



Texas Indigent Defense Commission

Policy Monitoring Follow-up Review -- Willacy County

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Texas Indigent Defense Commission
 209 W. 14th Street, Room 202 (Price Daniel Building)
 Austin, Texas 78701
 Direct: 512.463.8015 Fax: 512.463.5724
 Main line: 512.936.6994 Toll free in Texas: 866.499.0656
 On the web: <http://www.courts.state.tx.us/tidc>

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

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STAFF:

James D. Bethke	Director
Edwin Colfax	Project Manager
Dominic Gonzales	Grant Program Specialist
Marissa Kubinski	Executive Assistant
Joel Lieurance	Policy Monitor
Wesley Shackelford	Deputy Director/Special Counsel
Debra Stewart	Fiscal Monitor
Joan Thomas	Fiscal Monitor
Sharon Whitfield	Budget and Accounting Analyst
Bryan Wilson	Grants Administrator

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

Between FY2007 and FY2011, the Texas Indigent Defense Commission (Commission) provided discretionary grant funds to Willacy County for the operation of a public defender office. In accordance with Article 26.044(b) of the Code of Criminal Procedure, Willacy County contracted with Texas RioGrande Legal Aid (TRLA) to operate the public defender office. As stated in the original Statement of Grant Award, the program was developed to provide representation “for indigent defendants in all courts and all levels of crime except in cases where the death penalty is sought” or in cases of conflict of interest. The contract was signed on 7/27/2007 and the office began to accept cases on 8/1/2007. Over the course of the grant, the County expended \$898,320.00 on the program, with \$509,048.00 in funds paid to the County from the Commission through the discretionary grant. Grant funding for the program expired July 31, 2011, and the County has continued the program since the conclusion of grant funds. Discretionary grant payments were distributed in the manner shown in Table 1.

Table 1: Willacy County Discretionary Expenditures and Grant Payments

Fiscal Year	Total Program Expenditures	Grant Payments
FY2007	\$37,430	\$29,944
FY2008	\$224,580	\$179,664
FY2009	\$224,580	\$134,748
FY2010	\$224,580	\$89,832
FY2011	\$187,150	\$74,860

FY2012 Public Defender Grant Program Evaluation

The Commission conducted a grant evaluation of the program with on-site visits to the County in August 2011 and October 2011. During this review, staff attempted to obtain magistrate warning forms, but were unable to obtain these forms, except with one justice-of-the-peace. Staff found that persons referred to a blanket order appointing the public defender to all eligible defendants for cases in which the public defender did not have a conflict with the eligible defendants. However, no specific orders appointing counsel to a case on a specific date were found. The report was issued on June 22, 2012 and made several conclusions regarding the grant. Some of the issues related to statutory provisions of the Fair Defense Act (FDA). Those conclusions relating to the FDA included:

***Conclusion 14:** Willacy County magistrates’ warnings must document whether the defendant requests counsel at the time of magistration in line with Article 15.17 of the Code of Criminal Procedure.*

***Conclusion 15:** Willacy County should document when attorneys are appointed to represent defendants through the use of an order appointing contemporaneous with the appointment to demonstrate compliance with Article 1.051(c) of the Code of Criminal Procedures and the local indigent defense plan.*

***Conclusion 16:** Willacy County must continue to evaluate the magistration system to ensure timeliness of all Article 15.17 hearings.*

County Judge John Gonzales responded to each of these conclusions by stating:

***Conclusion 14:** County is cognizant of the magistrate warning procedure. We are currently meeting with all involved in the process to ensure strict compliance.*

***Conclusion 15:** County is working with district judge office to comply with documentation of appointed attorneys.*

***Conclusion 16:** County will hold regular meetings with all involved to ensure continued compliance and timeliness of Article 15.17 hearings.*

Overview of 2013 Follow-up Monitoring Review

In an effort to document that the conclusions from the grant evaluation relating to statutory matters were addressed, the policy monitor conducted a follow-up monitoring review. This monitoring review was not conducted to examine the effectiveness of the discretionary grant but to ensure that statutory matters relating to the core requirements of the FDA are being met.

