



Follow-up Review of Erath County's Indigent Defense Systems

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MISSION

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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Background

TIDC staff conducted a policy monitoring visit of Erath County between September 6 and September 9, 2011. We issued a report containing both commendations and recommendations. The commendations noted that Erath County appeared to have solid procedures to ensure: (1) the timeliness of misdemeanor appointments; (2) that statutory provisions are followed for handling waivers of counsel; (3) fairness in distributing counsel appointments in felony, misdemeanor, and juvenile cases; (4) timely and accurate indigent defense data reports; and (5) submission of indigent defense plans that include all required elements by TIDC.

This report will focus on areas where the County received a recommendation in the initial report. Those recommendations noted that improvements were needed with regard to: (1) the timeliness of felony appointments; (2) the timeliness of appointments in juvenile cases for instances when there is a detention hearing; (3) procedures for providing assistance to arrestees requesting counsel at magistration and for promptly transmitting these requests to the appointing authority; and (4) procedures for maintaining documentation showing that attorneys on appointment lists met their annual CLE requirements.

Recent Changes in Indigent Defense Law

House Bill 1318 has passed and has been signed by the Governor. Under this bill, Section 54.01(b-1) of the Family Code is amended to state:

(b-1) Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

In summary, this requires appointment of counsel for a juvenile prior to a detention hearing unless this is not feasible due to exigent circumstances. This change goes into effect on September 1, 2013.

Overview of Follow-up Monitoring Review

Joel Lieurance conducted the policy monitoring site review for Erath County with a visit to the County between February 12 and 13, 2013. Throughout this report all references to Commission staff use the term “monitor”. The purpose of this visit was to examine whether action plans were put in place to address recommendations from the September 2011 visit. On this follow-up visit, the monitor met with the statutory county judge and his coordinator, the coordinator for the district court, the pre-trial services manager, and a justice-of-the-peace. The monitor observed magistrate warnings that were conducted on February 13. The monitor examined felony case files from the district clerk’s office and juvenile case files from the county clerk’s office.

Status of Recommendations from September 2011 Visit

Based upon the Commission's follow-up review, Erath County has addressed all but one of the initial report's recommendations. The status of each recommendation made in the report for the September 2011 visit is listed below. The County does not need to respond to recommendations that it has successfully addressed (1 through 4) but must respond to Recommendation 5 below.

Prompt and Accurate Magistration Proceedings

September 2011 Recommendation 1: Erath County must implement procedures to ensure that arrestees are given assistance in completing necessary forms for requesting counsel at the time of magistration and must then forward these requests to the appointing authority within 24 hours of the request being made.

Status: *Successfully addressed.*

September 2011 Recommendation 2: Erath County must implement procedures to accept and transmit requests for counsel for persons arrested on out-of-county warrants.

Status: *Successfully addressed.*

Establish Minimum Attorney Qualifications

September 2011 Recommendation 3: Erath County must implement procedures to maintain documentation showing that attorneys on the adult appointment lists met their minimum CLE requirements and attorneys on the juvenile appointment list met their minimum CLE requirements.

Status: *Successfully addressed.*

Appoint Counsel Promptly (felony cases)

September 2011 Recommendation 4: Erath County must implement processes that ensure timely appointment of counsel in felony cases.

Status: *Successfully addressed.*

Appoint Counsel Promptly (juvenile cases)

September 2011 Recommendation 5: Erath County must implement processes that ensure timely appointment of counsel for juveniles when there is a detention hearing and there is a decision to detain the juvenile.

Status: *Not addressed.*

Follow-up Assessment

In the assessment that follows, the recommendations from the initial report are compared with the monitor's observations at the time of the current February 2013 visit.

Prompt and Accurate Magistration Proceedings

Relevant Statutory Requirements

Article 15.17(a) of the Code of Criminal Procedure requires that "the magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time" [the time of the Article 15.17 hearing]. Article 15.17(a) further states:

the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel.

Article 15.18(a) of the Code of Criminal Procedure requires that persons arrested under warrants from outside counties receive magistrate warnings described in Article 15.17. Article 15.18 states:

(a) A person arrested under warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. ...

Article 15.17 makes no exceptions to the warnings provided for persons arrested on out-of-county warrants. Requests for counsel are to be taken as described in Article 15.17(a). A record is to be made of whether the arrestee is requesting counsel as described in Article 15.17(e). Finally the request is to be transmitted to the appointing authority is described in Article 15.17(a).

Summary of Initial Monitoring Visit Findings

In the initial monitoring report, the monitor found that if an arrestee requested counsel at the Article 15.17 hearing, that the arrestee would be given the forms for requesting counsel at that time, but the completed forms would be collected by pre-trial services at a later time. The report noted that in many instances, arrestees did not complete the forms until days after initially requesting counsel. If the arrestee bonded, the forms might not be completed at all, even if a request for counsel was made to the magistrate. If a person was arrested on an out-of-county warrant, there were no procedures to transmit requests for counsel to the respective county.

