



Policy Monitoring Review of Collin County's Indigent Defense Systems

February 12, 2016



209 W. 14th Street, Room 202
 Austin, Texas 78701
 Phone: 512-936-6994; Fax: 512-463-5724
www.tidc.texas.gov

Chair:

Honorable Sharon Keller Chair – Presiding Judge, Court of Criminal Appeals

Vice Chair:

Honorable Olen Underwood Vice-Chair – Presiding Judge, 2nd Administrative Judicial Region of Texas

Ex Officio Members:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan L. Hecht	Austin, Chief Justice, Supreme Court of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Brandon Creighton	Conroe, State Senator
Honorable John Whitmire	Houston, State Senator
Honorable Andrew Murr	Kerrville, State Representative
Honorable Abel Herrero	Robstown, State Representative

Members Appointed by the Governor:

Honorable Olen Underwood	Conroe, Presiding Judge, 2 nd Administrative Judicial Region of Texas
Honorable Jon Burrows	Temple, Bell County Judge
Honorable Linda Rodriguez	Hays County
Mr. Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Mr. Don Hase	Arlington, Attorney, Ball & Hase

Staff:

Jim Bethke	Executive Director	512-936-6994	Jbethke@tidc.texas.gov
Brandon Bellows	Policy Analyst	512-936-6996	Bbellows@tidc.texas.gov
Sharon Calcote	Project Manager	512-936-0990	Sharon.calcote@txcourts.gov
Edwin Colfax	Grant Program Manager	512-463-2573	Ecolfax@tidc.texas.gov
Traci Cruz	Grant Coordinator	512-936-7551	Tcruz@tidc.texas.gov
Jamie Dickson	Special Counsel/Policy Analyst	512-463-2573	Jdickson@tidc.texas.gov
Marissa Kubinski	Executive Assistant	512-936-6994	Mkubinski@tidc.texas.gov
Joel Lieurance	Senior Policy Monitor	512-936-7560	Jlieurance@tidc.texas.gov
Wesley Shackelford	Deputy Director/Special Counsel	512-936-6997	Wshackelford@tidc.texas.gov
Debra Stewart	Fiscal Monitor	512-936-7561	Dstewart@tidc.texas.gov
Joan Thomas	Publications Manager/Analyst	512-463-8015	Jthomas@tidc.texas.gov
Sharon Whitfield	Budget & Accounting Analyst	512-936-6998	Swhitfield@tidc.texas.gov
Jaret Kanarek	Law Clerk	512-463-2889	Jkanarek@tidc.texas.gov

Background

The Texas Indigent Defense Commission (TIDC) made two site visits to Collin County in 2012 to assess the county's indigent defense systems and determine if the county was meeting Fair Defense Act requirements. In February 2013, the Commission issued the resulting initial policy monitoring report, which made several recommendations to assist Collin County in meeting the core requirements of the Fair Defense Act. Recommendations covered the local procedures for conducting Article 15.17 hearings and the timeliness of appointments of counsel in juvenile and felony cases. Commission staff found that the county's procedures were in compliance with the other core requirements of the Fair Defense Act.

One area addressed by the report was Collin County's method of conducting magistrate warnings. At the time of the initial review, Collin County provided recorded magistrate warnings as arrestees were screened by pretrial services for counsel. Afterwards, the magistrate found probable cause and set bond through electronic broadcast. This method of conducting magistration hearings did not meet two requirements of Article 15.17. Article 15.17(a) requires warnings to be either in person or through videoconference. Article 15.17(e) requires magistrates to ask arrestees if they want appointment of counsel and to record their responses. The Commission recommended that magistrates in Collin County provide live Article 15.17 warnings and make a record of the magistrate asking whether the arrestee wants to request appointed counsel. Collin County responded to these recommendations by providing in-person group warnings, asking each individual whether he/she wants to request appointed counsel, and marking whether each person requests appointed counsel.

A second area addressed by the report was Collin County's method for appointing counsel in felony cases. At the time of the monitor's review, the Indigent Defense Eligibility Specialist acted as the appointing authority in most cases. However, if a felony case had already been filed against the defendant, the request was transferred from the Indigent Defense Eligibility Specialist to the court having jurisdiction over the case to make the appointment. This extra step resulted in appointments of counsel later than the one working day required by statute. The Commission recommended that Collin County implement processes to ensure timely appointment of counsel in felony cases. To rectify the issue, the judges gave the Indigent Defense Eligibility Specialist the authority to appoint counsel in all felony cases.

