

Central Texas Indigent Defense Coordinators Workshop

McLennan County Courthouse
Waco, TX

February 1, 2019

Texas Indigent Defense Commission
Scott Ehlers & Joel Lieurance
Policy Analysts



Who We Are

Thirteen-member governing board administratively attached to the Office of Court Administration. Geoff Burkhart is the Executive Director. The Commission has eleven full-time staff.

Our Purpose

Provide 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.

Our Fiscal and Policy Monitoring Program

The Commission monitors counties to ensure grant funds are being properly spent and accounted for, and to enforce compliance with grant conditions, state law, local rules, and regulations.

Our Grant Program

In FY 2018 \$31.4 million was disbursed to counties.

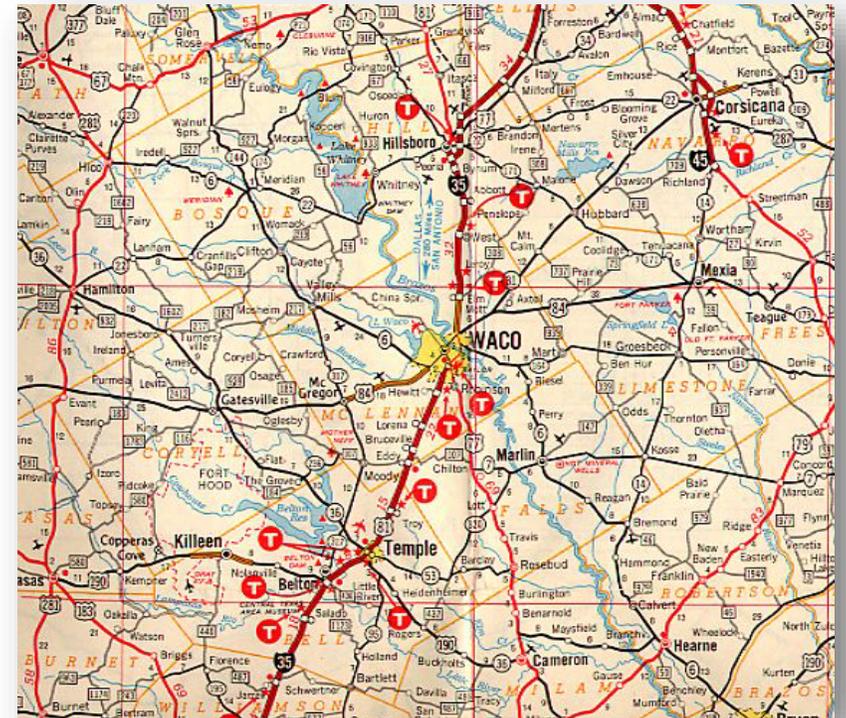
Formula grant awards totaled \$23.3 million to all 254 counties. Improvement grants for 26 programs totaled \$8.1 million.

Our Innocence Program

The Commission provides up to \$100,000 annually to the state's 6 public law schools to operate innocence clinics.

ROADMAP

- Fair Defense Act Background+Impact
- ID Coordinator Duties
- Common Mistakes & Important Deadlines
- Out-of County Requests
- Indigence Determinations
- Waivers of Counsel
- Appointment and Payment of Counsel
- Addressing Mental Health Issues
- State Reporting and Record Keeping Requirements
- Indigent Defense Improvement Grants



Credit:

http://www.texasfreeway.com/statewide/statewide/roadmaps/images/1966_texas_texaco_north_medres.jpg



FAIR DEFENSE ACT

BACKGROUND + IMPACT

HOW WE GOT HERE

- 1791 – Bill of Rights + 6th Amendment
- 1963 – *Gideon v. Wainwright*
- 1999 – Study of TX Indigent Defense
- 2001 – Fair Defense Act and Task Force
- 2011 – Texas Indigent Defense Commission

