

## **Procedures for Appointment, Supervision, and Compensation of Counsel to Defendants Arrested Under Operation Lone Star Pursuant to the Texas Supreme Court's Border Security State of Disaster Emergency Order**

The Executive Director of the Texas Indigent Defense Commission (TIDC) adopts these procedures to provide for the appointment of counsel to represent defendants arrested and charged with jailable misdemeanors and/or felonies as part of Operation Lone Star (OLS) in Counties covered by Governor Abbott's border security disaster declarations. These procedures are adopted pursuant to the Texas Supreme Court's "Emergency Order Regarding Indigent Defense and The Border Security State of Disaster," Misc. Docket Number 21-9104.

As directed by the Supreme Court's order, these procedures supersede the counties' procedures for appointing counsel under Code of Criminal Procedure Article 26.04(a) (indigent defense plans) for the OLS cases in those counties. These procedures only apply to individuals arrested under OLS and who are brought before magistrates for proceedings under Article 15.17 in facilities designated by the Office of Court Administration (OCA). (A list of the designated facilities can be found on OCA's website <https://www.txcourts.gov/oca>.) These procedures do not apply to any other cases in those counties, nor in any other Texas counties.

If a defendant is brought before a magistrate in an OCA-designated facility and requests the appointment of counsel, the defendant shall be provided the affidavit of indigence (below) to the defendant. The magistrate is authorized to determine indigence and if the magistrate finds a defendant to be indigent under the Operation Lonestar Indigence Determination Standards (below), the magistrate shall forward the affidavit, reflecting the Court's indigency finding, to the Lubbock Private Defender's Office (LPDO) not later than 24 hours after receiving and ruling on the affidavit.

TIDC hereby designates the LPDO to appoint counsel to indigent defendants in OLS cases, pursuant to the Supreme Court's Emergency Order.

LPDO is designated to compile and maintain a list, or more than one list, graduated according to: the degree of seriousness of the offense; the attorneys' qualifications; and whether representation will be provided in trial court proceedings, appellate proceedings, or both, of attorneys to be appointed in OLS cases. The list, or lists, may include attorneys from any Texas County, public defender offices, governmental entities, nonprofit corporations, or law firms, so long as LPDO determines that each has the skills, resources, and available workload capacity to effectively represent additional defendants.

TIDC further authorizes, LPDO, as its designee, to remove any attorney on the list from consideration for an appointment for any reason.

For cases in which compensation of court-appointed counsel, investigators, defense interpreters, or experts will be paid by the State, TIDC further designates LPDO to review, approve and pay fee vouchers for legal services, interpreter services, investigator services, travel expenses, and other expenses necessary for the criminal case representation, in accordance with LPDO's policies, procedures, the attached fee schedule, and contractual agreements, contingent on the availability of state funds. All requests for compensation, reimbursement, investigative, interpreter support, or other expenses must contain the information required by LPDO.

A copy of this plan shall be posted on the Texas Indigent Defense Commission's website, [www.tidc.texas.gov](http://www.tidc.texas.gov), and the Lubbock Private Defender's Office website, [www.LPDO.org](http://www.LPDO.org).

In addition, a copy of this indigent defense plan will be distributed to the following officials in each County covered by the state of disaster concerning border security issued by Governor Abbott:

- The County Judge
- Elected District and Statutory County Court Judges
- Justice(s) of the Peace
- The Sheriff

Further, copies will be sent to the Texas Office of Court Administration, Department of Public Safety, Texas Department of Emergency Management, OCA magistrations facilities and National Guard.

TIDC will provide assistance to counties affected by OLS in amending their indigent defense plans as needed.

Unless the Chief Justice extends effective dates of its emergency order, these procedures shall be in effect from the date they are signed and adopted until the Supreme Court's order terminates on November 1, 2021.

Signed and adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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Geoff Burkhart  
Executive Director  
Texas Indigent Defense Commission

## **Operation Lonestar Indigence Determination Standards**

### **0. Financial Standards for Determining Indigence**

These standards shall apply to each defendant equally, regardless of whether the defendant is in custody or has been released on bail.

The indigence assessment considers only the income and resources of the defendant and that person's spouse. The size of the household is equal to the defendant, the person's spouse, and any individuals who are dependents of either the defendant or the person's spouse.

### **B. Indigence Criteria**

Defendants requesting appointed counsel who meet any the following criteria are presumed indigent and shall be appointed a lawyer:

- Current household income does not exceed 125% of the current Federal Poverty Guidelines.
- Currently receiving food stamps, Medicaid, Temporary Assistance for Needy Families, Social Security assistance or public housing.
- Currently resides in a correctional facility, mental health institution, or similar facility.
- An individual who has been in pretrial detention for not less than seven (7) days for a misdemeanor, and not less than ten (10) days for a felony, and for whom counsel has not made an entry of appearance.
- The interests of justice indicate that counsel should be appointed.