September 2011 Recommendation 1: Erath County must implement procedures to ensure that arrestees are given assistance in completing necessary forms for requesting counsel at the time of magistration and must then forward these requests to the appointing authority within 24 hours of the request being made.

Erath Response 1: Affidavit of Indigence and Request for Court Appointed Attorney forms will be available in the office of all magistrates and at the jail at all times. If an arrestee requests a court appointed attorney at the time of magistration, the affidavit and request form will be provided to the arrestee for completion, and assistance in completing the form will be provided if requested. The magistrate will make the appointment of requested counsel at that time or forward the completed form to the appropriate court on that day or within 24 hours for appointment of an attorney.

September 2011 Recommendation 2: Erath County must implement procedures to accept and transmit requests for counsel for persons arrested on out-of-county warrants.

Erath Response 2: At the time of magistration of an arrestee on an out-of-county warrant, if the arrestee requests a court appointed attorney, an Affidavit of Indigency and Request for Court Appointed Attorney form will be provided to the arrestee for completion, with assistance in completion of the form if requested. The completed form will then be immediately faxed to the warrant issuing authority in the other county for appointment of an attorney in that county.

Jurisdiction's Current Process

During the follow-up review, the monitor observed magistrate's warnings on February 13. The hearings were conducted by Judge Bass (Justice-of-the-Peace Pct. 1). The warnings were given to six arrestees. One arrestee had been arrested on an out-of-county warrant. Three of the local arrestees requested counsel. The person arrested on an out-of-county warrant did not request counsel. Affidavits of indigence were given to all three persons who requested counsel. At the time of the hearing, Judge Bass and jail staff assisted the arrestees in completing the affidavits. Judge Bass ruled on all requests that morning.

According to interviews, pre-trial services staff typically attends the Article 15.17 hearings, and assists with affidavits of indigence. On this particular day, pre-trial services staff were attending a court docket instead.

If a person is arrested on an out-of-county warrant, the person is given the necessary forms and is provided assistance in completing the forms. The request and accompanying forms are then faxed to the respective county.

Based upon the monitor's observations and interviews, Erath County has implemented procedures to meet Article 15.17's requirement that immediate assistance be provided to arrestees in completing necessary forms for requesting counsel. Erath County has further met the requirement relating to the transmission of the request for counsel to the appointing authority. Erath County has met this requirement by designating the justice-of-the-peace with authority to appoint counsel. When persons are arrested on out-of-county warrants, Erath County appears to have procedures in place for transmitting the requests to the respective county.

Status of September 2011 Recommendation 1: Successfully addressed. Erath County has implemented procedures to ensure that persons who request counsel at the Article 15.17 hearing receive immediate assistance in completing the necessary forms. Erath County has implemented procedures to ensure that requests for counsel made at the Article 15.17 hearing are promptly transmitted to the appointing authority by designating the magistrate with authority to appoint counsel.

Status of September 2011 Recommendation 2: Successfully addressed. Erath County has implemented procedures to transmit requests for counsel to the appropriate authority on out-of-county arrest warrants.

Establish Minimum Attorney Qualifications

Relevant Statutory Requirements

Under the Commission's administrative rules (1 TAC §§174.1-174.4), an attorney may be appointed to a criminal case only if the attorney obtained at least six criminal CLE hours during the annual reporting period and to a juvenile case only if the attorney obtained at least six juvenile CLE hours during the annual reporting period. Local jurisdictions must establish annual CLE standards to be eligible for appointment lists, and these local standards may exceed the Commission's six hour threshold.

Summary of Initial Monitoring Visit Findings

At the time of the monitor's initial visit, the County did not maintain documentation showing that attorneys on the adult appointment lists received at least six hours of criminal law CLE annually (as required by the local indigent defense plan) or that attorneys on the juvenile list received at least six hours of juvenile law CLE annually (as required by the local indigent defense plan).

September 2011 Recommendation 3: Erath County must implement procedures to maintain documentation showing that attorneys on the adult appointment lists met their minimum CLE requirements and attorneys on the juvenile appointment list met their minimum CLE requirements.

Erath Response 3: The District and County Court at Law Judges will send letters to all attorneys requesting to be on the court appointed attorney list for adult or juvenile appointments, requiring them to file written proof of compliance with minimum CLE requirements before initial appointment and thereafter on December 31st of each year. The documentation of compliance will be maintained in the office of the respective courts where appointments are made and will be available during normal office hours for public review.

Jurisdiction's Current Process

During the follow-up review, the monitor spoke with the coordinators for the statutory county court and the district court. Both coordinators maintained attorney appointment lists for felony, misdemeanor, and juvenile cases. Both appeared to have procedures for tracking whether attorneys had obtained the minimum number of CLE hours to remain on the appointment lists.

Status of September 2011 Recommendation 3: Successfully addressed. Erath County has implemented procedures to maintain documentation showing that attorneys on appointment lists met their minimum CLE requirements.

Appoint Counsel Promptly (felony cases)

Relevant Statutory Requirements

Under Article 1.051(c) of the Code of Criminal Procedure, in counties with a population under 250,000 persons, courts must appoint counsel to indigent defendants within three working days of receiving requests for counsel.