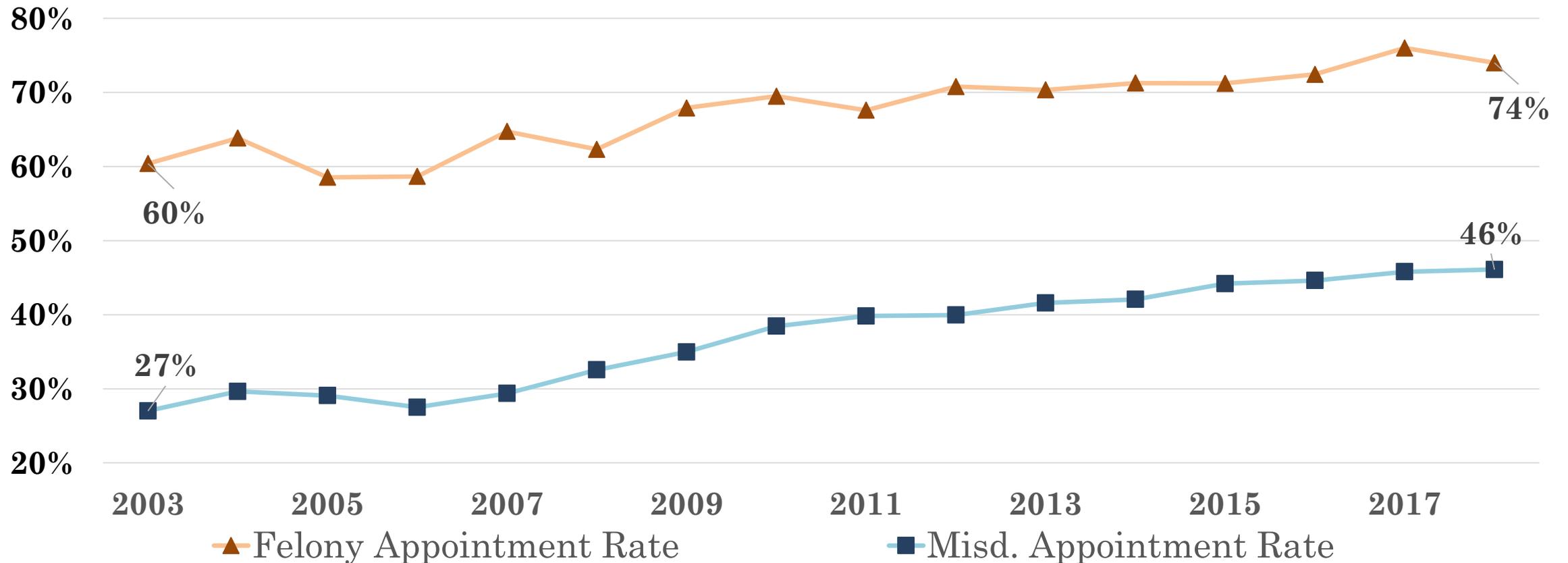
THE FAIR DEFENSE ACT OF 2001

Core Requirements:

- Prompt and accurate magistration hearings
- Develop a standard of indigence and process to determine eligibility
- Minimum attorney qualifications
- Timely appointment of counsel
- Fair, neutral, and non-discriminatory attorney selection process
- Standard attorney fee schedule and payment process
- State reporting

Since Passage of the FDA, Appointment Rates Have Increased

Percent of Felony and Misdemeanor Cases Receiving Appointed Counsel
(Cases Paid / Cases Added)



Estimate of Pro Se Misdemeanor Cases

% of Pro Se Misd. Dispositions	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Statewide	33.2%	28.8%	27.5%	25.4%	23.8%	24.1%	21.3%	22.2%
Counties < 50k Pop.	68.7%	66.3%	66.4%	63.5%	61.7%	58.5%	56.7%	58.0%
Counties Between 50k & 250k Pop.	56.9%	50.8%	48.4%	46.6%	42.5%	39.2%	41.7%	39.7%
Counties > 250k Pop.	19.6%	15.2%	13.3%	11.6%	11.3%	13.0%	8.8%	9.6%

The number of pro se dispositions can be estimated by the following formula:

Pro Se Dispositions = Total Dispositions – Total Retained Cases – Total Cases in Which Attorneys were Paid



DUTIES OF THE INDIGENT DEFENSE COORDINATOR

DUTIES OF THE INDIGENT DEFENSE COORDINATOR

ID Coordinators are not created by statute. Duties may vary by jurisdiction. Typical duties include:

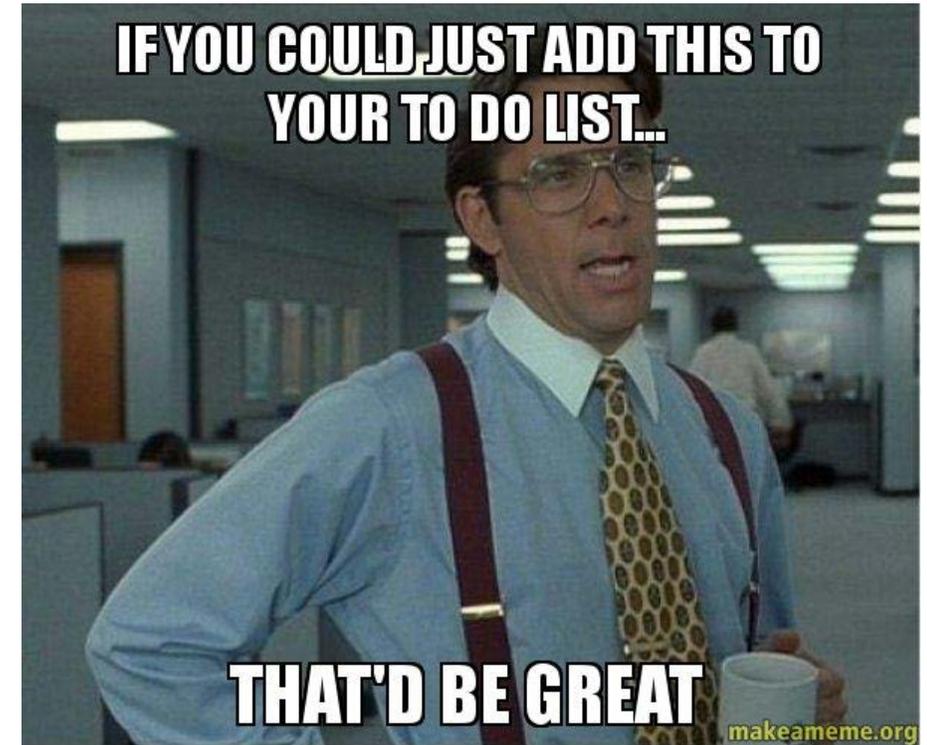
- Review all counsel requests
 - Article 15.17 requests
 - In-court requests
 - Requests before the initial appearance
 - Out-of-county requests
- Ensure affidavits of indigence are complete
- Select attorneys in a fair, neutral, and nondiscriminatory manner
- Notify attorneys of appointments
- Notify defendants of appointments / denials of indigence



Credit: <https://uwaterloo.ca/centre-for-teaching-excellence/teaching-resources/teaching-tips/assessing-student-work/grading-and-feedback/responding-writing>

