

# **Lubbock District and County Courts Indigent Defense Plan**

## **Preamble**

The Board of Judges made up of the District and County Courts at Law of Lubbock County will perform their judicial duties and supervisory powers through these Local Rules and procedures so that the ends of Article 14.06, 15.16 and 15.17 of the Texas Code of Criminal Procedure (C.C.P), the Laws and Constitutions of the State of Texas, the United States Constitution, as interpreted by the Texas Courts and Federal Courts and established by the Legislature of the State of Texas and “The Fair Defense Act” will be inviolate.

The Lubbock County Detention Center is designated as the receiving agency for all arrestees for all State law enforcement agencies having custody of a person pursuant to Article 14.06, 15.16 and 15.17 of the Texas Code of Criminal Procedure for presentation of a defendant before a magistrate unless directly ordered otherwise by the judge of said court (and with the exception of Class C fine-only offenses, arrests by warrant and without warrant arrest of municipal entities, which in the case of simultaneous arrest for Class C and Class B and above offenses and cases for which the Municipal Court has no jurisdiction, the Class C shall be magistrate and processed without undue delay of presentation to the magistrate system at the Lubbock County Detention Center for the greater offenses), or unless the laws, statutes, and regulations are in specific conflict with the general directives (i.e. blood test and medical necessities).

Article 15.17, C.C.P. – Initial Appearance Hearings shall be conducted at least three times daily (twice on weekends and on County holidays) for all arrests without warrant and arrests on warrant to ensure compliance with Article 14.06, 15.16, and 15.17, C.C.P.

An indigent defendant shall be appointed an attorney in compliance with the Fair Defense Act of 2001 and by the Procedures established in this Plan.

If a defendant wishes to request counsel prior to the initial appearance, 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 defendant may submit these forms to the appointing authority (Lubbock County Criminal Associate Judge or IDC). The court will rule on all request for counsel submitted in this manner.

## **Section A - Prompt Magistration**

### **1) Arresting Officer Responsibilities**

- a) The arresting officer, or the person having custody of the arrestee, shall ensure that every arrestee shall be brought before a magistrate without unnecessary delay, but not later than 24 hours after the person is arrested for a misdemeanor offense or 48 hours after the person is arrested for a felony offense [14.06(a), C.C.P.].
- b) Unless arrested pursuant to an arrest warrant, bench warrant, capias, or other order of a magistrate or judge, necessary forms establishing probable cause must be completed and filed at the time an arrestee is booked into jail for any felony or misdemeanor punishable by incarceration.
- c) Release of defendants arrested without warrant
  - i) A person arrested for a misdemeanor without a warrant and who is detained in jail must be released not later than the 24<sup>th</sup> hour after arrest, on a bond in an amount not to exceed \$5,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense [17.033(a), C.C.P.].
  - ii) A person arrested for a felony without a warrant and who is detained in jail must be released not later than the 48<sup>th</sup> hour after arrest, on a bond in an amount not to exceed \$10,000, if a magistrate has not determined that probable cause exists to believe that the person committed the offense [17.033(b), C.C.P.].
  - iii) If requested by an attorney representing the state, a magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest if a probable cause determination has not been made [17.033(c), C.C.P.].

### **2) Magistrate Duties – Local Charges**

- a) At the Magistrate's hearing, the magistrate shall determine if defendant can speak and understand English, or if the defendant is deaf.
- b) After making a determination an interpreter is necessary, the magistrate shall appoint a qualified interpreter to interpret the proceedings consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, then do the following:
  - Advise the defendant of the accusation against him/her and any affidavit filed therewith;
  - (1) Admonish the defendant of:
    - (a) The right to retain counsel;
    - (b) The right to remain silent;
    - (c) The right to have an attorney present during any interview with peace officers or attorneys representing the state;
    - (d) The right to terminate an interview at any time;

