

person accused of a crime receives a fair trial. When persons accused of crime are denied the right to counsel, the rest of the criminal trial rights guaranteed by the United States and Texas Constitutions are rendered worthless, because unrepresented defendants will not fully understand what those other rights are or how to assert them in court. Persons who are accused of crime and denied the right to counsel face an increased risk of being convicted of crimes they did not commit, leaving the public at continued risk from the true perpetrators of those offenses. Persons who are accused of crime and denied the right to counsel are likely to receive longer sentences of imprisonment than do defendants who are represented by competent defense counsel, which injects an arbitrary disproportionality into criminal sentencing. It also burdens taxpayers with the costs of incarcerating defendants who are imprisoned not in relation to the threat they pose to public safety but as a result of unfair and unconstitutional court procedures.

In flagrant violation of the right to counsel, Defendants are engaged in a systematic and deliberate scheme to deprive persons accused of misdemeanor offenses in Williamson County of their right to be represented by counsel and of their right to obtain court-appointed counsel when they are financially unable to hire a lawyer. Williamson County and the judges who preside over its county courts at law routinely fail to inform persons accused of crime of their right to counsel, provide inaccurate and misleading information about the right to appointed counsel in order to discourage requests for counsel, encourage defendants to waive their right to counsel and speak directly to prosecutors, threaten defendants who assert the right to counsel, and delay or deny appointment of counsel to individuals who request an attorney and are eligible for court-appointed counsel under Texas and federal law.

In violation of federal and state law, Defendants refuse to appoint counsel to indigent accused persons who have requested counsel because, among other reasons, the accused

persons are not physically disabled, the accused persons' family or friends post bond on their behalf, or the accused persons do not pass a court-ordered drug test. This conduct amounts to a systematic denial of basic civil rights to an entire class of individuals in Williamson County. This conduct also threatens some of the most basic premises of the American justice system, which hold that people will be treated fairly by the courts whether they are rich or poor and that the state will not deprive people of their liberty without first giving them a meaningful opportunity to respond to any charges brought against them. To stop Defendants' unconstitutional and unfair practices, Plaintiffs assert the claims described herein on behalf of themselves and on behalf of all indigent persons who are accused of a crime in Williamson County, conviction for which could involve a sentence of jail time.

II. **DISCOVERY**

1. Plaintiffs plead Level 3 discovery pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

III. **PARTIES**

2. Plaintiff Kerry Heckman is an individual residing in the city of Bartlett in Williamson County, Texas.

3. Mr. Heckman was arrested on or about March 29, 2006 for Driving while Intoxicated and shortly thereafter was charged in Williamson County with a misdemeanor offense punishable by imprisonment.

4. Mr. Heckman is indigent and cannot afford to hire an attorney. Mr. Heckman is a seasonal farm worker and has and will continue to have very little income, even after the next work season begins in August. When Mr. Heckman is able to work he makes

approximately \$6.50 an hour. Mr. Heckman has no assets, no savings account and no other bank accounts, and recently lost his truck because he was not able to make his monthly payments.

5. During his first court appearance in Williamson County in May 2006, court officials from Williamson County encouraged Mr. Heckman to plead guilty or no contest without consulting an attorney, and encouraged him to speak to prosecutors without the aid of an attorney.

6. After court personnel made these announcements, the presiding judge appeared and immediately began to call the defendants to the bench to hear their pleas, without any admonishment of rights.

7. Mr. Heckman was not told the process or procedures for requesting a court-appointed attorney, that an attorney would be provided if the court found that he was indigent, or the standards the court used to determine whether persons accused of crime were eligible for a court-appointed attorney.

8. Despite the fact that he was not properly advised of his right to a court-appointed attorney, Mr. Heckman informed the court that he could not afford an attorney and requested a court-appointed attorney. The court responded to the request by commenting on Mr. Heckman's physical appearance, implying that because Mr. Heckman looked healthy and had worn his best clothes to court that he did not qualify for a court-appointed attorney. The court did not ask any questions about Mr. Heckman's financial situation. Mr. Heckman was warned that if he came to his next appearance without an attorney his bail would be raised. If Mr. Heckman's bail is raised as indicated by the presiding judge, Mr. Heckman will face arrest and detention unless and until he can post bond for the increased bail amount.

9. Despite providing proof that he is indigent and requesting a court-appointed attorney, Mr. Heckman still has not been appointed an attorney. The misdemeanor charge against him remains pending.

10. Plaintiff Monica Maisenbacher is an individual residing in the city of Round Rock, Williamson County, Texas.

11. Ms. Maisenbacher was arrested on or about April 5, 2006 for an assault arising from a domestic dispute and shortly thereafter was charged in Williamson County with a misdemeanor offense punishable by imprisonment.

12. Ms. Maisenbacher is indigent and cannot afford to hire an attorney. She is without income to pay for basic expenses, including rent, food, or utilities. She is a former health care professional with a serious chronic illness that prevents her from working. She has applied for disability aid but has not yet received any disability benefits. Her illness has and will continue to require extensive treatment. Ms. Maisenbacher has no health care coverage or other insurance and has accumulated over \$4,000 in debt for medical expenses since April 4, 2006.

13. On or about April 5, 2006, Ms. Maisenbacher appeared before a magistrate at the Williamson County jail. The magistrate did not inform Ms. Maisenbacher that she had a right to a court-appointed attorney, did not provide any information about how to apply for a court-appointed attorney, did not provide forms that would allow Ms. Maisenbacher to ask for a court-appointed attorney, and did not inform Ms. Maisenbacher of the county or state standards for determining financial eligibility for court-appointed counsel.

14. While Ms. Maisenbacher was at the courthouse for her first appearance on May 24, 2006, court officials from Williamson County encouraged Ms. Maisenbacher to plead

guilty or no contest without consulting an attorney, and encouraged her to speak to prosecutors without the aid of an attorney.

