

**WALLER COUNTY RESPONSE TO
TEXAS INDIGENT DEFENSE COMMISSION
FOLLOW-UP POLICY MONITORING REVIEW**

The following written response is made to each reported finding regarding the Follow-up Policy Monitoring Review of Waller County's Indigent Defense System, the report of which is dated September, 2019. The Requirement is stated, the finding summarized, and recommended action stated.

Requirement 1: Conduct Prompt and Accurate Article 15.17 Proceedings

Finding 2: Arrestees not receiving reasonable assistance in completing forms.

Finding 3: JPs not submitting Article 15.17 requests in Texas Judicial Counsel monthly court activity reports to OCA.

Reply to Finding 2:

The jail has been instructed to immediately provide blank copies of the Affidavit of Indigency form, and the magistrates have been informed of the need to assist in having it filled out by the arrestee. Immediately on completion of the Affidavit of Indigency form the magistrate will ensure that the jail personnel transmit the completed forms via FAX or email to the appropriate trial court for consideration.

Reply to Finding 3:

Justices of the Peace have been instructed to properly submit Article 15.17 requests for counsel in their TJCMCA Reports to OCA.

Requirement 4: Appoint Counsel Promptly

Finding 4: (Felony Cases) Rule on requests for counsel within three working days.

Finding 5: (Misdemeanor Cases) Rule on Requests for counsel within three working days.

Finding 6: (Misdemeanor Cases) Process to ensure misdemeanor requests for counsel are ruled on prior to a defendant's waiver of counsel

Finding 7: (Juvenile Cases) Implement practices to satisfy time frames for appointment of counsel.

Reply to Finding 4:

All magistrates have been advised to inquire about requests for appointed counsel and mark the magistration form accordingly. The jail personnel have been instructed to immediately provide blank copies of the Affidavit of Indigency form to arrestees, and the magistrates have been advised to assist in having it filled out by the arrestee.

A detailed response from the Presiding Judge of the 506th District Court has been provided as an Annex to this Response. It is attached hereto and incorporated herein.

Reply to Finding 5:

All magistrates have been advised to inquire about requests for appointed counsel and mark the magistration form accordingly. The jail personnel have been instructed to immediately provide blank copies of the Affidavit of Indigency form to arrestees, and the magistrates have been advised to assist in having it filled out by the arrestee.

Reply to Finding 7:


A new Director of the Juvenile Probation Department has recently been appointed and appropriate steps have been taken for training all Juvenile Probation personnel on the requirements for timely appointment of counsel.

A new judge has been appointed as the primary Juvenile Judge since the 2016 monitoring visit. Policies and procedures have been reviewed and implemented to effect necessary changes.

To assure that each file reflects who the attorney is, the Waller County Clerk has a practice of notifying the Juvenile Probation Department via email that a petition has been filed. When an appointment has been made in another case involving the same juvenile, a copy of that appointment is forwarded to the Clerk for inclusion in the file. The County Clerk provides the new case information to the attorney. If no attorney has been appointed for the juvenile, Juvenile Probation forwards the financial information gathered during the intake to the Juvenile Court immediately. The Court makes a determination within 48 hours and appoints an attorney if financial qualifications are met. The Court notifies Juvenile Probation of the decision and the appointment is then forwarded to the juvenile and attorney by the Juvenile Probation Department.

If the juvenile does not qualify, Juvenile Probation notifies the juvenile of that decision and informs the parents or guardians that an attorney must be retained. If no attorney is retained, the Court does appoint an attorney and has the option of including repayment of fees as a part of the adjudication, if any. The Court transmits all paperwork to the County Clerk for inclusion in the file.

Signed: November 6, 2019



ALBERT M. McCAIG, JR.
Local Administrative Judge

506th Judicial District Court
Annex to Response to 2019 Follow-up Monitoring Report

Finding 4. Prompt Appointment. In felony cases, timeliness in sample cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments.

On drug cases, it often takes in excess of six months to get lab results back. Lab results can confirm a charge, but often also result in either dismissal, reduction of charges, or in some cases, an elevation of charges. Therefore, until legal action and dispositive jurisdiction is determined, it is premature to appoint counsel. Further, no legal action is taken against drug and alcohol defendants during the interim between release and first court appearance unless another offense is committed while they are on bond, or some other legal provocation occurs.