- (e) The right not to make a statement and that any statement made by the defendant may be used against him/her; and
  - (f) The right to an examining trial.
- ii) Inform the defendant of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
  - iii) Inquire as to whether defendant is requesting that counsel be appointed.
  - iv) Provide the defendant requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the defendant at the time of the magistrate's hearing.
- c) If the magistrate has reason to believe the defendant is not mentally competent, or received notification by the sheriff pursuant to Article 16.22, C.C.P., the magistrate shall enter a request for counsel on behalf of the defendant. Such a request will alert the Lubbock Private Defenders Office that counsel competent to represent mentally ill persons should be appointed.
  - d) In cases where the individual was arrested without an arrest warrant, bench warrant, capias, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.
  - e) The magistrate shall set the amount of bail and any conditions of bond for the defendant if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
  - f) The magistrate shall maintain a record [15.17(f), C.C.P.] of the following [15.17(e), C.C.P.]:
    - i) The date and time the defendant was arrested and the date and time when he/she was brought before the magistrate.
    - ii) Whether the magistrate informed the defendant of the right to request the appointment of counsel and asked the defendant whether he/she wants to request counsel.
    - iii) Whether the defendant requested appointment of counsel
  - g) The magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to the Lubbock County Criminal Associate Judge or Indigent Defense Coordinator (IDC). The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel [15.17(a), C.C.P.].
  - h) The Lubbock County Criminal Associate Judge or IDC shall make a determination of indigence immediately upon receipt of the forms requesting appointment of counsel [26.04(n), C.C.P.].
  - i) If the person requesting counsel is found to be indigent according to the standards in this plan, the Lubbock County Criminal Associate Judge or IDC shall immediately forward the request for counsel to the Lubbock Private Defenders Office, a managed assigned counsel program authorized under Article 26.047, C.C.P..

- j) The Lubbock Private Defenders Office shall appoint counsel within one working day of receipt of the request for counsel.
- k) If a request for counsel was made at initial appearance, the Lubbock County Criminal Associate Judge shall forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.
- l) If a request for counsel was not made at the initial appearance, the magistrate will forward the magistrate form to the clerk to be put into the case file.

**3) Magistrate Duties – Out-of-County Charges**

- a) At the Magistrate’s hearing, the magistrate shall determine if defendant can speak and understand English, or if the defendant is deaf.
- b) After making such determination, the magistrate shall in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:
  - i) Appointed a qualified interpreter to interpret the proceedings, if necessary, then:
  - ii) Advise the defendant of the accusation against him/her and any affidavit filed therewith;
    - (1) Admonish the defendant of:
      - (a) The right to retain counsel;
      - (b) The right to remain silent;
      - (c) The right to have an attorney present during any interview with peace officers or attorneys representing the state;
      - (d) The right to terminate an interview at any time;
      - (e) The right not to make a statement and that any statement made by the defendant may be used against him/her; and
      - (f) The right to an examining trial.
  - iii) Inform the defendant of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
  - iv) Inquire as to whether the defendant is requesting that counsel be appointed.
  - v) Provide the defendant requesting appointed counsel with necessary forms for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the defendant at the time of the magistrate’s hearing.
- c) The magistrate shall maintain a record [15.17(f), C.C.P.] of the following [15.17(e), C.C.P.]:
  - i) The date and time the defendant was arrested and the date and time when he/she was brought before the magistrate.
  - ii) Whether the magistrate informed the defendant of the right to request appointment of counsel and asked the defendant whether he/she wants to request counsel.
  - iii) Whether the defendant requested appointment of counsel

- d) The magistrate shall transmit or cause to be transmitted the magistrate form and any other forms requesting appointment of counsel to the Lubbock County Criminal Associate Judge or IDC.
- e) If possible, the magistrate will provide the defendant with the financial form from the county where the warrant originates. The forms requesting appointment of counsel shall be transmitted back to the originating county without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel.
- f) The Lubbock County Criminal Associate Judge or IDC shall transmit the request for counsel to the person authorized to appoint counsel in the county where the warrant originates.
- g) If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.