The final area addressed by the report was Collin County's method of appointing counsel for juveniles who were not detained. At the time of the initial report, the juvenile court typically appointed counsel at the juvenile's first appearance. Under Section 51.101(d) of the Family Code, once a petition is served on

the juvenile, the court has five working days to appoint counsel for the juvenile. Because the court was waiting until the juvenile's first appearance to determine indigence and appoint counsel, appointments were later than the timeframe required by Section 51.101(d). The Commission recommended that Collin County implement procedures to ensure timely appointment of counsel when a petition is served on a juvenile who is out of custody. Collin County responded by requiring juvenile probation officers provide families with affidavits of indigence, and if the family desires appointed counsel, have the family complete the form immediately.

February 2016 Follow-up Review

Staff members Joel Lieurance and Jamie Dickson conducted a follow-up review of Collin County with a site visit from April 6-8, 2015. Throughout this report, references to Commission staff will use the term "monitor." The monitor examined whether Collin County successfully addressed the recommendations from the February 2013 report. During the on-site visit, the monitor observed the pre-trial screening process prior to the Article 15.17 hearing and the Article 15.17 hearing. The monitor then examined juvenile and felony case files and met with the local administrative district judge and the juvenile board chair. In January 2016, the monitor viewed video recordings of Article 15.17 hearings that occurred in December 2015 and a videoconferenced Article 15.17 hearing.

Indigence Screening

On the morning of April 8, 2015 the monitor observed Collin County staff (three screeners and one clerk) take requests for counsel from arrestees and screen for indigence prior to the Article 15.17 hearing. Approximately 35 arrestees were present for the screening. Each arrestee was told of the charges they were facing and was individually asked his/her intention regarding representation as shown below.

On the charges listed below, I wish to:

- *Waive my right to counsel*¹
- *Hire my own attorney:* _____
- *Request court appointed counsel*

Arrestees who requested counsel were given an affidavit of indigence to complete. Staff answered questions and provided basic assistance needed to complete the form. The screeners reviewed each form for accuracy (e.g. the form did not merely contain several marks with the 'N/A' notation).

If either the sheriff's office or screeners found an indication that the arrestee may have a mental health issue, the arrestee's record was marked to indicate this possibility. When these arrestees receive appointed counsel, they are appointed

¹ Appendix A. Screeners asked this question only of arrestees facing solely misdemeanor charges.

attorneys with specialized mental health experience from the managed assigned counsel office.

April 2015 Article 15.17 Hearings

After the screening process, arrestees were brought before a Collin County justice of the peace for an Article 15.17 hearing through videoconference. By replacing a video recording with videoconference, Collin County successfully addressed the previous report's recommendation regarding the use of live warnings.² Arrestees appeared before the magistrate in groups of about ten. The magistrate provided the warnings listed in Article 15.17(a) of the Code of Criminal Procedure to the whole group.

For each person arrested on a class B misdemeanor offense or higher, the magistrate first made a probable cause determination and set bond. Rather than ask each arrestee whether he/she wanted to request counsel, the magistrate then reiterated the choice made to screeners as to whether the arrestee wanted to waive, retain, or request counsel. However, Article 15.17(e) requires the magistrate to ask whether the arrestee wants to request counsel and mark the request:

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

See Recommendation 2 below in reference to this matter.

December 2015 and January 2016 Article 15.17 Hearings

In December 2015, TIDC staff learned from Office of Court Administration (OCA) interpreters that jail staff were providing the warnings required under Article 15.17 for Spanish speaking arrestees at the Collin County Jail. The monitor viewed video recordings of Article 15.17 hearings that occurred between December 7 and December 18 provided by Justice of the Peace for Precinct 1 and watched a live videoconferenced hearing in January 2016 conducted by Justice of the Peace for Precinct 3-2.

During the December hearings, the magistrate first warned arrestees as a group of the requirements under Article 15.17(a), including the right to remain silent,

² A recording of the Article 15.17 warnings is allowed as a supplement to the live warnings, but Article 15.17(a) does not allow for the replacement of live warnings. Arrestees in Plano and Frisco receive Article 15.17 hearings from a municipal judge in those cities.

to request court appointed counsel, and to an examining trial (in the case of a felony). The judge informed the defendants of their entitlement to bail and the procedures for requesting court appointed counsel.

Video recorded warnings provided by the Justice of the Peace for Precinct 1 confirmed that non-English speaking arrestees were not being brought before the magistrate and given the appropriate warnings under Article 15.17(a). Article 15.17(a) requires the person making the arrest or having custody of the person arrested to, within 48 hours, take the person arrested or have him taken before the magistrate to be given the required warnings under Article 15.17. Article 15.17(a) also requires that:

... If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate....

Articles 38.30 and 38.31 provide guidance to counties regarding interpretation for non-English speakers and deaf persons in criminal proceedings. Article 38.30(a-1) makes clear that while counties are allowed to utilize telephonic interpretation in certain circumstances, it must be before a judge or magistrate and at a criminal proceeding:

A qualified telephone interpreter may be sworn to interpret for the person in any criminal proceeding before a judge or magistrate if an interpreter is not available to appear in person at the proceeding...