ADDITIONAL DUTIES OF ID COORDINATORS

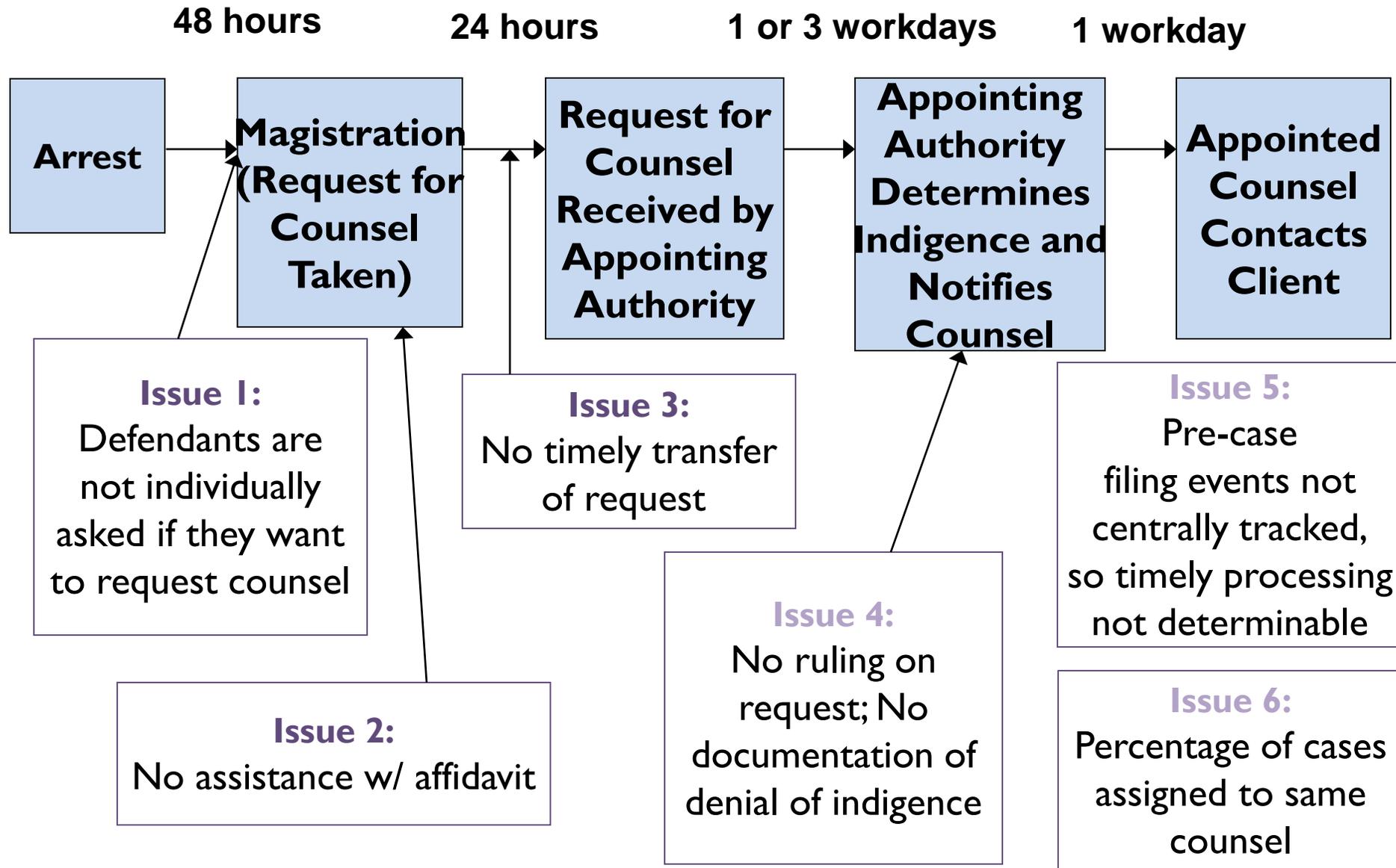
- Maintain attorney appointment list and supporting records (e.g. CLE records)
- Ensure attorneys complete practice time reports
- Keep records on attorney complaints
- Notarize counsel requests
- Monitor jail population
- Act as liaison between judges, sheriff's office, probation, and clerks