## **Section B - Indigence Determination Standards**

### **1) Definitions, as used in this rule:**

- a) “**Indigent**” means a person who is not financially able to employ counsel [1.051(b), C.C.P.].
- b) “**Net household income**” means all income of the defendant and spousal income actually available to the defendant.
- c) “**Income**” shall include: net-income (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents royalties, or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.
- d) “**Household**” means all individuals who are dependent on the accused for financial support.
- e) “**The cost of obtaining competent private legal representation**” includes the reasonable cost of support services such as investigators and expert witnesses as necessary and appropriate given the nature of the case.

### **2) Eligibility for Appointment**

- a) A defendant is presumed indigent if any of the following conditions or factors are present:
  - i) At the time of requesting appointed counsel, the defendant or the defendant’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
  - ii) The defendant’s net household income is at or below the most recent Living Wage Calculator guideline for Lubbock County<sup>1</sup>; or
  - iii) The defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.
- b) The defendant whose net household income exceeds the latest Living Wage Calculator guideline may still qualify for a court-appointed attorney if the court or IDC determines special circumstances exist;
- c) A defendant that does not meet any of the standards above shall nevertheless be considered indigent if the defendant is unable to retain private counsel without substantial

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<sup>1</sup> <http://livingwage.mit.edu/counties/48303>

hardship to the defendant or the defendant's dependents. In considering if obtaining private counsel will create a substantial hardship, the magistrate, IDC, or judicial authority shall take into account:

- i) the nature of the criminal charge(s),
  - ii) anticipated complexity of the defense,
  - iii) the estimated cost of obtaining competent private legal representation for the matter(s) charged;
  - iv) the amount needed for the support of the defendant and the defendant's dependents;
  - v) defendant's income,
  - vi) source of income,
  - vii) assets and property owned,
  - viii) outstanding obligations,
  - ix) necessary expenses,
  - x) the number and ages of dependents, and
  - xi) net household income
- d) Factors NOT to be considered in determining indigence [26.04(e), C.C.P]:
- i) The defendant's posting of bail or ability to post bail.
  - ii) The resources available to friends or relatives of the defendant.
- e) Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.
- f) The magistrate or IDC will inquire with a defendant who declined court-appointed counsel at their initial appearance to retain counsel, and has been incarcerated longer than seventy-two (72) hours without retained counsel as to their intent to retain private counsel.
- g) If, after seven (7) days from arrest, a defendant has not retained counsel and remains incarcerated, the defendant will be presumed indigent and notification will be sent to the Lubbock Private Defenders Office for assignment of court-appointed counsel.

### **3) Indigence Proceedings**

- a) The magistrate, IDC, or judge can require the defendant to respond to questions about the defendant's financial status, produce documentation supporting financial information provided, and/or order a court official to verify financial information provided.
- b) Information gathered for determining indigence, both in the affidavit of indigency and through oral examination, may be used only for:
  - i) Determining the defendant's indigency; or
  - ii) Impeaching direct testimony of the defendant regarding the defendant's indigence [26.04(q), C.C.P]
- c) A request by the magistrate, IDC, or judge for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in Parts I and IV of these rules and contained in Code of Criminal Procedure Article 1.051.

- d) A defendant determined to be indigent is presumed to remain indigency for the remainder of the case unless a material change in the defendant's financial circumstances occurs [26.04(p), C.C.P].
- e) A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of court proceedings, on a motion for reconsideration by the defendant, the defendant's attorney, or the attorney representing the state. The defendant's indigent status will be presumed not to have changed. The presumption can be rebutted in the review proceedings based on the following:
  - i) Evidence of a material change in the defendant's financial circumstances, as a result of which the defendant does not meet any of the standards for indigence contained in these rules; or
  - ii) Additional information regarding the defendant's financial circumstances that shows that the defendant does not meet any of the standards of indigence contained in these rules.
- f) If a defendant previously determined to be indigent is subsequently determined not to be indigent, as provided by subsection (e), the attorney shall be compensated by the Lubbock Private Defenders Office according to the fee schedule for hours reasonably expended on the case.
- g) As provided by subsection (e), if the court determines that a defendant has financial resources that enable him to offset in part or in whole the costs of the legal services provided, including any expenses and costs, the court shall order the defendant to pay, if convicted, as court costs, the amount that it finds the defendant is able to pay. The finding shall include additional evidence prior to imposition of sentence that justifies a finding that the defendant can repay in part or in whole the costs. An order supporting such finding shall be entered [26.05(g), C.C.P.].
- h) Each Judge of each Criminal Court in which the case is filed (transferred or assigned) shall conduct a hearing after due notice on all re-evaluations of indigency and/or material change of financial circumstances according to the law so as not to interfere with established attorney-client relationship.