DWI cases have similar issues with taking six to eight months, or more in some cases, to get lab results back on blood draws. It is rare that a felony DWI defendant agrees to a breath test after arrest. Therefore, the vast majority of DWI cases will be delayed while awaiting lab results. Again, no legal action is taken against defendants during the interim between release and first court appearance.

Ability to make bond is not to be considered as proof that a defendant is not indigent. However, when a defendant bonds out on the day of or the day after the 15.17 hearing, the questions regarding indigency may not have been raised or adequately determined. Until indigency is determined it would be premature to appoint counsel.

The following is my analysis of the Commission's finding on the sample cases:

CAUSE #	NAME	COMPLAINT	RESPONSE
17-11-16233	Fleming, Stephen Paul Jr.	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was almost exactly six months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance an attorney was appointed. Subsequently, Defendant retained his own attorney which negated the question on indigency. 4. The Court's decision on appointment of counsel was correct under these conditions.

17-10-16217	Adair, James III	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was only five months between arrest and indictment. In this case, investigation increased the charges to a 1st degree felony, which affects attorney appointments. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance, Defendant had retained an attorney which negated the question on indigency.. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-02-16384	Parker, Allijerus Dontale Tirye	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was over nine months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. Defendant failed to appear after notice and a capias was issued. There was no opportunity to appoint counsel. He remains at large. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-05-16436	Uriostegui, Geraldo Flores	No ruling on request	<ol style="list-style-type: none"> 1. This is a DWI case. It often takes 6 to 8 months to get blood results back from DPS labs. In this case it was 11 months between arrest and indictment. 2. In this case, notice of setting was sent out one day after the indictment was filed. Before defendant's first setting he retained his own counsel, which negated any issue of indigency. 3. Defendant failed to appear after notice and a capias was issued. He remains at large. 4. The Court's decision on appointment of counsel was correct under these conditions.

17-10-16196	Brewer, Gara Carrado	No ruling on request	<ol style="list-style-type: none"> 1. Defendant bonded out the day of 15.17 hearing. 2. On defendant's first appearance, he indicated a desire to retain his own counsel. 3. Charges were dismissed before counsel was employed or request for appointment of counsel was made. 4. Although the original request did not get to the Court's offices, ultimately the decision on appointment of counsel was correct.
17-11-16239	Montoya, Guadalupe Jr.	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was only about four months between arrest and indictment. Lab results often results in dismissal or reduction of charges. These charges were original filed with the County Clerk, but were upgraded and transferred tot he District Clerk. 2. Defendant bonded out three days after 15.17 hearing. 3. On Defendant's first court appearance he stated he wanted to retain his own attorney. Subsequently, Defendant came back to court and asked for an attorney and one was appointed without delay. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-01-16345	Thomas, Frederick	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a drug case associated with a murder case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was five months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance an attorney was requested and one was immediately appointed. Subsequently, Defendant retained his own attorney which negated the issue of indigency. 4. The Court's decision on appointment of counsel was correct under these conditions.

18-02-16356	Coronado, Reynaldo	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was seven months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance he requested an attorney and one was immediately appointed. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-01-16323	Jones, Clem Anthony III	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was six months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance he requested an attorney and one was immediately appointed. 4. The Court's decision on appointment of counsel was correct under these conditions.
17-10-16223	Ledesma, Laura Stokes	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a DWI case. It often takes 6 to 8 months to get blood results back from DPS labs. However, in this case it was only two months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance an attorney was requested and one was immediately appointed. 4. The Court's decision on appointment of counsel was correct under these conditions.