15. Despite the advice from the presiding judge and other court personnel that she plead guilty or no contest, Ms. Maisenbacher pled not guilty and asked for a court-appointed lawyer at her first appearance. When she requested a court-appointed attorney, the court asked, “Why should Williamson County pay for your mistake? You look like you can work.” Ms. Maisenbacher explained her medical condition to the court and stated that she would be unable to work for an extended period of time. The court then ordered her to fill out a financial eligibility form, but took no action to appoint Ms. Maisenbacher a lawyer.

16. Despite providing proof that she is indigent and requesting a court-appointed attorney, Ms. Maisenbacher still has not been appointed an attorney. The misdemeanor charge against her remains pending.

17. Plaintiff Sylvia Peterson was arrested in February 2005 for Driving While Intoxicated and shortly thereafter was charged in Williamson County with a misdemeanor offense punishable by imprisonment.

18. Ms. Peterson is indigent and cannot afford to hire an attorney. Ms. Peterson is the mother of two minor children and suffers from sarcoidosis, a serious and painful disease that prevents her from working. She has applied for disability aid but has not yet received any disability benefits. Her husband also is disabled. Her household supports itself with disability payments issued to her husband and with food stamps. The total amount of all the benefits the household receives is less than \$1000 per month.

19. After she was released on bond for her DWI charge, Ms. Peterson was arrested on a subsequent charge for assault after a dispute with her husband. She was unable to

post bond and remained in jail for several weeks. During her time in jail, Ms. Peterson's multiple requests to speak to an attorney were ignored by Williamson County jail officials and the magistrate judge.

20. During her time in jail, Ms. Peterson made an appearance before the presiding judge, but was sent back to confinement because of the court's confusion over her unrelated assault and DWI charges. A few weeks later, Ms. Peterson again appeared in court and was informed that she already had been appointed a lawyer, although this lawyer had not yet contacted her. Within a few days of this second court appearance, Ms. Peterson was released from jail and understood that the assault charge had been dropped.

21. In or around February 2006, Ms. Peterson's attorney withdrew from her DWI case. Ms. Peterson's financial circumstances had not materially changed since the initial appointment was made in her case and she still could not afford to hire an attorney. Nevertheless, the court failed to appoint a new attorney to replace the withdrawing attorney.

22. During her court appearance in Williamson County in May 2006, court officials from Williamson County encouraged Ms. Peterson to plead guilty or no contest without consulting an attorney, and encouraged her to speak to prosecutors without the aid of an attorney.

23. After court personnel made these announcements, the presiding judge appeared and immediately began to call the defendants to the bench to hear their pleas, without any admonishment of rights.

24. At her May 2006 court appearance, Ms. Peterson requested a new court-appointed lawyer to replace the appointed lawyer who had withdrawn from her case. After Ms.

Peterson informed the court about her illness, the presiding judge said to Ms. Peterson, “you look ok to me,” and refused her request for a court-appointed attorney.

25. Despite providing proof that she is indigent and requesting a court-appointed attorney, Ms. Peterson still has not been appointed an attorney. The misdemeanor charge against her remains pending.

26. Defendant Williamson County is a governmental unit and a subdivision of the State of Texas and may be served by serving a copy of this Petition at 301 S.E. Inner Loop, Georgetown, Texas 78626. Under state law, Williamson County is responsible for the provision of indigent defense services within its borders. Defendant Williamson County has a policy, pattern, and practice of denying legal representation to poor individuals accused of misdemeanor offenses punishable by imprisonment, in violation of state law and the Texas and United States Constitutions.

27. Defendant John Christian Doerfler (“Doerfler”), County Judge of Williamson County, is an individual residing in Williamson County and may be served by serving a copy of the Petition on him at 301 S.E. Inner Loop, Georgetown, Texas 78626. Defendant Doerfler is being sued in his official capacity for conduct undertaken in his roles as the presiding officer of Williamson County and as the county officer who, by resolution of the Williamson County Commissioner’s Court, is directly responsible for the operation of the county’s indigent defense system.

28. Defendant Judge Suzanne Brooks (“Brooks”), presiding judge for Williamson County Court at Law #1, is an individual residing in Williamson County and may be served by serving a copy of the Petition on her at the Williamson County Justice Center, 405 Martin Luther King, Georgetown, Texas 78626. Defendant Brooks is being sued in her official

capacity for actions taken in the absence of jurisdiction and in flagrant violation of state law and the Texas and United States Constitutions.

29. Defendant Judge Tim Wright (“Wright”), presiding judge for Williamson County Court at Law #2, is an individual residing in Williamson County and may be served by serving a copy of the Petition on him at the Williamson County Justice Center, 405 Martin Luther King, Georgetown, Texas 78626. Defendant Wright is being sued in his official capacity for actions taken in the absence of jurisdiction and in flagrant violation of state law and the Texas and United States Constitutions.

30. Defendant Judge Don Higginbotham (“Higginbotham”), presiding judge for Williamson County Court at Law #3, is an individual residing in Williamson County and may be served by serving a copy of the Petition on him at the Williamson County Justice Center, 405 Martin Luther King, Georgetown, Texas 78626. Defendant Higginbotham is being sued in his official capacity for actions taken in the absence of jurisdiction and in flagrant violation of state law and the Texas and United States Constitutions.

31. Defendant Judge William Thomas Eastes (“Eastes”), presiding judge for the Cedar Park Municipal Court, is an individual residing in Williamson County and may be served by serving a copy of the Petition on him at 911 Qwest Parkway, Cedar Park, Texas 78613. Defendant Eastes is being sued in his official capacity for actions taken in the absence of jurisdiction and in flagrant violation of state law and the Texas and United States Constitutions.

IV. **JURISDICTION AND VENUE**

32. This Court has jurisdiction over the claims asserted in this Petition. See TEX. CONST. art. V § 8; TEX. GOV’T CODE §§ 24.007, 24.008, 24.011; TEX. CIV. PRAC. & REM. CODE § 65.023.