## **Section C - Minimum Attorney Qualifications**

- 1) The Judges hearing criminal cases have approved, and the Lubbock County Commissioners Court has contracted to form a managed assigned counsel program under Article 26.047 of the Code of Criminal Procedure for all felony and misdemeanor cases, except capital murder cases. The managed assigned counsel program shall be operated by the Lubbock Private Defenders Office.
- 2) The minimum attorney qualifications for the managed assigned counsel program will be stated in the plan of operation filed by the Lubbock Private Defenders Office with Lubbock County's Office of Court Administration and provided to the judges of the courts served by the program. These minimum qualifications will note the available appointment lists and the minimum requirements for each list. The program's appointment lists must contain the names of qualified attorneys, each of whom:
  - a) Applies to be included on the list;
  - b) Meets any applicable requirements specified by the procedure for appointing counsel adopted under Article 26.04(a) C.C.P and the Texas Indigent Defense Commission; and
  - c) Is approved by the program director or review committee, as applicable.
- 3) The Lubbock Private Defenders Office will enforce the minimum requirements for each appointment list. Attorneys may apply for and be placed on multiple lists. The Lubbock Private Defenders Office shall ensure that minimum standards for each appointment list comply with the minimum standards adopted by the Texas Indigent Defense Commission in Texas Administrative Code 174.1-174.4.
- 4) Pursuant to Article 26.04 C.C.P, an attorney shall, effective October 15, 2014, no later than October 15<sup>th</sup> of each year and on a form prescribed by the Texas Indigent Defense Commission, submit to the county information, for the preceding fiscal year, that describes the percentage of the attorney's practice time that was dedicated to cases on which they were appointed. Attorneys may also report their practice time via the Texas Indigent Defense Commission's reporting portal<sup>2</sup>.
- 5) **Capital Case Qualification Requirements:**
  - a) Lead trial counsel or second chair counsel must be employed by the Regional Public Defender for Capital Cases; or

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<sup>2</sup> <https://tidc.tamu.edu/attorneyreporting/>

- b) Lead trial counsel must be on the list of attorneys approved by the local selection committee of the 9<sup>th</sup> Administrative Judicial Region for appointment as lead counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure
- c) Second chair counsel must be on the list of attorneys approved by the local selection committee on the 9<sup>th</sup> Administrative Judicial Region for appointment as lead trial counsel or second chair counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.
- d) Appellate counsel must be on the list of attorneys approved by the local selection committee of the 9<sup>th</sup> Administrative Judicial Region for appointment as appellate counsel in death penalty cases, as provided in Article 26.052, Texas Code of Criminal Procedure.

**6) Approval for Appointment Lists**

- a) An attorney wishing to be placed on the appointment list(s) shall follow the procedures as set forth by the Lubbock Private Defenders Office, except as noted below for capital cases.
- b) Capital List-An attorney must be employed by the Regional Public Defender for Capital Cases or approved by the Regional Selection Committee of the 9<sup>th</sup> Administrative Judicial Region.

**7) Removal from and Reinstatement to Appointment List**

- a) The Lubbock Private Defenders Office will monitor attorney performance on a continuing basis to ensure the competency of attorneys on the list.
- b) An attorney may be removed, suspended or reinstated, as appropriate, from one or more appointment lists under the procedures as set forth by the Lubbock Private Defenders Office.