The policy monitor, Joel Lieurance, conducted the follow-up review with an on-site visit to Willacy County on August 29 and August 30, 2013, and hereafter will be referred as “the monitor”. During the on-site review, the monitor met with district court staff, the county clerk, district clerk staff, the chief public defender, and with the municipal judge of Raymondville and Lyford. The monitor examined a sample of felony and misdemeanor case files. To obtain this sample, the monitor asked the clerks to pull the first twenty cases that were disposed in FY2013. These case files included neither magistrate warning forms nor orders appointing the public defender in felony cases. As a result, the monitor sent a letter requesting that the district judge provide orders appointing the public defender to felony cases and sent letters to each of the County’s magistrates asking that they provide magistrate warning records.

Summary of Recommendations from Policy Monitoring Review

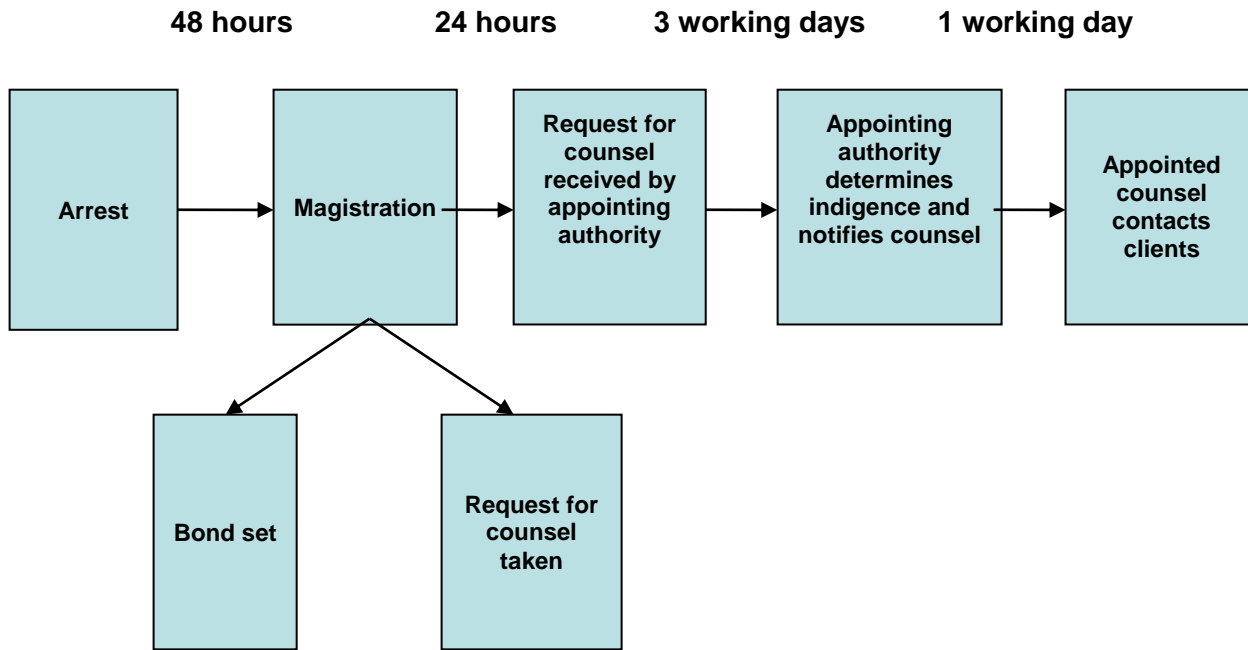
The recommendations from the policy monitoring review echo the conclusions of the previous grant review. Willacy County must respond in writing to how each recommendation will be addressed. Some of these recommendations may already have a plan of action that is currently being implemented. For these recommendations, please respond with the plan of action that is currently being implemented.

Recommendation 1: In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel.

