



# **Policy Monitoring Review of Chambers County's Indigent Defense Systems**

**March 2023**



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Honorable Richard Evans                      Bandera County Judge  
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Honorable Missy Medary                      Presiding Judge, 5th Administrative Judicial Region  
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**Mission:** Protecting the right to counsel, improving public defense

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## **Executive Summary**

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act through policy reviews.<sup>1</sup> In this follow-up review, TIDC interviewed officials and reviewed FY2021 data from Chambers County. TIDC found that five of the previous report's findings remained pending:

- a. Magistrates not always recording whether appointed counsel was requested.
- b. Lack of reporting requests for counsel in Judicial Council Monthly Court Activity Reports by justices of the peace.
- c. Untimely transmittal of counsel requests to appointing courts.
- d. Untimely appointments of counsel in misdemeanor cases.
- e. Prosecutors communicating with defendants who requested appointment of counsel when the court or its designee has not ruled on the request.

TIDC thanks Chambers County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its finding within two years.<sup>2</sup>

## **Background**

In March 2018, TIDC received a complaint from a local attorney alleging some defendants in Chambers County were not informed of their right to counsel after arrest, and counsel was not appointed in a timely manner. In June 2018, the attorney submitted a supplemental complaint, alleging that defendants must speak with the prosecutor before making an in-court request for counsel. TIDC staff presented these complaints to the Policies and Standards Committee. In August 2018, the Committee directed staff to conduct a limited-scope review, examining Chambers County's methods for accepting and ruling upon requests for counsel.

TIDC issued the policy monitoring report in April 2019. It found magistrates did not always record whether defendants requested counsel at Article 15.17 hearings. When defendants requested counsel, there were gaps in promptly sending the requests and associated paperwork to the appointing courts. Some magistrates did not submit required monthly reports of Article 15.17 hearings to the Office of Court Administration (OCA). As a result of gaps in sending requests to the appointing authority, counsel was not always appointed timely. Some defendants entered uncounseled pleas without court rulings on pending counsel requests. Misdemeanor defendants were directed to communicate with prosecutors prior to having the opportunity to request appointed counsel. Chambers County responded with action plans addressing the report's findings.

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## Current Review

TIDC’s policy monitoring rules require follow-up reviews where the report includes noncompliance findings.<sup>3</sup> TIDC staff members Joel Lieurance and William R. “Bill” Cox visited Chambers County to conduct a follow-up review on April 11 and 13, 2022. TIDC examined whether Chambers County successfully addressed the findings and recommendations from the April 2019 report. The review focused on two core requirements of the Fair Defense Act:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

TIDC reviewed 148 misdemeanor case files and 108 magistration forms from FY2021 (April – September 2021), observed a misdemeanor first appearance docket at the Chambers County Courthouse, and met with local officials.

### **History of Monitoring Findings for Chambers County**

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status after 2023 Review	
		Satisfied	Pending
1. Prompt Magistration	Magistrates must record whether an arrestee requested counsel. (2019)		✓
1. Prompt Magistration	Justices of the peace must report requests for counsel as part of their Judicial Council Monthly Court Activity Reports. (2019)		✓
1. Prompt Magistration	Requests for counsel must be transmitted to the courts within 24 hours of the request being made. (2019)		✓
4. Prompt Appointment	The timeliness of misdemeanor counsel appointments does not meet TIDC’s administrative threshold (90% of sample cases receive timely rulings). (2019)		✓
4. Prompt Appointment (waivers of counsel)	The attorney representing the State communicated with defendants who had requested counsel before the court had ruled on the request. (2019)		✓
4. Prompt Appointment (waivers of counsel)	The courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with attorneys representing the State before the court had ruled on requests for counsel. (2019). <b><i>Successfully Addressed 2019 and observed in 2023.</i></b>	✓	

<sup>3</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

# **Program Assessment**

## ***Description of Local Counsel Appointment Procedures***

After arrest in Chambers County, defendants go before a magistrate for the Article 15.17 hearing. At this hearing, a magistrate determines whether there is probable cause to detain the individual, sets bail, and asks defendants whether they would like to request counsel. Under Article 15.17 of the Code of Criminal Procedure, magistrates must record whether the defendant requested counsel. In Chambers County, magistrates generally, but not always, mark whether defendants request counsel.