17-11-16245	Terrell, Cory Maurice	Excess time to fill request	<ol style="list-style-type: none"> 1. Request for appointment of counsel was received on 9-29-2017, which was a Sunday. Office staff was at a training conference until 10-2-2019. Counsel was appointed on 10-3-2017. 2. Appointment of counsel was made within 4-days of receipt of the request. 3. There was no error in the appointment process.
18-07-16453	Cottrill, Jessica Gay	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was ten months between arrest and indictment. 2. Defendant bonded out the day after the 15.17 hearing. 3. On Defendant's first court appearance she failed to appear and remains at large. The request for appointment of counsel was never received by the Court. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-07-16470	LeBlanc, Gabriel Allen	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was in excess of nine months between arrest and indictment. 2. Defendant bonded out before the day of his 15.17 hearing. 3. Before the Defendant's first court appearance, he retained his own attorney. The request for appointment of counsel was never received by the Court. 4. The Court's decision on appointment of counsel was correct under these conditions.

18-05-16431	Montes, Paul	No ruling on request	<ol style="list-style-type: none"> 1. This is a complicated theft case in which the defendant knew he was under investigation prior to indictment. The defendant retained an attorney before he was indicted and arrested. 2. There was no attorney appointment decision to be made in this case. 3. There was no error in the appointment process.
18-03-16389	Garfield, Byron Wayne	Excess time to fill request	<ol style="list-style-type: none"> 1. This case was a companion to a drug case on the same defendant. 2. Defendant was also being held on a TDCJ Blue Warrant at the time of the 15.17 hearing. No request for an attorney was delivered to the Court. 3. On Defendant's first court appearance an attorney was requested and one was immediately appointed. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-07-16489	Verbarg, Kayleigh Nichole	No ruling on request	<ol style="list-style-type: none"> 1. This is a DWI case. It often takes 6 to 8 months to get blood results back from DPS labs. In this case it was almost seven months between arrest and indictment. 2. Defendant bonded out the day of 15.17 hearing. 3. On Defendant's first court appearance she appeared with retained counsel. No request for appointment of an attorney was ever made to the Court. 4. The Court's decision on appointment of counsel was correct under these conditions.

18-04-16408	Jackson, Jerry Lee	Excess time to fill request	<ol style="list-style-type: none"> 1. This is a child sex case. The defendant knew he was under investigation prior to his arrest. 2. Defendant bonded out the day of his 15.17 hearing. 3. On his first appearance day the defendant appeared with retained counsel. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-05-16425	Cano, Andres Rodriguez	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case that was under extensive investigation prior to the case being filed. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was in excess of five months between arrest and indictment. 2. Defendant was given a Personal Recognizance Bond on the day of his arrest and bonded out before the day of his 15.17 hearing. 3. Before the Defendant's first court appearance, he employed his own attorney. The request for appointment of counsel was never received by the Court. 4. The Court's decision on appointment of counsel was correct under these conditions.
18-07-16478	Manuel, Kori Wilfred	No ruling on request	<ol style="list-style-type: none"> 1. This is a drug case. It often takes in excess of 6 months to get labs back on drug cases. In this case, it was almost six months between arrest and indictment. 2. Defendant bonded out before the day of his 15.17 hearing. 3. On the Defendant's first court appearance, he stated he wanted to hire his own lawyer, and his case was reset. Before his next appearance, retained counsel appeared in the case. 4. The Court's decision on appointment of counsel was correct under these conditions.

With the exception of four cases, all of the sample cases are either drug or alcohol cases. In two of the four other cases, drug cases were ancillary to the primary cases reviewed. As a matter of necessity, drug and alcohol cases must be handled differently than other non-lab cases due to the indefinable nature of getting laboratory results, and the time lapse in getting them. In **no case** was any defendant held in jail without counsel after a request was made to the court.

There is an appearance that, due to political pressure, a predetermined outcome has been determined and data is mined to support that outcome. There does not appear to be a practical understanding of the difference between the actual protection of a person's constitutional rights and the Commission's determination that some arbitrary time line has not been met. Texas Code of Criminal Procedure, Article 1.051 provides that counsel shall be provided not later than the end of the third working day after the defendant's request is received by the court. In fact, all time requirements of the Texas Code of Criminal Procedure and the U.S. and Texas Constitutions have been met in every case selected for review by TIDC. Further, all time requirements set out in the Waller County Indigent Defense Plan have been met as well.

I see no reason to change any policies or procedures dealing with the appointment of counsel based on the findings of the follow-up monitoring visit.