Recommendation 2: Willacy County must put in place a system to ensure that Article 15.17 hearings occur in a timely manner.

Recommendation 3: Willacy County must ensure that when there is a request for counsel that there is either a corresponding order appointing counsel or a denial of indigence for each specific case.

Figure 1: Fair Defense Act Timeline Model for Counties with Populations Under 250,000



Statutory Requirements

According to Article 15.17(a) of the Code of Criminal Procedure, persons who are arrested must be brought before a magistrate within 48 hours to be given warnings and to be given an opportunity to request counsel. Under Article 15.17(a),

... The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. 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 shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. If the magistrate is not authorized to appoint counsel, 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. ...

Furthermore, Article 15.17(e) requires that the magistrate make a record 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.

If an arrestee does not receive a probable cause hearing within 24 hours of arrest for misdemeanors or 48 hours for felonies, the arrestee is to be released on bond. If the arrestee is unable to obtain a surety for the bond, the arrestee must be released on personal bond. Article 17.033 states:

(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(b) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$10,000, not later than the 48th hour after the person's arrest if the person was arrested for a felony and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

(c) On the filing of an application by the attorney representing the state, a magistrate may postpone the release of a person under Subsection (a), (a-1), or (b) for not more than 72 hours after the person's arrest. An application filed under this subsection must state the reason a magistrate has not determined whether probable cause exists to believe that the person committed the offense for which the person was arrested.

(d) The time limits imposed by Subsections (a), (a-1), and (b) do not apply to a person arrested without a warrant who is taken to a hospital, clinic, or other medical facility before being taken before a magistrate under Article 15.17. For a person described by this subsection, the time limits imposed by Subsections (a), (a-1), and (b) begin to run at the time, as documented in the records of the hospital, clinic, or other medical facility, that a physician or other medical professional releases the person from the hospital, clinic, or other medical facility.

Once counsel is requested, Article 1.051(c) requires the appointing authority to determine indigence, and if indigent, to appoint counsel within three working days of receiving the request for counsel (in counties with a population less than 250,000). Article 1.051(c) states:

Except as otherwise provided by this subsection, if an indigent defendant is entitled to and requests appointed counsel and if adversarial judicial proceedings have been initiated against the defendant, a court or the courts' designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county shall appoint counsel as soon as possible, but not later than the end of the third working day after the date on which the court or the courts' designee receives the defendant's request for appointment of counsel. ...

Judicial Council Monthly Court Activity Reports

Prior to the review, the monitor examined justice court data and municipal court data reported to the Office of Court Administration (OCA) as part of the Texas Judicial Council Monthly Court Activity Reports. The data appears problematic in that the justices-of-the-peace did not report any felony or misdemeanor warnings that were given to arrestees. The records examined in this monitoring review indicate that these data submissions are not accurate. According to data reported to OCA by local officials, just over 2% of both felony and misdemeanor arrestees request counsel at the Article 15.17 hearing. This portion of persons requesting counsel is much lower than is reported across the state. See Table 2 for a summary of the magistrate data reported to OCA.

Table 2: Justice Court and Municipal Court Reports (July 2012 – June 2013)

Jurisdiction	Felony Requests	Felony Warnings	Percent Felony Requests	Misdemeanor Requests	Misdemeanor Warnings	Percent Misdemeanor Requests
JP 1	0	0	N/A	0	0	N/A
JP 2	0	0	N/A	0	0	N/A
JP 3	0	0	N/A	0	0	N/A
JP 4	4	0	N/A	7	0	N/A
JP 5	0	0	N/A	0	0	N/A
Lyford	0	14	0.0%	0	72	0.0%
Raymondville	0	155	0.0%	0	243	0.0%
Combined Magistrates	4	169	2.4%	7	315	2.2%
Statewide JP Reports	29,233	102,364	28.6%	33,572	140,417	23.9%

The low number of persons reported to be requesting counsel at the Article 15.17 hearing can be contrasted with the high number of persons who receive appointed counsel. According to the FY2012 Indigent Defense Expense Report, Willacy County reported paying appointed counsel for 236 felony cases and 282 misdemeanor cases. Prior to the on-site visit and based upon the data reported to OCA and to the Commission, the monitor was not sure whether arrestees were able to request counsel at the Article 15.17 hearing.