Credit: <https://makeameme.org/meme/if-you-could-b90xv1>



COMMON MISTAKES AND IMPORTANT DEADLINES

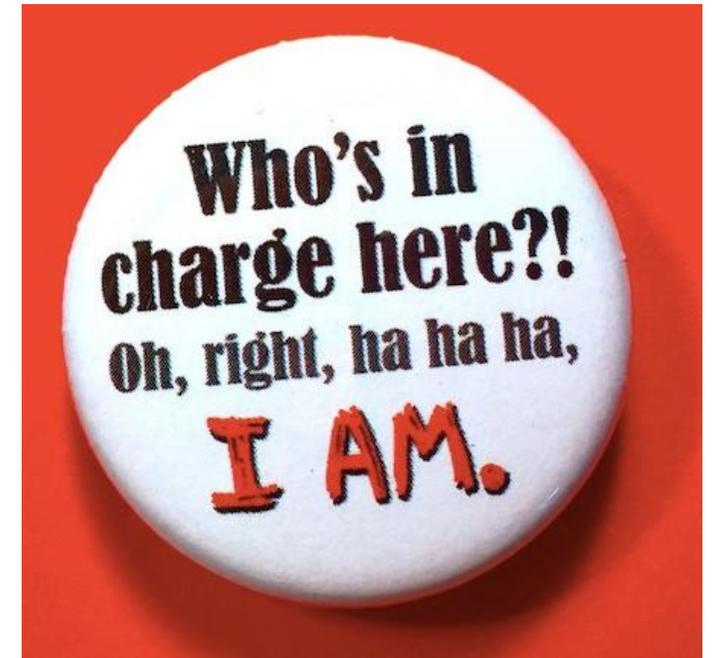


QUESTION

Who has authority to appoint counsel?

- The courts hearing criminal cases
- The courts' designee (incl. Magistrates and IDCs)
- IDC grants require the IDC to have appointing authority.

See your Indigent Defense Plan; Code of Criminal Procedure art. 1.051; 15.17; 26.04.



Credit: <https://bookishgifts.com/products/quote-button-magnet-1>

Timely Appointment of Counsel or Denial of Indigence

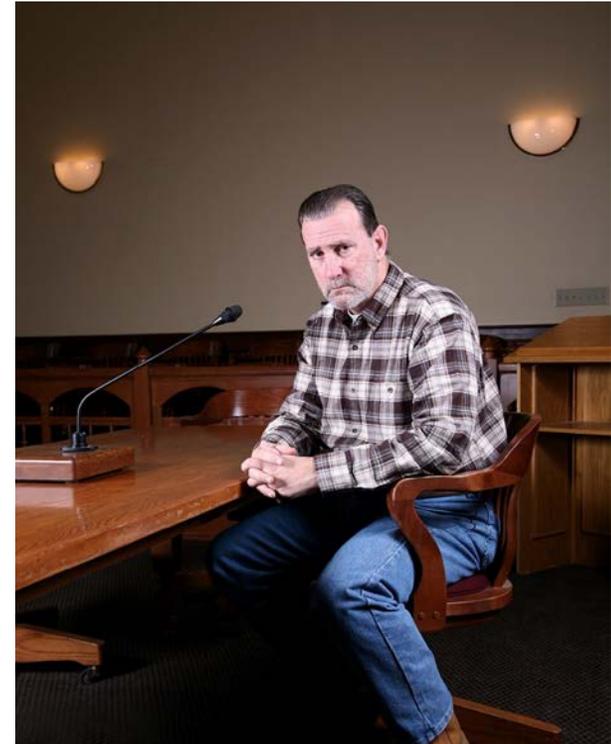
Texas Code Crim. Proc. Article 1.051

- Must appoint counsel /deny indigence within 3 working days of request for counsel (counties under 250,000 population)
- If defendant released before appointed counsel, then appointment not required until first court appearance “or when adversarial judicial proceedings are initiated, whichever comes first.” CCP 1.051(j)

Magistration = Initiation of Adversarial Judicial Proceedings

Rothgery v. Gillespie County, 554 US 191 (2008).

A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.