33. Venue properly lies in this District pursuant to Texas Civil Practices and Remedies Code § 15.015, which provides that all actions against a county shall be brought in that county. See TEX. CIV. PRAC. & REM. CODE § 15.015.

V.
FACTUAL BACKGROUND

34. It has long been settled that the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 10 of the Texas Constitution, impose on the State of Texas and, thus, upon Williamson County, the obligation to ensure that persons accused of crimes for which they may be imprisoned are provided with effective assistance of competent counsel if they are financially unable to hire a lawyer. The right to counsel has been deemed essential to ensuring that all persons accused of crime, including those without personal wealth, receive a fair trial.

35. The right to counsel extends to all persons accused of crime who may be imprisoned as a result of conviction, including to misdemeanor defendants sentenced to probation if that probation is conditioned upon a suspended sentence of imprisonment that ultimately may deprive a person of their liberty. Convictions for misdemeanors punishable by imprisonment may result in a number of very serious consequences, including loss of employment, housing, and/or the right to operate a motor vehicle.

36. A person accused of crime may waive the right to counsel and elect to proceed to trial or enter a plea without the assistance of an attorney, but waiver of the right to counsel is valid only if it is knowing and voluntary. Waiver of the right to counsel is not valid if it is coerced or obtained without an adequate and accurate explanation of the right to counsel and the dangers of proceeding without a lawyer.

37. Confronted with evidence that Texas courts were failing to provide counsel in a manner consistent with the guarantees of the Texas and United States Constitutions, the Texas Legislature enacted the Texas Fair Defense Act in 2001. See Texas Fair Defense Act, 77th Leg., R.S., ch. 906, 2001 Tex. Gen. Laws 906. The Fair Defense Act created a new statutory framework for the provision of indigent defense services in Texas and established specific standards for appointment of counsel to indigent criminal defendants who are facing any term of imprisonment as a punishment for their alleged crimes.

38. At the county level, the Fair Defense Act requires counsel to be appointed to indigent criminal defendants in accordance with written procedures that address matters such as the method for appointing counsel, the timing of appointment, the qualifications required of appointed lawyers, and the compensation provided in appointed cases. TEX. CRIM. PROC. CODE § 26.04(a), (c). The judges of the constitutional county courts, statutory county courts, and district courts trying criminal cases in each county adopt these procedures by local rule, though the procedures are adopted and applied on a countywide basis rather than according to judicial district lines. Id. at § 26.04(a). A county's indigent defense procedures must be consistent with the standards contained in the Fair Defense Act, including standards relating to prompt access to counsel and to determining financial eligibility for appointed counsel. Id.

39. Prompt access to counsel facilitates effective representation and the prompt and fair disposition of criminal charges, and the Fair Defense Act sets out specific time limits within which appointed counsel must be provided to poor people accused of crime. The Fair Defense Act guarantees that counsel will be appointed for eligible defendants within four days of arrest in counties, such as Williamson County, with populations of 250,000 or more. Id. at §§ 1.051(c), 15.17(a). If a defendant is released from custody before counsel is appointed,

appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first. *Id.* at § 1.051(j). However, a county's financial standards for determining whether a defendant is indigent must apply to each defendant equally, whether the defendant is in custody or has been released on bail. *Id.* at § 26.04(l). Also, a court generally may not consider whether a defendant has posted or is capable of posting bail when determining whether a defendant is indigent and thus eligible for appointment of counsel. *Id.* at § 26.04(m). A defendant may waive the right to counsel, but must do so voluntarily and intelligently. *Id.* at § 1.051(f).

40. With the Fair Defense Act, the Texas Legislature also created the Task Force on Indigent Defense. *See* TEX. GOV'T CODE §§ 71.051–71.063. The Task Force provides technical support to assist counties in improving their indigent defense systems and monitors indigent defense information reported by counties in order to promote county compliance with state law requirements relating to indigent defense. *Id.* at §§ 71.061, 71.062. The Task Force also administers the state grant program for indigent defense. *Id.* at § 71.062(b). All expenditures for indigent defense services are paid from a county's general fund, TEX. CRIM. PROC. CODE § 25.05(f), and Texas counties are the only entities eligible to receive indigent defense grant funds distributed by the Task Force, TEX. GOV'T CODE § 71.062(b); 1 TEX. ADMIN. CODE §§ 173.1-173.2(1).

41. Through the Fair Defense Act, the State of Texas has delegated to its constituent counties its federal and state constitutional responsibilities to provide effective assistance of competent counsel to persons financially unable to hire a lawyer. *See* TEX. CRIM. PROC. CODE §§ 15.17, 26.04, 26.044, 26.05; TEX. GOV'T CODE § 71.0351, 71.061, 71.062. Consequently, Defendant Williamson County is responsible for ensuring that the right to counsel

is guaranteed for indigent defendants who are accused in the Williamson County courts at law of misdemeanor offenses punishable by any term of imprisonment.

42. Williamson County has taken specific actions in order to benefit from this new statutory structure for the provision of indigent defense services. On August 20, 2002, the Williamson County Commissioners' Court adopted a resolution authorizing Defendant Doerfler to apply for indigent defense grant funding from the Task Force. In its resolution, the Commissioners' Court designated Defendant Doerfler as the "Program Director" for the county's indigent defense program, a position defined in state regulations as the "officer or employee responsible for program operation or monitoring or implementation of the indigent defense plan and who will serve as the point-of-contact regarding the program's day-to-day operations." 1 TEX. ADMIN CODE § 173.301. Defendant Doerfler applied for state indigent defense funding for fiscal year 2003 on September 26, 2002, identifying himself as the Program Director on the grant application.

43. For fiscal years 2004, 2005, and 2006, the Williamson County Commissioners' Court again designated Defendant Doerfler Program Director and authorized him to apply for state indigent defense grant funds, and Defendant Doerfler applied for those funds as authorized.