Description of Procedures for Providing Magistrate Warnings

In Willacy County, a magistrate is designated to provide Article 15.17 warnings to a specific arrestee if an arrest occurred within the magistrate’s precinct within the County. As an example, consider a hypothetical case where two persons are arrested simultaneously in different locations within the County. In the first instance, a justice-of-the-peace visits the jail and provides appropriate warnings to his/her arrestee within a few hours of the arrest. In the second instance, the appropriate justice-of-the-peace is out of town, and will remain so for a week. No magistrate warnings are provided to this arrestee until the justice-of-the-peace arrives back in town and visits the jail. In this system, magistrates do not provide Article 15.17 warnings to all arrestees within the County on a rotating basis but to all arrestees within their precinct on a continual basis.

Review of Magistrate Warning Records

The monitor examined Article 15.17 forms to determine the timeliness of warnings and to gauge from actual records the percentage of warnings in which counsel is requested. The monitor obtained a sample of 49 Article 15.17 forms that were conducted by each of the five justices-of-the-peace and by the municipal judge from Lyford and Raymondville. Multiple form types were used for these warnings. Some forms did not include a space to mark whether the arrestee had requested counsel.

Records Indicating a Request for Counsel

Of the 49 Article 15.17 forms examined, sixteen contained a record as to whether the arrestee had requested counsel. Eight of those sixteen requested counsel and eight did not request counsel (50% request rate). Thirty-one (31) forms did not contain a mark as to whether the arrestee had requested counsel. As previously noted, Article 15.17(e) requires that the magistrate record whether the arrestee is requesting counsel.

After the monitor obtained these Article 15.17 forms, the monitor spoke with County officials, and the officials agreed to modify their procedures. First, a common form was adopted. This form contained a space to request counsel. Magistrates were instructed that all forms must contain a mark as to whether the arrestee is requesting counsel. If counsel is requested, the form is to be sent to both the prosecutor and the public defender. When the case is filed, the prosecutor includes the form as part of the paperwork filed with the clerks' offices.

Recommendation 1: In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel.

Timeliness of Magistrate Warnings

Of the 49 Article 15.17 forms examined, the monitor could determine the time from arrest until the warnings in 47 instances. A few of the forms did not include the arrest time or the time of magistration, and so in reviewing the timeliness of magistrate warnings, the monitor assumed that warnings occurring within two days of arrest were timely, and those taking three days or more were untimely. This assumption means that some warnings may take slightly more than the statutory 48 hours to occur, but would be considered timely because they occurred within two days of arrest. Forty-one (41) of the warnings were considered timely (87% timely). Three of the warnings occurred three days after arrest, and three occurred more than three days after arrest (11 days, 15 days, and 50 days). See Table 3 below which breaks down the timeliness of the magistrate warning sample. The Commission assumes that a county has processes in place to assure timely magistrate warnings if the monitor's sample is at least 98% timely. Willacy County fell below this threshold.

Table 3: Days from Arrest Until Magistrate's Warnings

Willacy County Time to Magistration Data	Sample Size	Percent
Magistration Occurs x days after arrest:		
0 days	13	27.7%
1 day	18	38.3%
2 days	10	21.3%
Timely Magistration	41	87.2%
3 days	3	6.4%
More than 3 days	3	6.4%

The policy monitor's review focused on magistrate duties under Article 15.17. However, Article 17.033 provides a remedy for those arrestees who do not receive a probable cause hearing in a timely fashion. Misdemeanor arrestees are to be given a personal recognizance bond if probable cause is not determined within 24 hours of arrest. Felony arrestees are to be given a personal recognizance bond if probable cause is not determined within 48 hours of arrest.