According to interviews, if a defendant requests counsel, the magistrate stays with the defendant until the financial affidavit is completed. The Sheriff's Office makes an electronic copy of the forms and makes them available in electronic form to the justice courts. Justice court staff email requests and financial affidavits to the appropriate destination (the 253<sup>rd</sup> District Court in felony cases and the Chambers County Court in misdemeanor cases).<sup>4</sup>

Based on case records and interviews, some requests are sent to the courts more than 24 hours after the original request was made, and some are never sent to the courts. Article 15.17 allows a maximum time of 24 hours to get required paperwork to the appointing courts.

The County Court receives misdemeanor requests for counsel made at the Article 15.17 hearing and forwards requests for cases filed in the County Court-at-Law to that court.<sup>5</sup> Under Article 1.051(c), Chambers County has three working days to appoint counsel once the appointing court receives a request. Article 1.051(j) requires appointment of counsel when adversarial judicial proceedings are initiated. In Chambers, when defendants made bail, some of these requests were not promptly ruled upon. *Rothgery v. Gillespie County*, 554 U.S. 991 (2008), held the Article 15.17 hearing is an adversarial judicial hearing in which the right to counsel attached

After charges are filed, the county courts explain the right to appointed counsel to all unrepresented defendants and require them to complete the form titled Judges Explanation of Rights to Defendants without an attorney. Cases are then reset for defendants wishing to retain counsel, defendants are given the opportunity to apply for appointed counsel or defer the decision to invoke their right to counsel until after learning more about the case from the prosecutor. (See Appendix.)

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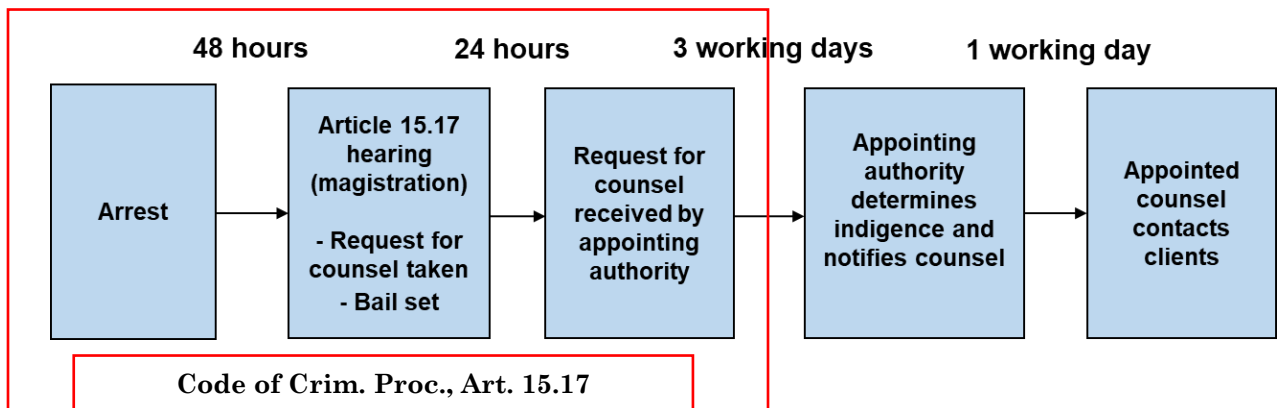
<sup>4</sup> Arrests for out-of-county warrants are sent to the appropriate contact.