44. In order to receive the grant funds applied for by Defendant Doerfler for fiscal years 2003 to 2006, Williamson County had to ensure that the county court at law and district court judges operating within its borders approved countywide indigent defense procedures as required by the Fair Defense Act, and that those procedures contained specific provisions required by the Task Force. See TEX. CRIM. PROC. CODE § 26.04. This grant condition was satisfied by the adoption of Williamson County's "Joint Felony and Misdemeanor

Court Rules,” which became effective on January 1, 2002, and which subsequently have been amended as the Task Force has from time to time adopted additional grant requirements.

45. In exchange for its commitment to comply with the Fair Defense Act, Williamson County has been awarded approximately \$540,000 in state grant funds during fiscal years 2003 to 2006.

46. Nevertheless, in contravention of its responsibilities under federal and state law and its commitments under state indigent defense grant program, Defendants Williamson County and Doerfler systematically deprive persons accused of misdemeanor offenses of their right to counsel as guaranteed by the United States Constitution, the Texas Constitution, the Texas Code of Criminal Procedure, and local rule.

47. Under the federal and state law as well as Williamson County’s indigent defense procedures, Defendants Brooks’, Wright’s, and Higginbotham’s duties include advising defendants appearing in the Williamson County courts at law of the right to counsel, appointing counsel for eligible defendants, and ensuring that all waivers of the right to counsel are knowing and voluntary. Defendant Eastes has similar responsibilities when defendants appear before him for magistration under Article 15.17 of the Texas Code of Criminal Procedure. Despite these obligations, Defendants Brooks, Wright, Higginbotham, and Eastes systematically deprive persons accused of misdemeanor offenses of their right to counsel as guaranteed by the United States Constitution, the Texas Constitution, the Texas Code of Criminal Procedure, and local rule.

48. *Well over half* of defendants found guilty of some offense in the Williamson County courts at law in the last two years *were not represented by counsel*. These individuals were denied their right to counsel as a result of patently illegal practices such as

denying counsel to people whose families post bond, providing unrepresented defendants with inaccurate information about the right to counsel, encouraging unrepresented defendants who have not waived counsel to discuss their cases with prosecutors or other court personnel, and encouraging unrepresented defendants to enter uncounseled pleas of guilty or no contest.

A. PROCEEDINGS BEFORE THE MAGISTRATE

49. All persons arrested in Williamson County for a misdemeanor offense punishable by imprisonment appear before a magistrate, usually Defendant Eastes, in proceedings conducted in the Williamson County Jail shortly after their arrest. These proceedings are held in a secure area within the jail and are not open to family members or members of the public.

50. During this initial hearing in the Williamson County Jail, the magistrate reviews the basis for each person's arrest and determines whether there is probable cause to support the arrest. If the magistrate finds that an arrest is not supported by probable cause, then the person arrested must be released. If probable cause is found, however, the magistrate determines and sets an amount for bail. If the person cannot post the bail amount set by the magistrate, he or she remains in custody at the Williamson County Jail pending trial.

51. During this initial hearing, the magistrate also informs each person of a number of specific rights as required by Article 15.17 of the Texas Code of Criminal Procedure. By statute, the magistrate is required to inform each person of his or her right to counsel, including the right to request the appointment of counsel if he or she is indigent. See TEX. CRIM. PROC. CODE § 15.17 (a) ("The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel."). The

magistrate also is required to provide the accused an opportunity to request counsel and reasonable assistance in doing so. Id.

52. In Williamson County, the magistrate asks each person whether they plan to hire an attorney. The magistrate *does not* ask whether the defendant wants to request the appointment of counsel. Based on the individual's answer, the magistrate then completes a standardized form indicating that a person has requested appointed counsel, plans to hire counsel, or intends to proceed without counsel.

53. Persons appearing before the magistrate in Williamson County are not informed of the financial standard for determining whether they are eligible for appointed counsel and are not provided sufficient information to evaluate whether they have a right to appointed counsel. No lawyer is provided to consult with them.

54. Instead, persons appearing before the magistrate in Williamson County who are charged with offenses that could result in imprisonment are specifically and intentionally discouraged from requesting court-appointed counsel if their family members and/or friends may be able to collect the funds necessary to post bond. In direct violation of Texas statute, persons appearing before the magistrate are instructed to wait a few days before they file a written request for counsel so that an appointment may be avoided if they will be able to bond out of jail. They are specifically informed that the magistrate will not appoint counsel for persons who are going to be released from jail on bond. Thus, the information provided to persons appearing before the magistrate inaccurately suggests that persons who are released on bond are not eligible to receive appointed counsel and should not bother to apply.

55. As a result of Williamson County's practices, persons who cannot afford to hire a lawyer are denied representation by appointed counsel after adversarial judicial

proceedings have been initiated against them, in violation of their constitutional and statutory rights. Even though a number of these persons verbally request appointment of counsel before the magistrate, the majority of individuals who do so follow the magistrate's advice and refrain from signing a written request for counsel because they are intentionally led to believe they will be ineligible for appointed counsel if someone is able to post bond for them. Furthermore, they proceed to subsequent stages of their criminal case having been provided misleading information about their eligibility for appointed counsel and with an incorrect understanding of their right to counsel if they are released on bond.

B. COUNTY COURT AT LAW PROCEEDINGS FOR DEFENDANTS IN JAIL AT THE TIME OF FIRST APPEARANCE

56. After the County Attorney's office files an information against them, persons accused of misdemeanor offenses punishable by imprisonment are brought before one of the county courts at law for a "first appearance docket." Persons who have not posted bond and who are still in jail at the time their cases are set on the first appearance docket are brought before one of the county courts at law, usually on Thursday mornings. Defendants Brooks, Wright, and Higginbotham alternate presiding over the first appearance docket for persons who have not posted bond, with each presiding over the docket approximately once every three weeks.