Willacy County's system of delegating the task of providing magistrate warnings based upon the magistrate in whose jurisdiction the arrest occurred does not appear to create a system of timely warnings. The County should consider adopting a system where a specific magistrate is designated with the task of providing all warnings over a given period, and then rotating that duty to the next available magistrate. If an arrestee does not receive a probable cause hearing within the times set in Article 17.033, personal recognizance bonds are to be given in accordance with the statute.

Recommendation 2: Willacy County must put in place a system to ensure that Article 15.17 hearings occur in a timely manner.

Review of Clerks' Records

The monitor examined a sample of nineteen felony case files and twenty misdemeanor case files in order to determine the procedures for appointing counsel and the timeliness of these appointments.

Felony Cases

In Willacy County, at the time of the site visit, arrestees were screened for indigence twice each week by the public defender at the Willacy County Jail. Assignment of counsel was based on an understanding that the public defender represented all persons that it screened and found met the local standard of indigence, except in instances where the public defender found a conflict of interest. In these conflict cases, an order appointing counsel was generated that appointed specific counsel to the case on a specific day. In instances when no conflict was present, and the public defender provided representation, no official appointment order was generated prior to the monitor's visit.

As just noted, the monitor examined nineteen felony cases from the Willacy District Clerk's Office. The monitor threw out four of these cases because they were for motions to revoke probation whose original case had been filed more than three years ago. Of the remaining fifteen cases examined by the monitor, eleven were disposed by the public defender, two by assigned counsel, and two by retained counsel. The monitor could not determine the timeliness of appointment in any of the felony cases. Willacy County did provide dates when defendants were screened, and the public defender did represent defendants after screening for indigence. The monitor did find orders appointing counsel for the two cases in which assigned counsel was appointed. In both of these instances, the public defender was determined to have had a conflict with the defendant, and so other counsel was appointed.

After speaking with local officials, local procedures were changed so that the public defender was designated with authority to screen for indigence and to appoint counsel. The public defender now generates an order appointing counsel, and a clear timeline can now be traced, so that one can determine the time when counsel was requested and the date of appointment of counsel. If a person requesting counsel does not meet the local standard of indigence, the person may bring the request to the district judge (in felony cases) or to the county judge (in misdemeanor cases).

Recommendation 3: Willacy County must ensure that when there is a request for counsel that there is either a corresponding order appointing counsel or a denial of indigence for each specific case.

Misdemeanor Cases

Misdemeanor arrestees are screened for indigence in the same way as felony arrestees. In the misdemeanor cases, orders appointing counsel were present in case files. These orders appointing counsel appeared to be issued at the initial appearance.

Of the twenty misdemeanor case files that were part of the monitor's sample, all twenty were disposed by the public defender. In none of the cases was the monitor able to determine whether counsel was requested at the Article 15.17 hearing. The monitor was able to determine the date that the public defender was appointed to cases, but could not determine whether the misdemeanor appointments met statutory time frames as the date of the request for counsel was unknown.

Conclusion

The Commission's grant evaluation report from 2012 made three conclusions relating to statutory provisions of the FDA. Based upon this policy monitoring review, the previously identified issues were still present at the time of the on-site visit. Since the monitor's visit, necessary changes appear to be underway. Specifically, the following procedural items were put in place:

1. A uniform magistrate warning form (that contains a space to request counsel) has been adopted.
2. Magistrates have been instructed to always mark when counsel is requested by arrestees.
3. Magistrates are to forward all requests for counsel to the public defender (who has been designated with authority to appoint counsel) as well as to the prosecutor (who files the magistrate warning form with other case filing documents).
4. Orders appointing counsel that specifies the actual date of appointment are to be promptly generated for each case.

One area where additional work must be done involves the timeliness of Article 15.17 hearings. A system for providing timely magistrate warnings does not appear to be in place. Willacy County will need to strategize ways to improve the timeliness of these warnings.

The monitor thanks Willacy County officials and staff for their cooperation with this review. Willacy County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to Commission findings.