approved methods to appoint attorneys.

## **11. PROCEDURES FOR ATTORNEY ASSIGNMENT**

11.1. Consistent with these adopted procedures, each judge may choose any attorney from the graduated lists of qualified attorneys for assignment. The procedures shall take into account the availability of the attorney and the individual qualifications of the attorney with respect to the nature of the case.

11.2. The Judges shall select a Central Appointment Coordinator to assist in the implementation of the Harris County Juvenile Courts' alternative appointment procedures.

11.3. Each judge will indicate to the Central Appointment Coordinator how many Public Defender slots should be placed on each graduated list, which may or may not correspond to the

number of available and qualified attorneys employed by the Public Defender for appointment to Juvenile cases.

## **12. ATTORNEY REQUESTS FOR APPOINTMENTS:**

12.1. Attorneys whose names appear on the Master List of Qualified Attorneys shall submit requests to be considered for appointments to the Central Appointment Coordinator by way of computer in the District Court Administrative Office or through the Internet. An attorney may access the sign-up program by entering his bar card number. Before the system will accept the request, the attorney must enter a current telephone and/or pager number and, when applicable, an updated address and contact information. All requests must include the following information:

Name and bar card number; Telephone, pager, and fax numbers and e-mail address (if available), specific dates available, and types of assignment sought.

## **13. Court Assignment of Attorneys.**

13.1. **Individual Case Assignments:** When submitting a request for an attorney, the court's request shall designate: (1) the ranking of the attorney needed; (2) the date of the assignment; (3) any special requests (bilingual, etc.).

The computer shall provide to the court **five (5)** randomly selected names (or HCPD slots) per request. A court requesting an attorney for individual case assignment may submit only one request at a time. A court may not submit another request until at least one attorney has been assigned from the original five names/slots and the remaining names have been returned to the attorney pool. If the court chooses a HCPD slot, the attorney designated by the Public Defender shall not be appointed by the court unless the court is satisfied the attorney is qualified for the appointment.

13.2. **Term Assignments:** Courts may submit requests for attorneys available for term assignments. Courts may make assignments from among the available attorneys who meet the court's criteria for term appointments. These limited assignments are based on the needs of the court and the qualifications of attorneys already on the Master List. The period of appointment may be one day or multi-day, not to exceed one year. All types and categories of cases are subject to term appointment, including but not limited to: violations of probation, deferred prosecution, detention, T.Y.C transfer hearings, certifications, determinate sentences and appeals.

## **Fee and Expense Payment Process**

14. **FEE SCHEDULES:** The Juvenile Board adopts the following fee schedules:



14.1. **For Conduct Indicating a Need for Supervision and Misdemeanor Delinquent**

**Conduct:** The fee schedule adopted by the County Criminal Courts at Law in Harris County, Texas; and

14.2. **or Felonies:** The fee schedule adopted by the District Courts Trying Criminal Cases in Harris County, Texas.

**15. APPOINTED PRIVATE ATTORNEY COMPENSATION**

15.1. Appointed private counsel shall be compensated for all work on behalf of a respondent, including habeas corpus proceedings, appellate work, and motions for rehearing.

15.2. Compensation shall be based on the time and labor required, the complexity of the case, and the experience of counsel.

15.3. Appointed private counsel shall be paid a reasonable attorney's fee for performing the following services:

Time spent in court making an appearance on behalf of the respondent as evidenced by docket entry;

Time spent in trial;

Time spent in a proceeding in which sworn oral testimony is elicited;

Reasonable and necessary time spent out of court on the case, supported by any documentation the court requires;

Preparation of an appellate brief, preparation and presentation of oral argument before a Court of Appeals, the Court of Criminal Appeals, or the Texas Supreme Court; and preparation of motions for rehearing.

15.4. An attorney shall not be paid until the attorney submits to the judge presiding over the proceedings a completed, itemized form detailing services rendered. The judge must approve payment.

15.5. The attorney whose request for payment has been disapproved may, by written motion, file an appeal with the presiding judge of the administrative region. The presiding judge may conduct a hearing on the matter.

15.6. Non –capital counsel shall be reimbursed for reasonable and necessary expenses, including expenses for investigations, mental health, and other experts. Expenses incurred with and without prior court approval shall be reimbursed according to the procedures set forth below. When possible, counsel should obtain prior court approval before incurring expenses for investigation and experts.

15.7. Expenses incurred **with prior court approval** shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases:

15.8. Appointed private counsel may file with the trial court a pretrial ex parte confidential request for advance payment of expenses to investigate potential defenses. The request for expenses must state, as applicable:

The type of investigation to be conducted or the type of experts to be retained.

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

An itemized list of anticipated expenses for each investigation or expert.

15.9. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

State the reasons for the denial in writing;

Attach the denial to the confidential request; and

Submit the request and denial as a sealed exhibit to the record.

15.10. Expenses incurred **without prior court approval** shall be reimbursed in the same manner provided for in the Code of Criminal Procedures for capital cases:

Appointed private counsel may incur reasonable or necessary investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for reasonable or necessary expenses.