57. Persons whose cases are set on the jail first appearance docket are brought to one of the Williamson County courts at law from the Williamson County Jail located next door. Typically, the accused arrive in shackles and are seated next to each other and remain shackled together throughout most of the proceeding. Williamson County prosecutors are present in the courtroom when the accused persons arrive.

58. Once all of the persons accused of offenses are seated, either in the courtroom or in a holding cell to the rear of the courtroom, one of Defendants Brooks, Wright, or Higginbotham enters the courtroom as the presiding judge of the day's proceedings.

59. If the group of persons accused of crime is seated in the holding cell, the presiding judge orders a bailiff to bring a few of the accused out to the courtroom at a time. The accused are taken to a table in order to speak to a prosecutor about their case.

60. If the group of accused is seated in the courtroom, the Williamson County prosecutors begin to approach each of the accused individuals, who often are still shackled together, to talk with each accused about his or her case.

61. In their courtroom conversations with people accused of crime, the Williamson County prosecutors discuss with unrepresented persons plea deals that include waiver of the right to counsel. Such discussions typically occur before the accused person has waived his or her right to counsel, or had an opportunity to appear individually before the presiding judge and request appointed counsel. Defendants Brooks, Wright, and Higginbotham, in their roles as presiding judge, often are present in the courtroom while the discussions between the Williamson County prosecutors and the unrepresented accused persons take place, and they do not interrupt the discussions or ensure that such discussions do not proceed until the accused has an opportunity to request counsel or has waived counsel. In fact, in the presence of the presiding judge, many of the unrepresented accused persons agree to plead either guilty or no contest to the charges against them during these discussions with the prosecutors.

62. The presiding judge then speaks to the accused persons, typically only after the accused have been directed to speak to a prosecutor and have agreed to a plea deal. The presiding judge informs the accused about the general classification of misdemeanor offenses as

either Class A or B misdemeanors, the statutory range of punishment for Class A and B misdemeanors, and possible pleas to such charges. The presiding judge does not inform the accused of any of the elements of the misdemeanors with which they are charged.

63. The presiding judge generally tells the accused they have a right to counsel and that they may plead not guilty and request appointed counsel if they are indigent. However, the presiding judge suggests to the accused that most of them should be able to resolve their cases by speaking directly to the prosecutor without the assistance of defense counsel, and endorses plea deals that are the result of uncounseled discussions between the accused and prosecutors that occurred before the accused had been informed of the right to counsel and had an opportunity to appear before the court and request counsel. The presiding judge also cautions the accused that they will be ordered to pay the cost of appointed counsel at the conclusion of their cases and that appointed counsel therefore is not really free. The presiding judge does not explain to the accused that they will not have to reimburse the state for the cost of court-appointed counsel if they cannot afford to do so or that the cost of appointed counsel cannot be assessed if the accused is not convicted of the charged offense.

64. Persons in custody in Williamson County and appearing before Defendants Brooks, Wright, and Higginbotham at their first appearance are not informed of the financial standard for determining if they are eligible for appointed counsel, nor are they given any information from which to evaluate whether they have a right to appointed counsel. No lawyer is provided to consult with them or answer questions regarding their right to appointment of counsel.

65. The presiding judge then asks each person accused of crime if he or she knows of what charge they stand accused. If an accused person responds that he or she does not

know what charge is pending, the presiding judge will read the charge but does not inform any of the accused of the elements of the offenses with which they are charged.

66. Next, the presiding judge asks each person accused of crime how they plead. The vast majority of individuals plead guilty or no contest without counsel. With respect to the individuals who plead not guilty, the presiding judge asks whether they plan to retain counsel, but they typically are not asked whether they would like to request appointed counsel. Some of the accused reply to the presiding judge's question about their intent to hire counsel by replying that they would like to request appointed counsel. Persons who indicate a desire to request appointed counsel are provided with an application form.

67. After an accused individual pleads guilty or no contest, that person is instructed to sign a written plea form that contains language purporting to waive the accused person's right to counsel – though that right has never been adequately explained to the accused and the accused person's understanding of that right has been distorted through Williamson County's various practices of discouraging requests for counsel. The presiding judge then pronounces sentence against the accused person, which usually includes an immediate or suspended term of imprisonment. Again, throughout this process, the accused person has not been properly advised of his or her right to counsel and, in fact, Defendants have conspired to deprive indigent defendants of the right to appointed counsel.

C. COUNTY COURT AT LAW PROCEEDINGS FOR DEFENDANTS RELEASED ON BOND AT THE TIME OF FIRST APPEARANCE

68. A different procedure is followed for persons accused of misdemeanors that involve the possibility of punishment by imprisonment but who have posted bond and been released from the Williamson County Jail. Persons who have posted bond and who are not in custody at the time the Williamson County Attorney's office files an information against them

are set on a bond “first appearance docket,” which is held on Wednesday mornings. Defendants Brooks, Wright, Higginbotham, and, occasionally, visiting judges, alternate presiding over the bond first appearance docket, with each of Defendants Brooks, Wright, and Higginbotham presiding over the docket approximately once every three weeks.

69. Persons whose cases are set on the bond first appearance docket are instructed to arrive at the county courthouse at 8:30 a.m. When they arrive, they are directed to a county court at law courtroom and are told to sit in the gallery. A bailiff is standing at the door to the courtroom and tells people attempting to enter the courtroom that only persons with cases on the docket are allowed in the courtroom. The bailiff tells family members of the accused and members of the public that they are not allowed to be present during the court proceedings. Bailiffs stationed inside the courtroom also repeatedly ask whether there are any family members or members of the public inside the courtroom, and order any person who does not have a case on the first appearance docket to leave the courtroom.

70. Beginning at or before 8:30 a.m., a bailiff addresses the accused as a group and explains courtroom procedures. On occasion, the bailiff will make comments about the right to counsel during this presentation, and will tell defendants that they should not waste the court’s time asking for appointed counsel.