**8) Duties of Appointed Counsel**

Appointed Counsel shall:

- a) Make every reasonable effort to:
  - i) Contact the defendant by the end of the first working day after the date on which the attorney is appointed; and
  - ii) Interview the defendant as soon as practicable after the attorney is appointed, but not later than seven working days after appointment;
  - iii) Represent the defendant until:
    - (1) Charges are dismissed;
    - (2) The defendant is acquitted;
    - (3) Appeals are exhausted; or
    - (4) The attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.

- iv) Investigate, either by self or through an investigator, the facts of the case and be prepared to present any factual defense(s) that may be reasonably and arguably available to the defendant;
- v) Brief the law of the case and be prepared to present any legal defense(s) that may be reasonably and arguably available to the defendant;
- vi) Be prepared to negotiate with the prosecutor for the most favorable resolution of the case as can be achieved through a plea agreement;
- vii) Be prepared to try the case to conclusion either with or without a jury;
- viii) Be prepared to file post-trial motions, give notice of appeal and appeal the case pursuant to the standards and requirements of the Texas Rules of Appellate Procedure;
- ix) Maintain reasonable communication and contact with the client at all times and keep the client informed of the status of the case;
- x) Advise the client on all matters involving the case and such collateral matters as may reasonably be required to aid the client in making appropriate decisions about the case
- xi) Perform the attorney's duty owed to the defendant in accordance with these procedures, the requirements of the Code of Criminal Procedure, and applicable rules of ethics; and
- xii) Manage attorney's workload to allow for the provision of quality representation and the execution of the responsibilities listed in these rules in every case.

## **Section D - Prompt Appointment of Counsel**

### **1) Prompt Appointment of Counsel**

- a) Counsel shall be appointed as soon as possible to indigent defendants but no later than the end of the first working day after the date on which the Lubbock County Criminal Associate Judge or IDC receives the defendant's request for court-appointed counsel (including requests made by persons arrested in other counties on Lubbock County warrants) [1.051(c-2), C.C.P.]. Working day means Monday through Friday, excluding official state or county holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
- b) Upon determination of indigence by the Lubbock County Criminal Associate Judge or IDC, the appointment authority for all filed or unfiled cases (except capital murder cases) is the Lubbock Private Defenders Office.
- c) If the defendant is still in the Lubbock County Detention Center and the defendant has no counsel for matters under Chapter 11 (Habeas Corpus) or Chapter 17 (Bail), Code of Criminal Procedure, after 11 days, counsel shall be appointed by the arresting county.
  - i) Pursuant to Article 1.051, Code of Criminal Procedure, Lubbock County may seek reimbursement from the county where the warrant originated, the actual costs paid to appointed counsel.

### **2) Defendant's Appearance Without Counsel**

If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

- a) The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.
- b) If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant [1.051(f-2), C.C.P.]:
  - i) Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
  - ii) Waived or has waived the opportunity to retain private counsel.
- c) The attorney representing the state may not [1.051(f-1), C.C.P.]:
  - i) Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
  - ii) Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:

- (1) Has been given a reasonable opportunity to retain counsel; or
- (2) Waives or has waived the opportunity to retain private counsel.

**3) Waiver of the Right to Counsel**

- a) A defendant may voluntarily and intelligently waive the right to counsel [1.051(f), C.C.P.].
- b) A waiver obtained in violation of Section D(2)(b) or D(2)(c) above is presumed invalid.
- c) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings [1.051(g), C.C.P.]:
  - i) *“I have been advised this \_\_ day of \_\_, 20 \_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”*
- d) A defendant may withdraw a waiver of the right to counsel [1.051(h), C.C.P.] at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

## **Section E - Attorney Selection Process**

- 1) The Lubbock Private Defenders Office will identify which of the appointment lists discussed in Section C (attorney qualifications), is most appropriate based on the accusations against the defendant and will appoint an attorney pursuant to the procedures identified by the Lubbock Private Defenders Office. The Lubbock Private Defenders Office may refuse to accept appointment to a case, if:
  - a) A conflict of interest exists;
  - b) The office has insufficient resources to provide adequate representation;
  - c) The office is incapable of providing representation in accordance with the rules of professional conduct; or
  - d) The office shows other good cause for refusing appointment.