<sup>5</sup> The Chambers County Court handles the requests for all unfiled misdemeanor cases, and one-third of filed cases, while the County Court-at-Law receives two-third of filed cases.

## REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

A person must be brought before a magistrate within 48 hours of arrest.<sup>6</sup> At this hearing, the magistrate must inform the arrestee of the right to counsel, procedures for requesting counsel, and ensure the person has reasonable assistance in completing the necessary forms for requesting assistance of counsel.<sup>7</sup> Within 24 hours of receiving a request for counsel, the magistrate must transmit this request to the appointing authority.<sup>8</sup>

**Figure 1a: Timeline for Appointment of Counsel in Adult Criminal Cases**



### *Arrestees Receiving Appointed Counsel*

At the Article 15.17 hearing, the magistrate must inform the accused of the right to counsel, ask whether the accused wants to request counsel, and receive the accused's request for counsel.<sup>9</sup> The magistrate must make a record of each step of this exchange.<sup>10</sup> Justices of the peace and municipal judges report this data to OCA as part of their Judicial Council Monthly Court Activity Reports. TIDC uses these reports, as well as court observations and case file records, to determine if magistrates inform arrestees of their right to counsel and if arrestees are able to invoke that right.

Of the 108 magistration forms TIDC reviewed, 50 included requests for counsel. On 10 of the forms, there was no mark for whether the arrestee requested counsel. Article

<sup>6</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>10</sup> TEX. CODE CRIM. PROC. art. 15.17(e).

15.17(e)(3) requires that the magistrate record whether the arrestee requested counsel. This requirement extends to out-of-county arrestees.<sup>11</sup>

Historically, the percentage of misdemeanor defendants receiving appointed counsel in Chambers County has generally been below the statewide average (see Table 1) and below the percentage of defendants who request counsel at the Article 15.17 hearing.

**Table 1: Misdemeanor Appointment Rates<sup>12</sup>**

	FY21	FY20	FY19	FY18
Chambers Misd. Cases Disposed	1,681	442	774	878
Statewide Misd. Cases Disposed	329,309	304,810	452,953	459,758
Chambers Misd. Cases Paid	204	233	204	189
Statewide Misd. Cases Paid	143,702	149,070	209,652	214,458
Chambers % Cases Paid	12%	53%	26%	22%
Statewide % Cases Paid	44%	49%	46%	47%

### ***Transmitting Forms to the Appointing Authority***

Magistrates must transmit requests for counsel to the appointing authority within 24 hours of the request being made.<sup>13</sup> For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.<sup>14</sup>

Chambers County staff reported that magistrates email requests for counsel at 15.17 hearings to the courts; however, in some instances there are delays forwarding the requests to the courts. TIDC’s misdemeanor case sample showed several instances in which arrestees requested counsel at the Article 15.17 hearing, but the court had no record of the requests or received the requests more than 24 hours after the hearing.<sup>15</sup> In this sample, nine defendants requested appointed counsel at the Article 15.17 hearing but did not receive a ruling on that request, and they had to make a second request (most likely in the misdemeanor trial court).

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<sup>11</sup> TEX. CODE CRIM. PROC. art. 15.18(a) – (a-1).

<sup>12</sup> Rates estimated from data reported to the Office of Court Administration (OCA) and TIDC. All estimates are based on the percent of cases disposed over the fiscal year from October through September. The number of appointed cases was based upon the number of misdemeanor cases paid as reported by the county’s financial officer to TIDC.

<sup>13</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>14</sup> TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

<sup>15</sup> In 17 sample cases where defendants requested counsel at the Article 15.17 hearing, the courts never received a completed application. In 11 other sample cases, the court received a completed application more than 24 hours after the request was made.



### ***Judicial Council Monthly Court Activity Reports***

TIDC also notes that not all justices of the peace are reporting requests for counsel in their Judicial Council Monthly Court Activity Reports (see Table 3). TIDC found that all six judges conducted magistrate warnings, but only four of them reported data to OCA. These data are required to be reported by justice courts per Title 1 Tex. Admin. Code § 171.7.