71. Representatives from the clerk’s office and the probation department then take turns talking to the assembled group of accused. The representative from the clerk’s office discusses procedures for paying court costs assessed in connection with a criminal conviction. The probation representative discusses the standard terms of probation and how and when to report for probation upon conviction. The probation representative also talks to the accused about more general legal issues, such as the various pleas that the accused may enter when called

before the judge and the probation representative's understanding of the consequences of each of those pleas. The probation officer informs the accused that most of them will "have an opportunity" to talk to the prosecutor and resolve their case during the course of the day.

72. During the preliminary presentations by the bailiff, the clerk's representative, and the probation representative, persons with cases set on the bond first appearance docket are not informed of the financial standard for determining if they are eligible for appointed counsel, and are not given sufficient information to evaluate whether they have a right to appointed counsel. No lawyer is provided to consult with them.

73. Before and during these preliminary presentations by the bailiff, the clerk's representative, and the probation representative, a Spanish language interpreter occasionally interjects to inquire if there are any accused who have difficulty with the English language. Persons who identify themselves as Spanish speakers are told to sit with the interpreter in the front of the courtroom. Occasionally the interpreter takes all of the Spanish speakers into a room that is not visible from the courtroom.

74. After the bailiff, the clerk's representative, and the probation representative have completed the preliminary presentations, the judge presiding over the bond first appearance docket that week enters the courtroom. The presiding judge talks to the group as a whole about the classification of common misdemeanor offenses as Class A or B misdemeanors, the statutory range of punishment for Class A and B misdemeanors, and possible pleas. The presiding judge does not inform the accused of any of the elements of the misdemeanors with which they are charged.

75. Speaking to the accused as a group, the presiding judge states that the accused have a right to counsel, and that they may plead not guilty and request appointed counsel

if they are indigent. However, the presiding judge encourages the accused to enter a plea of guilty or no contest, which will allow them to “have an opportunity” to talk to the prosecutor and resolve their case by the end of the day. The presiding judge suggests to the accused that most of them should be able to resolve their cases by speaking to the prosecutor without their own lawyer. The presiding judge also tells the accused that they cannot talk to the prosecutor and attempt to resolve their case unless they enter a plea of guilty or no contest. The presiding judge admonishes the accused not to assert the right to counsel unless they are confident that they will be able to obtain counsel prior to the next court appearance, and warns the accused that they will face serious consequences if they return to court without counsel. On occasion, the presiding judge will state that he or she will increase the amount of bail set in a particular case and return the accused to jail if an accused asserts the right to counsel yet fails to obtain counsel by the next court setting. The presiding judge also cautions the accused that they will be ordered to pay the cost of appointed counsel at the conclusion of their cases and that appointed counsel therefore is not really free. The presiding judge does not explain to the accused that they will not have to reimburse the state for the cost of court-appointed counsel if they cannot afford to do so or that the cost of appointed counsel cannot be assessed if the accused is not convicted of the charged offense.

76. Persons released on bond and who appear before the presiding judge on the bond first appearance docket are not informed by the presiding judge of the financial standard for determining if they are eligible for appointed counsel, and are not given sufficient information to evaluate whether they have a right to appointed counsel. No lawyer is provided to consult with them.

77. After the presiding judge delivers these general admonitions to the entire group of persons set on the bond first appearance docket, the presiding judge calls defendants before the bench, either individually or in small groups. The presiding judge sometimes calls the names of the Spanish-speaking accused and brings them to the bench as a group and takes their pleas. At other times, the presiding judge will call the Spanish-speaking accused individually. Occasionally, the Spanish-speaking accused are not present in court during the presiding judge's general admonitions to the accused.

78. When defendants appear before the presiding judge, the presiding judge proceeds to ask each person if he or she knows what charge has been brought against him or her. The presiding judge reads the charge if a person indicates that he or she does not know what charge is pending. The presiding judge does not inform any of the accused of the elements of the offenses with which they are charged.

79. The presiding judge then asks each of the accused in the smaller group how they plead. The majority of the accused plead guilty or no contest without counsel. Persons who plead not guilty are asked whether they plan to retain counsel. They generally are not specifically asked whether they would like to request appointed counsel. Some of the accused reply to the presiding judge's question about their intent to hire counsel by replying that they would like to request appointed counsel. Persons who indicate a desire to request appointed counsel are provided with an application form. Persons who indicate that they plan to retain counsel are warned that they will face serious consequences if they return for their next court appearance without having hired counsel.

80. Persons who enter a plea of guilty or no contest are instructed to sign a form and to go sit in the hallway and wait for a prosecutor to call for them and discuss their case.

The prosecutors call for the accused either individually or in groups and take the accused into nearby rooms and hallways to discuss their cases. When talking to a prosecutor, the accused are informed of the prosecutor's sentencing offer and must accept or reject it.

81. After all of the accused have appeared before the court to enter their pleas, and while the accused who have entered a plea of guilty or no contest are talking to the prosecutors, the presiding judge returns to the accused who entered pleas of not guilty and requested appointment of counsel. The presiding judge receives each accused's application for appointed counsel and asks the accused a number of questions. These questions generally do not concern the accused's income and whether that income allows him or her to retain an attorney without substantial economic hardship, but instead focus solely on the accused's employment status, ability to work, and living arrangements. Defendants Brooks, Wright, and Higginbotham, when presiding over the bond first appearance docket, routinely deny applications for appointed counsel submitted by accused who are financially unable to hire an attorney and therefore have a right to appointed counsel. Defendants Brooks, Wright, and Higginbotham on occasion even deny appointed counsel to accused who are unemployed and who have no income, and instead reset the accused person's case and order him or her to find employment and hire an attorney prior to the next court appearance. As a result of these practices, Defendant Williamson County illegally denies counsel to defendants who are released on bond and who are not disabled.