# AFFIDAVIT OF INDIGENCE

<i>THIS PORTION TO BE COMPLETED BY OFFICE PERSONNEL ONLY</i>			
The State of Texas		_____ County Court	
vs.			
_____		_____ District Court	
Offense:	Felony/Misd:	Interpreter required? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Offense:	Felony/Misd:	If yes, language required:	
Offense:	Felony/Misd:		
Defendant Currently In: <input type="checkbox"/> Correctional Facility <input type="checkbox"/> Mental Health Facility			
<i>THIS PORTION TO BE COMPLETED BY OR WITH DEFENDANT</i>			
Name _____			Date of Birth _____
_____	_____	_____	_____
First Name	MI	Last Name	
Address _____			
_____	_____	_____	_____
No. Code	Street City	Apt State	Zip
Phone Numbers _____			
_____	_____	_____	_____
Home	Cell	Work	Family
Member			
I receive:	<input type="checkbox"/> Medicaid	<input type="checkbox"/> SSI	<input type="checkbox"/> SNAP
Housing	<input type="checkbox"/> TANF	<input type="checkbox"/> Public	
Are you Employed? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, where? _____ Type of Work _____			
Number of Hours per Week: _____		How long have you worked at this job? _____	
Marital Status : <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed <input type="checkbox"/> Separated			
Name of Spouse _____			
_____	_____	_____	
First	MI	Last	
RESIDENCE INFORMATION			
Name of Dependent Child(ren)	Age	Name of Dependent Child(ren)	Age
(0-18 yrs.)		(0-18 yrs.)	
Rent: yes or no			
	Own: yes or no	Reside with family: yes or no	Homeless: yes or no

<u>MONTHLY INCOME AND ASSETS</u>		<u>MONTHLY EXPENSES</u>	
My take home pay	\$	Rent/Mortgage	\$
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$
SNAP (Food Stamps)	\$	Total Food Expenses	\$
Social Security/Disability	\$	Transportation Costs	\$
Other Government Check	\$	Cell/home phone	\$
Other Income	\$	Probation fees	\$
Assets (car, house, etc.)	\$	Medical Expenses / Health Insurance	\$
TOTAL MONTHLY INCOME AND ASSETS	\$	Minimum Monthly Credit Card Payment	\$
		TOTAL MONTHLY EXPENSES	\$

### Defendant's Oath

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I have been advised of my right to representation by counsel in connection with the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.

\_\_\_\_\_

Defendant's Signature

\_\_\_\_\_

Date

**ONLY ONE SECTION BELOW TO BE COMPLETED.**

### Administered Oath

(Clerk/Notary ONLY)

SUBSCRIBED and SWORN to before me, the undersigned authority, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Signature      Date

\_\_\_\_\_

Clerk/Notary Public

**Unsworn Declaration by Defendant**

(Defendant ONLY)

My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_.

(First Name)      (Middle Name)      (Last Name)

My address is \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,

\_\_\_\_\_ (Street Number and Name)      (City)      (State)      (Zip  
Code)      (Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in \_\_\_\_\_ County, State of Texas, on the \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_ (Year)

(Month)

**Defendant Currently Meets Eligibility Requirements?**

YES

NO

I find the above-named defendant indigent and authorize **Lubbock Private Defenders' Office** to appoint counsel.

Date \_\_\_\_\_

Magistrate

## DECLARACIÓN JURADA ESCRITA DE INDIGENCIA

*ESTA SECCIÓN SERÁ LLENADA SOLO POR EL PERSONAL DE LA OFICINA*

El Estado de Texas \_\_\_\_\_ Tribunal de Condado  
vs. \_\_\_\_\_ Tribunal de Distrito

Delito: \_\_\_\_\_ Grave/No Grave: \_\_\_\_\_ ¿Se requiere de un intérprete?  Si  No

Delito: \_\_\_\_\_ Grave/No Grave: \_\_\_\_\_ En caso afirmativo, indique el idioma: \_\_\_\_\_

Delito: \_\_\_\_\_ Grave/No Grave: \_\_\_\_\_

Imputado actualmente en:  Institución Penitenciaria  Institución de Salud Mental

*ESTA SECCIÓN SERÁ LLENADA POR EL IMPUTADO O EN PRESENCIA DEL MISMO*

Nombre \_\_\_\_\_ Fecha de nacimiento \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Nombre de Pila                      Inicial del Segundo nombre                      Apellido

Dirección \_\_\_\_\_

Código Postal                      Calle                      Núm. de Depto.                      Ciudad                      Estado

Números telefónicos \_\_\_\_\_

miembro de la familia                      Casa                      Móvil                      Trabajo                      Otro