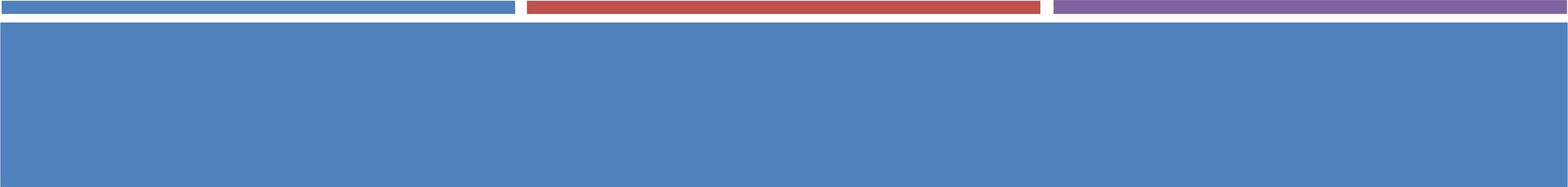
Gillespie Co. refused to appoint Walter Rothgery an attorney until after indictment. He sued the county for violating his 6th Amendment right to counsel.

How Does TIDC Measure “Prompt Appointment of Counsel?”

“A county is presumed to be in substantial compliance with prompt appointment of counsel if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor’s sample are timely.”

Sec. 174.28(c)(4)(B), Tex. Admin. Code





OUT-OF-COUNTY REQUESTS FOR COUNSEL

PROCESS QUESTIONS

- What must you do if a defendant is arrested on your county's warrant but is currently in another county's jail? The defendant has requested counsel.
- What must you do if a defendant is in your jail on another county's warrant, but has requested counsel?

Out-of-County Requests for Counsel

- If a person is arrested in your county for another county's warrant,
 - The person must be asked if he/she would like to request counsel.
 - Requests for counsel must be sent to the county issuing the warrant.
 - Where is the contact list to send these requests?

<http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>

Art. 15.18(a-1): If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant.

Out-of-County Appointments of Counsel

Tex. Code Crim. Proc. art. 1.051(c-1)

- **If a person is arrested in another county for your county's warrant:**
 - You must rule upon the request within the same 3 working day time frame as in-county requests
- **If a person is in your jail on another county's warrant, you must appoint counsel:**
 - If the person has not been transferred to the other county within 11 days after arrest; and
 - If counsel has not been appointed by the county issuing the warrant.
 - Appointment limited to Article 11 or 17 matters (writs or bail bond issues).
 - Arresting county may seek reimbursement from the warrant issuing county.



INDIGENCE DETERMINATIONS

STANDARD OF INDIGENCE

Texas Code Crim. Proc. Article 26.04(l)-(m) (Adults)

- Procedures must include financial standards that apply equally to jailed or bailed defendants.
- Court may consider income, assets, and expenses of defendant (and defendant's spouse).
- Court may not consider bail or ability to post bail, “except to the extent that it measures the defendant's financial circumstances”.

ADDITIONAL REQUIREMENTS FOR INDIGENCE DETERMINATION

Texas Code Crim. Proc. Article 26.04(m)-(o) (Adults)

- Defendant must complete under oath questionnaire regarding financial resources and/or respond to examination by judge or magistrate
- Defendant must sign sworn statement substantially similar to statement at CCP art. 26.04(o)
- Court may not consider bail or ability to post bail, “except to the extent that it measures the defendant’s financial circumstances”.

Local Standards Of Indigence

- Income Less than 150% of FPG: Burnet, Leon
- Income Less than 125% of FPG: Bell, Brown, Coryell, Ellis, Hill, Henderson (135%), Lampasas, McLennan, Navarro, Van Zandt, Williamson
- Income Less than 100% of FPG: Anderson

Household Size	100%	125%	150%
1	\$12,140	\$15,175	\$18,210
2	\$16,460	\$20,575	\$24,690
3	\$20,780	\$25,975	\$31,170
4	\$25,100	\$31,375	\$37,650
5	\$29,420	\$36,775	\$44,130
6	\$33,470	\$41,838	\$50,205

Local Standards Of Indigence – Other Provisions

- Eligible for federal benefits (food stamps, SSI, public housing):
- Difference between accused's net income and reasonable necessary expenses is less than _____
- Asset test (value of liquid assets greater than _____)
- Serving sentence in a correctional institution or in a mental health facility
- Substantial hardship
- Appointment in the interest of justice

PROCESS QUESTIONS

- Where is your local standard of indigence listed?

