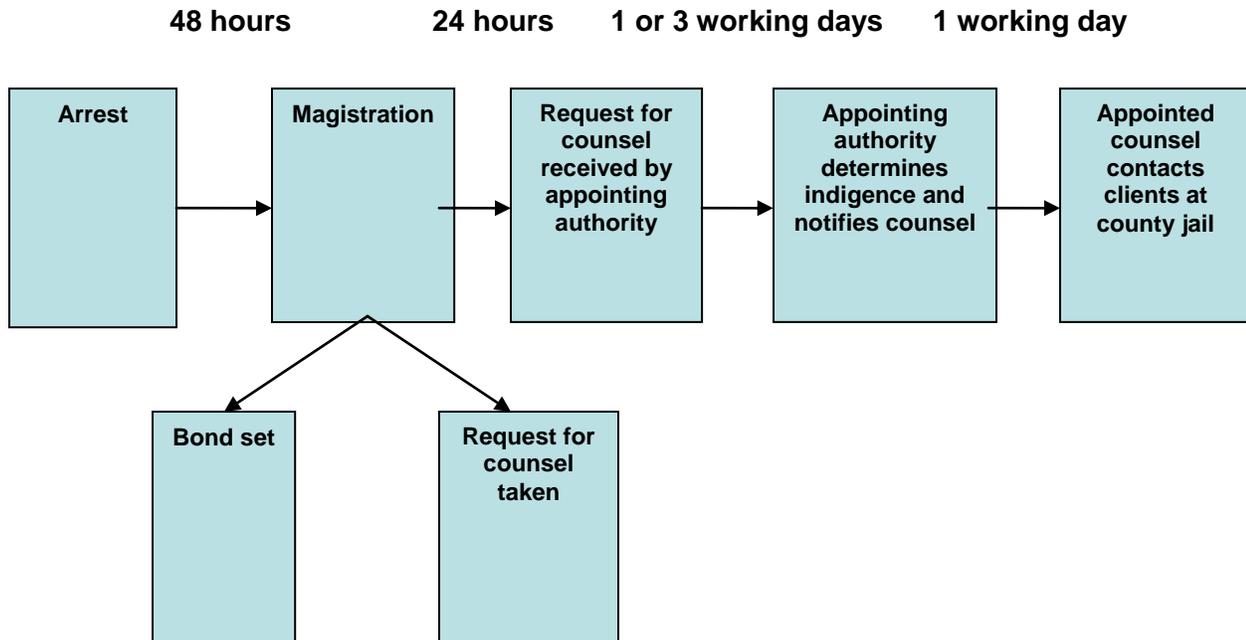


Summary of a Methodology for Conducting an Initial Indigent Defense Self-Assessment

Self-assessment is a technique where the local jurisdiction periodically samples relevant data to determine whether all Fair Defense Act (FDA) requirements are being met. The Commission recommends that self-assessments be conducted to verify procedures and operational practices (e.g. local plan, rules and procedures, attorneys' applications, attorneys' CLE hours). Self-assessments can be a valuable management tool. Important reasons to conduct self-assessment reviews include:

- protecting institutional knowledge;
- training (documentation of operational practices of local plan); and
- maintaining internal controls (procedures give management assurances that everyone knows what is acceptable and that safeguards are there to double check for errors).

Self-assessments ensure familiarity with county policies, procedures, and operational practices. Moreover, best practices indicate that internal periodic reviews of documents/forms and processes assist in identifying possible problems or errors. Self-assessments can be performed by any jurisdiction and add accountability to the indigent defense process. Court personnel may have an internal belief of performance based on experience with a part of the indigent defense process, but without actual records, one cannot know the effectiveness of the system.



Self-assessment items

1. Time to magistration

Check magistration records to see that magistration occurred within 48 hours of arrest (use an acceptable sample size as defined in the methodology). Compare the time of arrest to the time of magistration. The magistration record may be on a paper magistration form or on an electronic record.

The sample should be as random as reasonably possible, from a representative cross-section of persons/places where magistration was conducted. For instance, if magistration duties are rotated between justices-of-the-peace, the sample should include magistration data from all the different justices. The sample size should be large enough to allow one to gauge performance of the system. A sample size calculator is available at <http://www.surveysystem.com/sscalc.htm> and allows for the calculation of an appropriate sample size. Reasonable confidence requirements may be a 95% confidence level with a 15% confidence interval. In this way if the sample showed that 75% of magistrations were timely, one could say with 95% confidence that all magistrations are timely 75% +/- 15% of the time (or between 60% and 90% of the time). More accurate confidence intervals may be used but require larger sample sizes or a basis for knowing the performance level of the system. If a second review were conducted, the performance from the initial review could be used as a base level for system performance. Plugging this initial review percentage into the sample size calculator may yield much tighter confidence intervals with the same sample size.

2. Timely appointment of counsel

Review counsel request forms for each court system and make separate performance estimates for each court system (i.e. felony, misdemeanor, and juvenile) to see that counsel was appointed for each court system within the time required by the FDA. Check the percentage of persons who receive timely appointment of counsel. The Commission's policy monitoring rules presume that a jurisdiction's procedures ensure timely appointment of counsel if a sample collected by the policy monitor is 90% timely.

Check that all requests for counsel are ruled upon. Under Article 1.051(f)-(f-2) of the Code of Criminal Procedure, a waiver of counsel is presumed invalid if a request for counsel has not been denied prior to the waiver.

3. Review attorney qualifications

Check all attorneys who have received appointments from the previous 12 months to see that they are on the approved list (voted by a majority of judges) and that they have met the applicable CLE requirements.

4. Review attorney selection process

- Rotation system – Check that appointments follow the wheel or that good cause is found when the wheel is not followed (use an acceptable sample size).

To check that a rotation system is fair, neutral and non-discriminatory, observe the distribution of all criminal appointments in each court system from the previous year. Look for instances when an individual or small group of individuals are given a far greater share of appointments than one would expect if given out according to the wheel. Mere disparity in felony appointments is not an indication of discriminatory appointments, as some attorneys may be qualified to receive more types of appointments than other attorneys.

The policy monitoring rules presume that a jurisdiction's appointment process is fair, neutral, and non-discriminatory if the top 10% of recipient attorneys receive less than three times their representative share of appointments. As an example, if an appointment list contains 18 attorneys, and there were 300 appointments from this list during the previous year, the top two attorneys (or top 11.1% of the list) should receive less than 100 appointments (33.3% of available appointments).

5. Review indigence standards

Check that a determination of indigence has been made for all persons requesting counsel.

6. Review payment for indigent services

- a. Check that attorney fee vouchers are complete. (Did the judge and attorney sign the voucher? Is the voucher for a felony or a misdemeanor?)
- b. Do the amounts on the attorney fee voucher add up correctly?
- c. Is the voucher payment in accordance with the attorney fee schedule?
- d. Are written findings made for disapproved/reduced reimbursements?