Summary of Initial Monitoring Visit Findings

At the time of the monitor's initial visit, the monitor examined 81 felony case files that were filed in FY2010 (October 2009 – September 2010) to determine the timeliness of counsel appointments. Of the 81 felony case files reviewed, 41 involved assigned counsel. Thirty-four (34) of these requests had a timely appointment of counsel (83% timely). The monitor's sample of felony case files was below the Commission's threshold (sample that is at least 90% timely) for presuming that a jurisdiction has a process for making timely appointments of counsel. The root cause of these late appointments appeared to be that there was not a process to ensure that all requests for counsel made at magistration are transmitted

to the appointing authority within 24 hours of the request (as required by Article 15.17 of the Code of Criminal Procedure).

September 2011 Recommendation 4: Erath County must implement processes that ensure timely appointment of counsel in felony cases.

Erath Response 4: Timely appointments of counsel in felony cases will be ensured by implementation of the procedure adapted in response to Recommendation No. 1, above. If a request for appointed counsel is not made prior to appearing before the District Court for arraignment, then a request form will be provided to the indicted individual at that time, and counsel appointed immediately if the defendant establishes indigency.

Jurisdiction’s Current Process

Erath County’s response to our initial report was dated April 20, 2012. The monitor examined 31 felony case files containing a request for counsel made between May 2012 and January 2013. Of these requests, the time to appointment (or denial of indigence) ranged from zero to seven working days. A total of 29 of the 31 requests were timely (93.5% timely). This percent of timely appointments meets the Commission’s threshold for presuming a jurisdiction has processes in place for making timely appointments of counsel (threshold of 90% of monitor’s sample). See the following table showing the number of working days from request for counsel until appointment.

Erath Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	31		
Appointment / Denial of Indigence Occurred in:			
0 work days		27	87.1%
1 work day + 24 hour transfer		2	6.5%
2 work days + 24 hour transfer		0	0.0%
3 work days + 24 hour transfer		0	0.0%
Timely appointments		29	93.5%
Late Appointments		2	6.5%

Status of September 2011 Recommendation 4: Successfully addressed. Erath County appears to have processes in place for making timely appointments of counsel in felony cases.

Appoint Counsel Promptly (juvenile cases)

Relevant Statutory Requirements

Section 51.10(c) of the Family Code requires counsel to be appointed immediately if there is a decision to detain the juvenile at a detention hearing.

Summary of Initial Monitoring Visit Findings

The monitor examined case files for eleven juveniles with case filing activity occurring during FY2010 (October 2009 – September 2010). Four of the eleven juveniles faced detention hearings in which there were decisions to detain the juveniles. Two of these juveniles had counsel appointed either prior to the hearing or on the day of the hearing. The other two juveniles had counsel appointed on the day after the detention hearing.

September 2011 Recommendation 5: Erath County must implement processes that ensure timely appointment of counsel for juveniles when there is a detention hearing and there is a decision to detain the juvenile.

Erath Response 5: If a juvenile is detained and does not have an attorney, an attorney will be appointed at that time or within 24 hours. In accordance with the Juvenile Justice Code, if a de novo detention hearing is requested after appointment of counsel, such hearing will be granted.

Jurisdiction's Current Process

There are no juvenile detention facilities within Erath County. As a result, the County often conducts detention hearings prior to sending a juvenile to the detention facility. This means that detention hearings can be held at night with very little notice. In Erath County, the justice-of-the-peace conducts many of these nighttime detention hearings. Often attorneys are appointed for the juvenile the day after the hearing.

The monitor examined nine juvenile case files with detention hearings occurring after April 20, 2012 (the date of Erath County's response to the initial monitoring report). Of these nine cases, eight juveniles were detained after the initial hearing. Three of the initial detention hearings, where there was a decision to detain the juvenile, involved instances in which no attorney was appointed on the date of the hearing. Three of the case files involved second detention hearings, and all these juveniles were represented by counsel by the second hearing. This means that from the nine files examined that the monitor examined eleven instances involving a first detention hearing with a decision to detain or a second detention hearing, and counsel was appointed in a timely manner for eight of these hearings. This rate of timeliness (73%) falls below the Commission's 90% threshold. See the following table summarizing the timeliness of appointments in the cases reviewed.

Erath Juvenile Appointment Sample Data	Number from sample	Percent
Number of juvenile cases examined involving detention hearings	9	
Number of detention hearing files examined	12	
Number of detention hearings in which there had been a decision to detain the juvenile	11	
Number of detention hearings with an attorney appointed by the date of the detention hearing	8	
Total detention hearings with counsel appointed in a timely manner	8	72.7%

September 2011 Recommendation 5: Not addressed. Erath County must implement procedures that ensure timely appointment of counsel for juveniles when there is a detention hearing and there is a decision to detain the juvenile. Please prepare an action plan to address this issue and submit this response to the Texas Indigent Defense Commission.

Conclusion

The monitor enjoyed meeting with Erath County officials and staff and appreciates their cooperation during this review. Commission staff stands ready to provide any assistance the County may need in addressing the issues identified in this report.