82. After Brooks, Wright, or Higginbotham completes his or her review of appointed counsel requests, the accused who entered pleas of guilty or no contest and who have met with the prosecutor to discuss punishment are instructed to appear before that presiding judge again for sentencing. The accused are instructed to sign a written plea form that contains language purporting to waive their right to counsel – though that right has never been adequately

explained to the accused and has been distorted through Williamson County's various practices of discouraging requests for counsel. The presiding judge pronounces sentence, which usually includes an immediate or suspended term of imprisonment. Throughout this process, the accused have not been properly advised of their right to counsel and, in fact, Defendants have conspired to deprive indigent defendants of the right to appointed counsel.

D. DENIAL OF MISDEMEANOR DEFENDANTS' RIGHT TO COUNSEL

83. As detailed above, a majority of persons who are charged with misdemeanor offenses punishable by imprisonment in the Williamson County courts at law plead guilty or no contest to those charges. And nearly all such persons are never properly informed of their right to counsel and never receive any assistance of counsel, even though almost all receive sentences of imprisonment.

84. Persons who plead not guilty are denied the right to self-representation, because the accused are not allowed to meet with a prosecutor and attempt to resolve their case unless they enter a plea of guilty or no contest.

85. If Defendants Brooks, Wright, or Higginbotham find by a preponderance of the evidence that an accused who was given a suspended sentence of imprisonment has failed to satisfy certain conditions of community supervision, Defendants Brooks, Wright, and Higginbotham often revoke the suspended sentence and imprison the accused. Accused are denied the assistance of counsel in their revocation proceedings in the Williamson County courts at law as a result of practices nearly identical to those described in paragraphs 32-84 *supra*.

86. At no point during their hearings before the magistrate, their "first appearance," or their revocation hearings do the accused clearly and unequivocally invoke their right to self-representation. Defendants Brooks, Wright, and Higginbotham do not establish on

the record that uncounseled defendants have knowingly, intelligently, and voluntarily decided to waive counsel and represent themselves.

87. As a result of this systematic denial of the right to counsel, persons accused of misdemeanors in the Williamson County courts at law enter pleas of guilty or no contest and make other significant legal decisions without sufficient understanding of their right to counsel and other constitutional and legal rights. They do not understand the government's burden of proof. They do not understand the elements of the offenses with which they are charged, and may plead guilty to offenses they did not commit. They do not understand the consequences of their guilty pleas. They do not fully understand the prospect of going to jail or prison, particularly when they receive a suspended sentence and probation. They do not understand applicable sentencing alternatives, and may be incarcerated at taxpayer expense for periods of time longer than are necessary to ensure public safety. They stand alone against the State, defenseless and uninformed.

88. Although the Williamson County courts at law sentence numerous persons every week to suspended and/or immediate terms of imprisonment, Defendant Williamson County does not ensure that they are represented by a lawyer or knowingly and intelligently waive their right to counsel. Defendant Williamson County has failed to provide an adequate system of indigent representation for criminal defendants in its county courts at law.

E. PLAINTIFFS LACK AN ADEQUATE REMEDY AT LAW

89. Plaintiffs have suffered irreparable harm or are at imminent and serious risk of suffering such harm because of Defendants' failure to adequately and properly inform Plaintiffs of their right to appointed counsel and Defendants' conspiracy to deprive indigent accused persons of their right to appointed counsel. There is no adequate remedy at law to address this deprivation of counsel.

F. CLASS ACTION ALLEGATIONS

90. Plaintiffs bring this action on behalf of themselves and as representatives of a class of persons, pursuant to Rule 42 of the Texas Rules of Civil Procedure. The class consists of all individuals who are accused of a misdemeanor crime in Williamson County who face the possibility of incarceration as a punishment if convicted of such crime and who cannot afford counsel (the "Class").

91. Members of the Class are so numerous that joinder of all members is impracticable.

92. There are questions of law and fact common to all members of the Class.

93. Plaintiffs' claims are typical of the claims of the other members of the Class. Both Plaintiffs and the absent members of the Class have been and continue to be harmed because of Defendants' unlawful activities as alleged herein.

94. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiffs. Plaintiffs have no interests that are contrary to or in conflict with those of the Class that Plaintiffs seek to represent.

95. Defendants have acted and refused to act on grounds generally applicable to Plaintiffs and the members of the Class as a whole, thereby making appropriate final injunctive relief with respect to the Class as a whole.

96. In addition, common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class and a class action is superior to all other available methods for the fair and efficient adjudication of this controversy.

97. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude their maintenance as a class action.

VI.
FIRST CLAIM FOR RELIEF
(VIOLATION OF SIXTH AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION)

98. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 97 of the Petition as if fully set forth herein.

99. Pursuant to 42 U.S.C. § 1983, Plaintiffs claim that Defendants Williamson County, Doerfler, Brooks, Wright, Higginbotham, and Eastes and their successors and assigns, acting under color of the laws of the State of Texas, have deprived, and conspired to deprive, and have allowed to be deprived, indigent persons accused of crimes in Williamson County for which there is a possibility of imprisonment as punishment of their right to counsel and of due process in violation of the Sixth and Fourteenth Amendments to the United States Constitution through a custom and practice of deliberately failing to inform accused persons of their right to counsel, providing inaccurate information to accused persons about their ability to qualify for appointed counsel, failing to provide counsel to indigent defendants who have requested such counsel, failing to adequately inform accused persons of the charges against them, and permitting Williamson County prosecutors to confront uncounseled accused persons regarding the merits of their cases without allowing them to request appointment of counsel. Moreover, by refusing to allow persons accused of crime to discuss their cases with a prosecutor unless such persons enter pleas of guilty or no contest, Defendants also have deprived and conspired to deprive persons accused of crime of the right to self-representation in violation of the Sixth and Fourteenth Amendments to the United States Constitution.

VII.
SECOND CLAIM FOR RELIEF
(VIOLATION OF ARTICLE I, SECTION 10 OF THE TEXAS CONSTITUTION)

100. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 97 of the Petition as if fully set forth herein.

