



Policy Monitor Report – Review of El Paso County Indigent Defense Systems

Initial Report Released: November 25, 2014

First Follow-up Report Released: March 19, 2018

Requirement 1: Conduct prompt and accurate magistration proceedings.

Recommendation 1: The County must ensure that reasonable assistance in completing affidavits of indigence is provided, so that all arrestees who request counsel can have the request ruled upon. Under Article 15.17(a), this duty falls on the magistrate presiding over the Article 15.17 hearing.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Requirement 2: Determine indigence according to standards directed by the indigent defense plan.

Recommendation 2: In making determinations of indigence, the screener must consider only factors provided in Article 26.04(m) and the local indigent defense plan. As to income, both Article 26.04(m) and the indigent defense plan allow only for income of the defendant and the defendant's spouse to be considered. In practice, some screenings were examining income of other individuals.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Requirement 3: Establish minimum attorney qualifications.

No recommendations. County practices and procedures comport with statutory requirements.

Requirement 4: Appoint counsel promptly.

Recommendation 3 (felony appointments): The monitor's sample of attorney appointments in felony cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The felony courts must implement methods to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Recommendation 4 (misdemeanor appointments): The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The misdemeanor courts must implement methods to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Recommendation 5 (misdemeanor appointments): All requests for counsel must be ruled upon. If a defendant makes a request for counsel that is never ruled upon and later enters an uncounseled plea, the waiver of counsel is presumed invalid under Article 1.051(f) of the Code of Criminal Procedure.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Recommendation 6 (juvenile appointments): The monitor's sample of attorney appointments to juveniles who were served with a petition fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The juvenile court must implement methods to ensure that all appointments to juveniles served with a petition occur within five working days of service on the juvenile. If financial affidavits could be obtained from parents at intake prior to the filing of the petition, almost all appointments of counsel would likely be timely.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Requirement 5: Institute a fair, neutral, and non-discriminatory attorney selection process.

Recommendation 7 (felony appointments): Recommendation: Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system in felony cases. The felony courts must examine their appointment methods and implement a system that demonstrates that appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Recommendation 8 (misdemeanor appointments): Recommendation: Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system in misdemeanor cases. The misdemeanor courts must examine their appointment methods and implement a

system that demonstrates that appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Requirement 6: Promulgate standard attorney fee schedule and payment process.

Recommendation 9: Under Article 26.05(c) all payments for indigent defense services must be approved by the judge presiding over the proceedings. El Paso County must implement procedures so that any differences between voucher totals and amounts paid to attorneys are approved by the judge presiding over the proceedings.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Requirement 7: Statutory data reporting.

Recommendation 10: The auditor's procedures for reporting the number of assigned counsel cases paid must be amended to accurately reflect the number of cases in which attorneys were paid.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*

Recommendation 11: Public defender personnel expenses must be properly categorized on the IDER.

Initial Year Made: 2014

Status: *Successfully addressed with the March 2018 review.*