The Justice of the Peace for Precinct 3-2 provided the warnings as required under Articles 15.17 and 38.30, bringing non-English speaking arrestees before him, giving the appropriate admonishments, and taking requests for counsel with the assistance of an interpreter from OCA.

February 2016 Recommendation 1: Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.

In April and December 2015, the justice of the peace failed to ask each defendant whether or not he or she would like to request court appointed counsel, as required by Article 15.17(e). In April 2015, the justice of the peace reiterated the arrestee's previous choice to screeners regarding whether or not he or she wanted appointed counsel. On the videos from December 2015, the magistrate failed to make any inquiry into the individual's choice regarding the appointment of counsel, instead noting at the beginning of the proceedings that some of the arrestees had requested court appointed counsel.

February 2016 Recommendation 2: Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel.

Collin County's Magistration Form

Collin County's magistrate warning form lists the option to request counsel as the last of three choices, rather than posing a binary question requiring a 'yes' or 'no' answer, as required by Article 15.17(e). The magistrate warning form mirrored the questions asked of defendants by the screeners and contained a space for the magistrate to mark one of the following three options:

The accused has announced he/she waives the right to counsel.

The accused has announced he/she is not indigent and intends to hire an attorney.

The accused had announced he/she is indigent and has requested court appointed counsel.³

Collin County must amend its magistrate warning form to include only a binary 'yes' or 'no' question regarding whether the arrestee requests counsel. Because screeners interview defendants and take initial requests for counsel before magistration, the county would benefit by aligning its initial indigent screening form with the magistrate warning form.

February 2016 Recommendation 3: The magistrate warning form must track the language of Article 15.17(e) regarding whether the arrestee would like to request counsel.

Appointment of Counsel in Felony Cases

Once an arrestee requests counsel, the magistrate must ensure that requests for counsel are transmitted to the appointing authority within 24 hours. Under Article 1.051(c), the appointing authority then has one working day to appoint counsel for those deemed indigent (in counties with a population of 250,000 or more).

In order to determine the timeliness of Collin County's felony appointment processes, the monitor examined 107 felony cases filed in FY2014 (October 2013 – September 2014). Of this sample, 70 cases contained appointment of counsel. Of these 70 cases, 63 received timely appointments of counsel / denials of indigence (90%

³ Appendix B.

timely).^{4,5} Of the seven untimely cases, all were very narrowly outside of the statutory time frames (six received the appointment/denial in two working days and one received it in three working days). See the following table for a summary of data showing the timeliness of counsel appointments. This percentage meets the Commission's threshold for presuming a jurisdiction's appointment procedures ensure timely appointment of counsel. Collin County has successfully addressed the previous report's recommendation regarding timely appointment of counsel in felony cases.⁶

Table 1: Times to Appointment in Felony Cases

Collin Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	107		
Appointment / denial of indigence occurred in:	70		
0 work days		20	28.6%
1 work day + 24 hour transfer		43	61.4%
Timely appointments		63	90.0%
Late appointments (more than 1 working day)		7	10.0%

Appointment of Counsel in Juvenile Cases

Under Section 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to appoint counsel for the juvenile or order the parents to retain counsel. This requirement can be problematic if the court is unable to quickly meet with the parents and either make an appointment of counsel or order counsel retained.

In order to determine whether counsel was appointed in a timely fashion for juveniles served with a petition, the monitor examined 75 case files.⁷ Counsel was either appointed, retained, or ordered retained in a timely fashion in 63 of the 75

⁴ Per the Commission's policy monitoring rules in [Title 1, §174.28\(c\)\(4\), Texas Administrative Code](#), the monitor considers the time from request until appointment of counsel to also apply to the time from request to denial of indigence.

⁵ In fourteen (14) of the cases, the monitor could not find a request for counsel. These cases appeared to be made in-court, and the monitor assumed the date of the request was the date of the appointment.

⁶ The threshold requires that at least 90% of the monitor's sample is timely.

⁷ The monitor reviewed nine additional cases in which no petition was served on the juvenile and no counsel was appointed or retained for the juvenile. These cases were not counted in the sample results.

cases (84.0% timely).⁸ This is below the Commission’s threshold for presuming a jurisdiction’s appointment procedures ensure timely appointment of counsel.⁹

While the court handling juvenile matters has made progress in obtaining requests for counsel early in the adjudication process, the current procedures do not yet meet the Commission’s threshold. The court may wish to make provisional appointments of counsel in those instances in which the court does not know if an attorney already represents a juvenile by the fifth working day after service of the petition on the juvenile. Under Section 51.101(d) of the Texas Family Code, an attorney appointed under the subsection continues to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the court. See the following table for a summary of the timeliness of counsel appointment in juvenile matters.