101. Defendants Williamson County, Doerfler, Brooks, Wright, Higginbotham, and Eastes and their successors and assigns, acting under color of the laws of the State of Texas, have deprived and conspired to deprive and have allowed to be deprived, indigent persons accused of crimes in Williamson County for which there is a possibility of imprisonment as punishment of their right to counsel in violation of Article I, Section 10 of the Texas Constitution through a custom and practice of deliberately failing to inform accused persons of their right to counsel, providing inaccurate information to accused persons about their ability to qualify for appointed counsel, failing to provide counsel to indigent defendants who have requested such counsel, failing to adequately inform accused persons of the charges against them, and permitting Williamson County prosecutors to confront uncounseled accused persons regarding the merits of their cases without allowing them to request appointment of counsel. Moreover, by refusing to allow persons accused of crime to discuss their cases with a prosecutor unless such persons enter pleas of guilty or no contest, Defendants also have deprived and conspired to deprive persons accused of crime of the right to self-representation in violation of Article I, Section 10 of the Texas Constitution.

VIII.
THIRD CLAIM FOR RELIEF
(VIOLATION OF TEXAS FAIR DEFENSE ACT)

102. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 97 of the Petition as if fully set forth herein.

103. Defendants Williamson County, Doerfler, Brooks, Wright, Higginbotham, and Eastes and their successors and assigns, acting under color of the laws of the State of Texas, have routinely violated the requirements of the Texas Fair Defense Act and other Texas statutes relating to rights of indigent defendants to appointment of counsel.

IX.
FOURTH CLAIM FOR RELIEF
(VIOLATION OF OPEN COURTS PROVISIONS)

104. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 97 of the Petition as if fully set forth herein.

105. By regularly acquiescing in or condoning the prohibition or prevention of members of the public from entering and observing proceedings in which persons are accused of violating the criminal laws of the State of Texas, Defendants Williamson County, Doerfler, Brooks, Wright, Higginbotham, and Eastes routinely violate the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 13 of the Texas Constitution, which requires that all Texas courts be open.

X.
RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that, following a trial on the merits, the Court enter judgment on their Petition by entering an injunction requiring the following:

- (A) at the time that all persons accused of an offense for which a punishment of imprisonment is possible come before a magistrate after their arrest, Defendants fully and completely inform all such persons regarding the right to appointed counsel, including providing accurate information regarding the standard for indigence under Texas law and local rule;

(B) at the time that all persons accused of an offense for which a punishment of imprisonment is possible make their first appearance in the Williamson County courts at law, Defendants fully and completely inform all such persons regarding the right to appointed counsel, including providing accurate information regarding the standard for indigence and their financial eligibility for appointed counsel under Texas law and local rule;

(C) Defendants fairly evaluate the requests for appointment of counsel made by all persons accused of an offense for which a punishment of imprisonment is possible in Williamson County, following the guidelines and standards contained in Texas law and local rule, without reference to whether the accused person's family and/or friends are able to post bond or to whether the accused person is physically unable to work;

(D) Defendants refrain from discouraging and deterring, and from allowing other court personnel to discourage and deter, any person accused of an offense for which a punishment of imprisonment is possible from asserting his or her right to counsel and from requesting appointed counsel;

(E) Defendants refrain from promoting, facilitating, and/or enabling any Williamson County prosecutor to have contact with unrepresented and uncounseled persons accused of an offense for which a punishment of imprisonment is possible unless and until such person knowingly and voluntarily waives his or her right to counsel;

(F) Defendants refrain from interfering with the right of persons accused of crime to represent themselves, including during any period of time prior to entry of a plea, and with the ability of any Williamson County prosecutor and/or any accused who has

knowingly and voluntarily waived his or her right to counsel to discuss the accused's case; and

(G) Defendants allow members of the public access to court proceedings, including magistration and first appearance proceedings.

In addition to, or in the alternative to, the injunctive relief requested above, Plaintiffs respectfully request that, following a trial on the merits, the Court enter judgment on their Petition by declaring the following:

(A) that Defendants' practice at magistration of providing persons accused of an offense for which a punishment of imprisonment is possible with incomplete and inaccurate information regarding the right to counsel and of discouraging unrepresented defendants from requesting appointed counsel violates the United States Constitution, the Texas Constitution, and the Texas Code of Criminal Procedure;

(B) that Defendants' practice at first appearance proceedings of providing persons accused of an offense for which a punishment of imprisonment is possible with incomplete and inaccurate information regarding the right to counsel, of discouraging unrepresented defendants from requesting appointed counsel, and of encouraging unrepresented defendants to enter pleas of guilty or no contest violates the United States Constitution, the Texas Constitution, and the Texas Code of Criminal Procedure;

(C) that Defendants' practice of denying counsel to persons accused of crime for which a punishment of imprisonment is possible and who are able to post bond, or whose family members and friends post bond on their behalf, when such persons are not financially able to hire a lawyer violates the United States Constitution, the Texas Constitution, and the Texas Code of Criminal Procedure;

(D) that Defendants' practice of encouraging unrepresented persons accused of crime to discuss their cases with prosecutors and other court personnel when the accused have not knowingly and voluntarily waived their right to counsel violates the United States Constitution, the Texas Constitution, and the Texas Code of Criminal Procedure;

(E) that Defendants' practice of requiring persons accused of crime and who have knowingly and voluntarily waived their right to counsel to enter a plea of guilty or no contest before they can discuss their case with a prosecutor violates the United States Constitution, the Texas Constitution, and the Texas Code of Criminal Procedure; and

(F) that Defendant's practice of denying members of the public access to public court proceedings including magistration and the first appearance dockets violates the United States Constitution and the Texas Constitution.

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Plaintiffs also respectfully request that, following a trial on the merits, the Court award Plaintiffs their attorneys' fees and other expenses incurred in this action, and award Plaintiffs all such other and further relief as the Court may deem just and proper.

Dated: June 12, 2006

Respectfully submitted,

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