**Table 2: Texas Judicial Council Monthly Court Activity Reports for Chambers County (April 2021 – September 2021)**

<b>Court</b>	<b>Misd Req.</b>	<b>Misd. Warnings</b>	<b>% Misd Req.</b>	<b>Fel. Req.</b>	<b>Fel. Warnings</b>	<b>% Fel. Req.</b>
JP1	60	120	50%	92	166	55%
JP2	No reports	No reports	No reports	No reports	No reports	No reports
JP3	No reports	No reports	No reports	No reports	No reports	No reports
JP4	0	34	0%	0	34	0%
JP5	0	0	n/a	0	0	n/a
JP6	24	44	55%	28	62	45%
<b>Total</b>	84	198	42%	120	262	46%

#### FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

##### **Conduct prompt and accurate magistration proceedings.**

**2019 FINDING 1 AND RECOMMENDATION:** Per Article 15.17(e)(3), magistrates must record whether an arrestee requested counsel. Justices of the peace must mark whether each arrestee made a request or not. ***Issue Pending.***

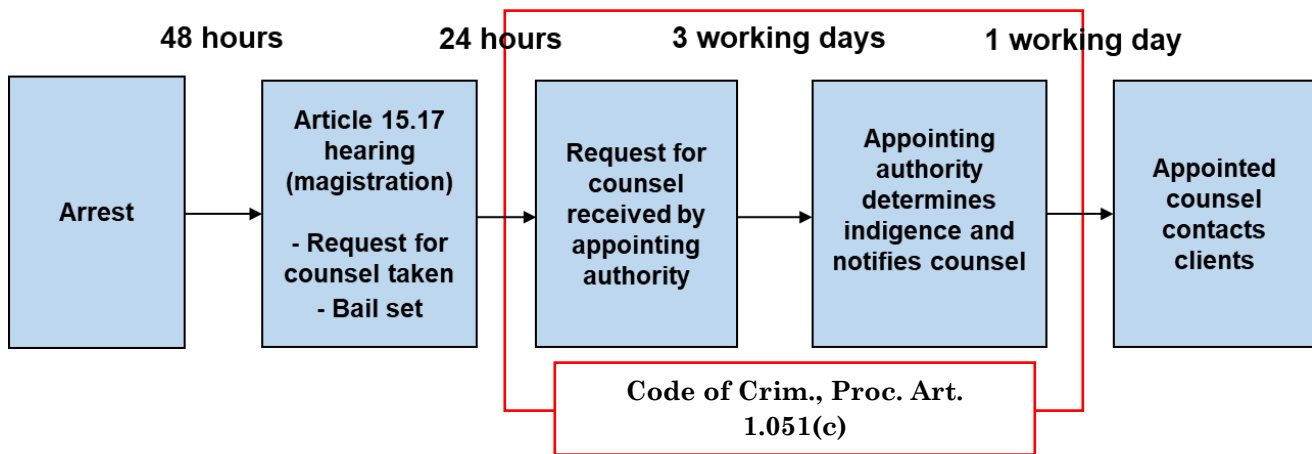
**2019 FINDING 2 AND RECOMMENDATION:** Per Title 1 Tex. Admin. Code § 171.7, justices of the peace are required to report requests for counsel as part of their Judicial Council Monthly Court Activity Reports. All justices of the peace must create procedures to report this data. ***Issue Pending.***

**2019 FINDING 3 AND RECOMMENDATION:** Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Chambers County must ensure that whenever a request for counsel is made at the Article 15.17 hearing, the associated paperwork is sent to the courts within 24 hours of the request being made. ***Issue Pending.***

## REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within 3 working days of receiving the request. If an arrestee makes bail, Article 1.051(j) sets the deadline for appointing counsel to be the defendant's first court appearance or the initiation of adversarial judicial proceedings, whichever comes first. *Rothgery v. Gillespie County* clarified that the initiation of adversarial judicial proceedings occurs at the Article 15.17 hearing.<sup>16</sup> After magistration, courts must provide a method for defendants to request and obtain appointed counsel.<sup>17</sup>

**Figure 1b: Timeline for Appointment of Counsel in Adult Criminal Cases**



### *Timeliness of Appointments in Misdemeanor Cases*

TIDC examined 136 sample misdemeanor cases filed between April 1 and September 30, 2021. Counsel was timely appointed in 18 of 53 cases where counsel was requested (**34% timely**). This falls below TIDC's 90% threshold for presuming a jurisdiction's practice ensures timely appointment of counsel. The misdemeanor courts must put in place procedures to ensure timely appointment of counsel. Many untimely sample cases reflected (1) delays in sending counsel requests to the courts; or (2) defendants who made bail shortly after requesting counsel at magistration.

<sup>16</sup> *Rothgery v. Gillespie County*, 554 U.S. 191, 212–13 (2008).

<sup>17</sup> 1 TEX. ADMIN. CODE § 174.51.

**Table 3: Times to Appointment in Misdemeanor Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	136	-	-
Total cases with a counsel request	-	53	<b>39%</b>
<b>Appointment / denial of indigence occurred in:</b>			
0 work days	-	11	-
1 – 3 work days + 24-hour transfer	-	7	-
<b>Total Rulings on Request</b>	-	<b>18</b>	<b>34%</b>
More than 3 work days + 24-hour transfer	-	16	-
No ruling on request	-	13	-
<b>Untimely / No Rulings on Requests</b>	-	29	<b>55%</b>

***Waivers of Counsel in Misdemeanor Cases***

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel, allowing waivers that are voluntarily and intelligently made. Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is denied, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel to an unrepresented defendant and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. If a defendant enters an uncounseled plea, the defendant must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).<sup>18</sup>

TIDC found eight sample cases in which misdemeanor defendants requested counsel at the Article 15.17 hearing and later entered uncounseled pleas or pretrial diversion agreements without their requests being ruled upon. The absence of a ruling on a pending request raises the possibility of statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Chambers County must ensure that its

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<sup>18</sup> The waiver language of Article 1.051(g) states:

“I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).<sup>19</sup>

TIDC's previous report determined Chambers County had addressed the finding that courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with attorneys representing the state before ruling on requests for counsel. The finding stated the attorney representing the state may be communicating with defendants who have requested the appointment of counsel when the court or its designee has not acted on the request. TIDC staff observed the misdemeanor docket on April 13, 2022. At the docket, the court met with all defendants who did not have counsel and advised them of their right to appointed counsel and the procedure to apply for an attorney. The Court further advised the defendants they had the option to:

- Retain an attorney;
- Apply for appointed counsel; or
- Decide to defer the decision on whether to apply for appointed counsel and choose to speak with the prosecutor to discuss their case

Each defendant without counsel was required to complete a form titled Judge's Explanation of Rights to Defendants Without an Attorney, a copy of which is included in Appendix A. The form includes the defendant's choices regarding retaining or requesting appointed counsel.

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<sup>19</sup> These cases may be instances where defendants requested counsel at the Article 15.17 hearing before posting bond, or requests were not forwarded to the Court timely, or were not received by the Court.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

**Appoint Counsel Promptly.**

**2019 FINDING 4 AND RECOMMENDATION:** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy the appointment timeline in Article 1.051(c)(1). *Issue Pending.*

**2019 FINDING 5 AND RECOMMENDATION:** The County does not have processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. *Issue Pending.*

**2019 FINDING 6:** TIDC interviews, case file reviews, and court observation indicate that courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with attorneys representing the state before acting on requests for counsel. Chambers County has amended its process to ensure compliance with Article 1.051(f-2). *Successfully Addressed in 2019 and observed in 2023.*

## **Conclusion**

TIDC thanks Chambers County officials for their assistance during its visits and commends them for their commitment to improving local indigent defense practices. TIDC will continue to monitor whether the County has satisfied its four pending recommendations. TIDC is available for technical assistance; please contact Joel Lieurance, or William R. “Bill” Cox, Senior Policy Analysts, with questions.