Your county's Indigent Defense Plan. Found here:

<http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>

- What should you do if a defendant lists no income, assets, or expenses on the affidavit of indigence?

Ask for additional info or deny the request.

- What should you do if last year a defendant made a little more income than is set by your local standard of indigence but has remained in jail for 2 weeks?

May need to appoint per Indigent Defense Plan; get more info to determine if now unemployed; consult with judge.



WAIVERS OF COUNSEL

WAIVERS OF COUNSEL – 2 PARTS

- Unrepresented defendants speaking with the prosecutor: Art. 1.051(f-1),(f-2)
 - Prosecutor may not initiate waiver
 - All requests for counsel must first be denied before prosecutor communicates with defendant
 - Procedures for requesting counsel must be explained
 - Waivers obtained in violation of the above provisions are presumed invalid.
- Unrepresented defendants entering a plea: Art. 1.051(g)
 - Court must determine waiver is voluntarily and intelligently made
 - Defendant must sign waiver that substantially conforms to Art. 1.051(g)

TIDC Model Form to Explain Rights to Unrepresented Defendants

IN THE [INSERT COURT] [INSERT COUNTY] COUNTY, TEXAS	
JUDGE'S EXPLANATION OF RIGHTS TO DEFENDANTS WITHOUT ATTORNEY	
<p>As a defendant in a criminal case, you have three options:</p> <ol style="list-style-type: none">1. You may hire an attorney;2. If you do not have enough money to hire an attorney, you may request an attorney be appointed to represent you;3. You may represent yourself. <p>If you want an attorney to represent you and have enough money to hire an attorney, the case will be reset to give you time to do so.</p> <p>If you want an attorney and do not have the money to hire one, you will need to fill out a financial questionnaire so that the proper person can determine whether or not to appoint an attorney to represent you.</p> <p>You may not speak to the prosecutor about your case unless you sign a written waiver of your right to represented by an attorney.</p> <p style="padding-left: 40px;">Be aware that there are dangers to self-representation. Waiving your right to an attorney and representing yourself may result in a worse outcome for you and your case, including the loss of significant legal rights and opportunities relating to military service, possession of a firearm, housing and public benefits, child custody, immigration status for non-citizens, and employment.</p> <p>If you choose to proceed without an attorney, you may change your mind at any time and may request counsel from the Court.</p> <p style="text-align: right;">_____ Judge Presiding</p>	
DEFENDANT'S CHOICE [mark initials next to only ONE choice]	
<input type="checkbox"/> I want to reset this case to hire my own attorney.	
<input type="checkbox"/> I have hired an attorney, whose name is: _____	
<input type="checkbox"/> I want to apply for court-appointed counsel.	
<input type="checkbox"/> I have a court-appointed attorney, whose name is: _____	
<input type="checkbox"/> I want to waive my right to an attorney and represent myself.	
Defendant: _____	Date: _____



APPOINTMENT AND PAYMENT OF COUNSEL

Selection of Counsel

- Indigent defense plan lists the method for appointing counsel.
- The default is the rotational system.
 - Appoint the top attorney on the list (who is qualified for the appointment)
 - May select another attorney with a record of good cause for appointing out of order
 - Appointments must be “fair, neutral, and nondiscriminatory.”
 - See CCP art. 26.04(a); (b)(6).

Assessment of Attorney Fees

- If the judge determines the defendant has financial resources to offset in part or whole the costs of representation, Article 26.05(g) allows the court to assess attorney fees against the defendant.
- The court must find the defendant is able to pay the costs.
- The order to pay may be issued while charges are pending or, if convicted, as court costs.