Table 2: Times to Appointment in Juvenile Cases

Collin Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of juvenile case files examined	75		
TIMELINESS OF COUNSEL APPOINTMENTS WHEN THE JUVENILE WAS SERVED WITH A PETITION			
Appointment of counsel occurred within 5 working days of petition being served on juvenile		33	44.0%
Retention of counsel occurred within 5 working days of petition being served on juvenile		12	16.0%
Indigence denied within 5 working days of petition being served on juvenile ¹⁰		18	24.0%
Total cases in which counsel was present in a timely fashion		63	84.0%
Total cases in which counsel was not present in a timely fashion		12	16.0%

February 2016 Recommendation 4: Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody.

⁸ The monitor presumed the case had a timely appointment of counsel if within five working days of the petition being served on the juvenile: counsel was appointed; counsel was retained; or indigence was denied (an implied order to retain counsel).

⁹ The threshold requires that at least 90% of the monitor’s sample is timely.

¹⁰ The monitor assumed that a denial of indigence is equivalent to an order to retain counsel.

Conclusion

The monitor enjoyed meeting with Collin County officials and staff and appreciates their cooperation during this review. While Collin County has successfully addressed several of the Commission's recommendations and made progress towards others, some work remains to be done towards meeting Fair Defense Act requirements. Commission staff stands ready to provide any assistance the county may need in addressing the issues identified.

Status of Recommendations from the February 2013 Review

Core Requirement 1. Conduct prompt and accurate magistrature proceedings.

February 2013 Recommendation 1: Magistrates in Collin County must provide the warnings listed in Article 15.17(a) either in person or through an electronic broadcast system. *Successfully addressed.*

February 2013 Recommendation 2: Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel. *Issue still pending. This February 2013 recommendation must be addressed.*

Core Requirement 4. Appoint counsel promptly.

February 2013 Recommendation 3: Collin County must implement processes that ensure timely appointment of counsel in felony cases. *Successfully addressed.*

February 2013 Recommendation 4: Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody. *Issue still pending. This February 2013 recommendation must be addressed.*

Recommendations from the February 2016 Review

Core Requirement 1. Conduct prompt and accurate magistrature proceedings.

February 2016 Recommendation 1: Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.

February 2016 Recommendation 2: Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel.

February 2016 Recommendation 3: The magistrate warning form must track the language of Article 15.17(e) regarding whether the arrestee would like to request counsel.

Core Requirement 4. Appoint counsel promptly.

February 2016 Recommendation 4: Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody.

Appendix A – Initial Indigent Screening Form



COLLIN COUNTY

Indigent Defense Office
2100 Bloomdale Road
Suite 20210
McKinney, Texas 75071
972-548-4617
Fax 972-547-5788

Inmate Name: Bob Jones

SO#: 12345

DOB: 01/01/69

On the charges listed below, I wish to:

- ☐ Waive my right to counsel
- ☐ Hire my own attorney: _____
- ☐ Request court appointed counsel

Warrant Number	Charges	Degree	Agency	Bond Amount
On View	THEFT PROP>=\$50 < \$500	Class B Misdemeanor	So Coliin Co	500.00

Defendant
Signature: _____

Date: 04/08/15

Appendix B – Magistrate Warning Form

MAGISTRATION NOTIFICATION

NAME:

SO:

DOB:

As the Magistrate in this case, I hereby certify that:

-The law enforcement agency having custody of the accused, brought the accused before this Magistrate not later than (24) (48) hours after arrest.

-I have informed the accused of his/her right to request appointment of counsel and the procedures for requesting appointment of counsel.

-If the accused does not speak and/or understand the English language or is deaf, I have informed the accused in a manner consistent with Texas Code Articles 38.30 and 38.31.

-I have ensured that all reasonable assistance in completing the necessary forms for requesting appointment of counsel has been provided.

-A record (written forms, electronic recordings, or other documentation as authorized) of the Magistrate's advising the accused of right to appointed counsel has been prepared in accordance with the law and such record consists of this document signed by me as Magistrate, a copy of which was placed in the accused jail and/ or court packet.

- ☐ The accused has announced he/she **waives the right to counsel.**
- ☐ The accused has announced he/she is **not indigent and intends to hire an attorney.**
- ☐ The accused had announced he/she is **indigent and has requested court appointed counsel.**

ARE YOU A U.S. CITIZEN? YES NO Accused is a Citizen of: _____

- ☐ The accused has announced that he/she is not a citizen of the United States, and would like for the consular representatives to be notified of the arrest.
- ☐ The accused has announced that he/she is not a citizen of the United States and would NOT like for the consular representatives to be notified of the arrest.*

**If you are a citizen of a country that has a mandatory notification, we shall notify your consular representatives as soon as possible.

Defendant Signature: _____

Warrant Number Charges

Degree

Agency

Bond/Fine

SIGNATURE OF MAGISTRATE: _____ DATE: April 08, 2015

BOND CONDITIONS