## **Findings and Recommendations from the 2023 Review**

Chambers County must respond in writing how it will address the report’s pending findings.

**2023 FINDING 1 AND RECOMMENDATION:** Per Article 15.17(e)(3), magistrates must record whether an arrestee requested counsel. Justices of the peace must mark whether each arrestee made a request or not.

**2023 FINDING 2 AND RECOMMENDATION:** Per 1 Tex. Admin. Code § 171.7, justices of the peace are required to report requests for counsel as part of their Judicial Council Monthly Court Activity Reports. All justices of the peace must create procedures to report this data.

**2023 FINDING 3 AND RECOMMENDATION:** Article 15.17(a) requires requests for counsel to be transmitted to the courts within 24 hours of the requests being made. Chambers County must ensure that whenever a request for counsel is made at the 15.17 hearing, the associated paperwork is sent to the courts within 24 hours of the request being made.

**2023 FINDING 4 AND RECOMMENDATION:** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor’s sample of misdemeanor cases fell below TIDC’s 90% timely threshold for presuming a jurisdiction’s appointment system ensures timely appointment of counsel. The county must implement practices that satisfy the appointment timeline in Article 1.051(c)(1).

**2023 FINDING 5 AND RECOMMENDATION:** The County does not have processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant’s waiver of counsel. As required by Article 1.051(f-2), the court must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. *Issue Pending.*

# Appendix

## JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS WITHOUT AN ATTORNEY

CASE #: \_\_\_\_\_

DEFENDANT'S NAME: \_\_\_\_\_

Dear Sir or Ma'am:

Prior to meeting with a prosecutor and their disclosing the contents of the State's file, I am notifying you of certain rights regarding the decision to either represent yourself or seek an attorney at this time.

Before speaking to a prosecutor you have been advised of the following:

1. You have a right to counsel,
2. The procedure for requesting appointed counsel, and
3. If you choose to request appointed counsel, you will be given a reasonable opportunity to do so.

You also have the right to hear the State's Plea Offer and learn the contents of the State's file at this time, without an attorney.

*In summation, you have the right to hire an attorney, request a court appointed attorney, or represent yourself at this time. These rights exist prior to speaking with a prosecutor on your case, and shall exist after you learn the State's Plea offer and contents of the State's file, if you choose to do so at this time.*

By signing below, you understand the above mentioned rights, and have made the decision indicated.

### **DEFENDANT'S CHOICE** (Mark Initials next to (one) choice):

\_\_\_\_\_ I want to reset this case to hire my own attorney.

\_\_\_\_\_ I have hired an attorney, whose name is: \_\_\_\_\_

\_\_\_\_\_ I want to apply for a court-appointed counsel.

\_\_\_\_\_ I want to waive my right to an attorney and represent myself.

\_\_\_\_\_ I want to speak with a prosecutor about my case, and decide after learning the contents of the State's file and the Prosecutor's Plea Offer whether to hire an attorney, apply for a court-appointed attorney, or represent myself.

Defendant: \_\_\_\_\_ Date: \_\_\_\_\_

### **After speaking with a prosecutor about my case, I have decided to (Mark initials next to (one) choice):**

\_\_\_\_\_ **Request a Court Appointed Attorney**

\_\_\_\_\_ **Hire my own attorney**

\_\_\_\_\_ **Represent myself in this cause.**

\_\_\_\_\_ **Consider the above options and decide by the next Court setting.**

Defendant: \_\_\_\_\_ Date: \_\_\_\_\_