### **2) Judicial Removal from Case**

- a) The judge presiding over a criminal case may remove appointed counsel upon entering a written order showing good cause for such removal, including without limitation, the following:
  - i) Counsel's failure to appear at a court hearing;
  - ii) Counsel's failure to comply with the requirements imposed upon counsel by this plan;
  - iii) Current information about the defendant and the charges against the defendant indicate that another qualified attorney is more appropriate for the defendant under these rules;
  - iv) Replacement of appointed counsel in a death penalty case as required under Article 26.052(e), Texas Code of Criminal Procedure;
  - v) The appointed counsel shows good cause for being removed, such as illness, workload or scheduling difficulties;
  - vi) The defendant requests an attorney, other than trial counsel, for appeal; or
  - vii) The defendant shows good cause for removal of counsel, including counsel's persistent or prolonged failure to communicate with the defendant.
- b) The judge presiding over a criminal case requiring the removal of appointed counsel will make a reasonable effort to communicate with the Lubbock Private Defenders Office when it is deemed necessary to make such removal.

### **3) Appointment of Replacement Counsel**

- a) Whenever appointed counsel is removed under this section, replacement counsel shall immediately be selected and appointed in accordance with the procedures described in this plan.

**4) Regional Public Defender for Capital Cases**

- a) The Regional Public Defender for Capital Cases will be appointed to all capital cases unless good causes exists to appoint private counsel. The Regional Public Defender for Capital Cases may refuse to accept appointment to a case, if:
  - i) A conflict of interest exists;
  - ii) The office has insufficient resources to provide adequate representation;
  - iii) The office is incapable of providing representation in accordance with the rules of professional conduct; or
  - iv) The office shows other good cause for refusing appointment.

## **Section F - Fee and Expense Payment Process**

- 1) Court appointed counsel shall be compensated for all reasonable and appropriate services rendered in representing the accused. Compensation shall be reasonable for time and effort expended and will be in accordance with a fee schedule adopted and approved by the Lubbock Private Defenders Office.
- 2) **Payment Process**
  - a) No payment of attorney's fees will be made other than in accordance with the rules set forth by the Lubbock Private Defenders Office.
  - b) Payment shall not be made until the form for itemizing the services performed is submitted to the director of the Lubbock Private Defenders Office, and until the director approves the payment.
  - c) If the director disapproves the requested amount of payment, the director shall make written findings stating the amount of payment that the director approves and each reason for approving an amount different from the requested amount.
- 3) **Payment of Expenses**
  - a) Court-appointed counsel will be reimbursed for reasonable and necessary expenses incurred, including expenses for investigator, experts, and other litigation expenses.
  - b) Expenses incurred shall be paid according to the procedures set forth by the Lubbock Private Defenders Office.

## Section G – Miscellaneous

### 1) Mentally Impaired Defendants

- a) Each person arrested and booked into the Lubbock County Detention Center shall receive a required mental assessment at booking and a mental health screening and evaluation pursuant to a contract with Lubbock StarCare.
- b) Individuals with mental impairments should be brought to the attention of the magistrate at the 15.17 hearing, or if delayed by necessity of medical reasons the next available magistrate for 15.17 procedures for appropriate orders and transmittal of all related information to the appropriate court.
- c) Mentally ill or mentally impaired defendants should not be released by the Lubbock County Detention Center after an arrest without warrant until any feasible prescribed medication has been administered, the person is stabilized through the nursing staff of the Lubbock County Detention Center, and after review by a magistrate for appropriate conditions of bond.
- d) Diversion of identified mentally ill and mentally impaired defendants should be made to available programs established for mentally ill or impaired, as directed by regulatory codes and regulations.
- e) Every effort should be made to identify the mentally ill, the mentally impaired, or other persons with special needs.
- f) Every mentally ill or mentally impaired indigent defendant will be appointed counsel qualified to represent the mentally ill or impaired defendants.