Marque si usted recibe alguno de

los siguientes servicios o beneficios:  Medicaid                       SSI                       SNAP                       TANF                       Asistencia de Vivienda

¿Está usted trabajando actualmente?  Sí  No ¿En dónde trabaja? \_\_\_\_\_ ¿En qué trabaja? \_\_\_\_\_

Horas trabajadas por semana: \_\_\_\_\_ Tiempo que lleva trabajando ahí: \_\_\_\_\_

Estado civil:  Soltero(a)                       Casado(a)                       Divorciado(a)                       Viudo(a)                       Separado(a)

Nombre de su cónyuge \_\_\_\_\_  
Nombre de Pila                      Inicial del Segundo nombre                      Apellido

Nombres de los Menor(es) que dependen de usted (de 0 a 18 años de edad)	Edad	Nombres de los Menor(es) que dependen de usted (de 0 a 18 años de edad)	Edad

**INFORMACIÓN SOBRE SU HOGAR**

Hogar alquilado: Sí / No	Hogar propio: Sí / No	Vivo en el hogar de otros familiares: Sí / No	Sin hogar: Sí / No
<b>INGRESOS MENSUALES Y BIENES</b>		<b>GASTOS MENSUALES</b>	
Mis ingresos después de impuestos	\$	Pago de Alquiler o de Hipoteca	\$
Ingresos después de impuestos de mi cónyuge	\$	Servicios públicos (Luz, Gas, Agua)	\$
Manutención de Menores (Recibida)	\$	Total de gastos en los menores (Incluya pagos de Manutención de Menores hechos por usted)	\$
SNAP (Cupones alimenticios)	\$	Total de Gastos en Alimentos	\$
Seguro Social / Discapacitación	\$	Gastos de Transporte	\$
Otros Ingresos del Gobierno	\$	Teléfono móvil o de la casa	\$
Otros Ingresos	\$	Cuotas de Vigilancia de su libertad a prueba	\$
Bienes (auto, casa, etc.)	\$	Gastos Médicos / Seguro Médico	\$
<b>TOTAL MENSUAL DE INGRESOS Y BIENES</b>	\$	Pago Mínimo Mensual de Tarjetas de Crédito	\$
		<b>TOTAL MENSUAL DE GASTOS</b>	\$

## Juramento del Imputado

El día de hoy \_\_\_\_\_ de \_\_\_\_\_ del 20 \_\_\_\_, he sido notificado sobre mi derecho a ser representado por un abogado en relación al cargo en mi contra. Yo declaro que no tengo los medios económicos para contratar un abogado por mi propia cuenta y por el presente solicito al Juez me asigne un abogado de oficio.

\_\_\_\_\_  
Firma del Imputado

\_\_\_\_\_  
Fecha

JURAMENTADO y FIRMADO ante mí, la autoridad que suscribe, el día de hoy \_\_\_\_\_ de \_\_\_\_\_, del 20\_\_\_\_\_.

\_\_\_\_\_  
Firma del Secretario del Tribunal/Fedatario

\_\_\_\_\_  
Fecha



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<b>¿El imputado cumple actualmente con los requisitos para calificar?</b>
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SÍ

NO

Yo determino que el acusado antes mencionado sí es de escasos recursos y autorizo a la **Oficina de Abogados Defensores Privados de Lubbock** que le asignen un abogado defensor gratuito que lo represente.

Fecha \_\_\_\_\_

Juez de Control \_\_\_\_\_

## **Fee Schedule for Private Practitioners Appointed to Represent Indigent Defendants in Operation Lone Star Cases**

Private practitioners appointed to represent Indigent Defendants in Operation Lone Star Cases will be compensated based on the following schedule.

### **Felony Cases:**

#### Hourly Rates

- 1<sup>st</sup> Degree \$100.00
- 2<sup>nd</sup> Degree \$85.00
- 3<sup>rd</sup> Degree \$85.00
- State Jail Felony \$85.00
- 2<sup>nd</sup> Chair Felony \$75.00
- 2<sup>nd</sup> Chair Felony Mentee \$70.00

Felony Base Fee \$400.00

Must have at least 4 hours on the case, with the billing rate based on the highest class offense charged, and billing .1 on all subsequent cases.

### **Misdemeanor Cases:**

#### Hourly Rates

- A and B Misdemeanors \$75.00
- Mental Health Cases \$100.00
  - Must be approved to receive Mental Health Cases
- 2<sup>nd</sup> Chair Misdemeanor \$65.00
- 2<sup>nd</sup> Chair Misdemeanor Mentee \$60.00

Misdemeanor Base Fee \$250.00

Must have at least 4 hours on the case, with the billing rate based on the highest class offense charged, and billing .1 on all subsequent cases.

### **Appeals**

Appellate case work will be paid equivalent to hourly rates for trial work based on the degree of offense.