Compare Requests to Cases Paid

FY2018	Misd. Requests / Warnings	Misd. Cases Paid / Cases Added
Anderson	237 / 693 (34%)	299 / 861 (35%)
Bell	4,080 / 8,295 (49%)	5,396 / 9,012 (60%)
Brown	214 / 792 (27%)	297 / 929 (32%)
Burnet	238 / 505 (47%)	485 / 1,098 (44%)
Coryell	985 / 1,024 (96%)	281 / 857 (33%)
Ellis	391 / 2,565 (15%)	1,094 / 3,225 (34%)
Henderson	329 / 802 (41%)	538 / 1,302 (41%)

Compare Requests to Cases Paid

FY2018	Misd. Requests / Warnings	Misd. Cases Paid / Cases Added
Hill	0 / 40 (0%)	383 / 1,023 (37%)
Lampasas	83 / 334 (25%)	62 / 381 (16%)
Leon	104 / 45 (231%)	96 / 235 (41%)
McLennan	1,124 / 1,742 (65%)	2,710 / 3,966 (68%)
Navarro	167 / 1,813 (9%)	366 / 1,772 (21%)
Van Zandt	418 / 925 (45%)	93 / 715 (13%)
Williamson	N/A -- No Reports	4,458 / 7,205 (62%)



ADDRESSING MENTAL HEALTH ISSUES

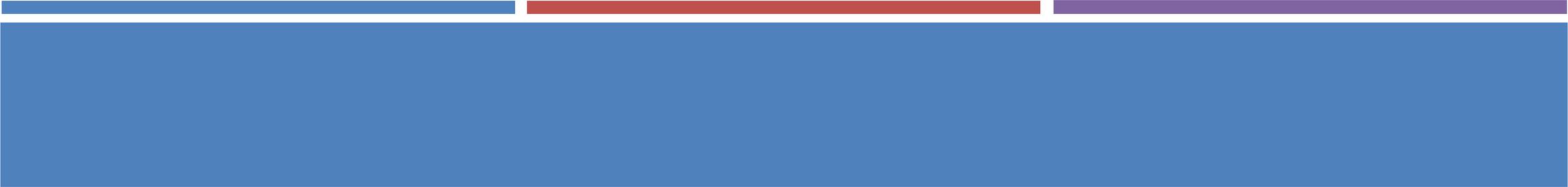
Mental Health Issues

■ Mental Health Assessment

- Per Article 16.22, jail must notify magistrate w/in 12 hrs. of receiving “credible information” that defendant has mental illness
- Magistrate must order mental health assessment if reasonable cause to believe defendant has mental illness or intellectual disability.
- The assessment must include information as to whether:
 - The defendant has a mental illness or intellectual disability;
 - The defendant is incompetent or should undergo a competency exam
 - Recommended treatment

PROCESS QUESTIONS

- What should you do if a jailed defendant appears to have mental health issues, but no one seems to have identified the person as having a mental illness?
- What if the person listed above appears to have a very low IQ?



STATE REPORTING AND RECORD KEEPING REQUIREMENTS

Local Reporting Requirements

- Indigent Defense Plan (Judiciary) – Nov. 1 every odd-numbered year
- Indigent Defense Expenditure Report (IDER) and Attorney Case Count (Auditor/Treasurer) – Nov. 1 every year
- **Attorney Practice Time Figures (Criminal Defense Attorneys)**
 - 2 methods for reporting set by the indigent defense plan
 1. To TIDC, through our online portal: <https://tidc.tamu.edu/AttorneyReporting/>
 2. To the ID Coordinator, who submits to TIDC
 - Courts may put hold on court appointments until attorney report is submitted.
Example: Coryell County indigent defense plan:
“Failure to update this information by October 15th, will result in the County approved software placing the attorney on hold.”

Record Keeping

- Attorney appointment lists (and attorney applications)
- CLE hours for attorneys on the list
- Application for attorneys to be on the list
- Complaints about attorneys on the appointment list

FOR MORE INFORMATION:

- TIDC Model Forms and Procedures:

<http://www.tidc.texas.gov/policies-standards/model-forms-procedures/>

- A Primer for Local Officials:

http://www.tidc.texas.gov/media/52836/2017_primer-for-county-officials_final3.pdf



Fair Defense Law

A Primer for Texas County Officials

Updated February 2017

www.tidc.texas.gov



Our 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. In addition, we require local planning for indigent defense and reporting of expenditures and provide an array of resources for counties to improve these services.



INDIGENT DEFENSE IMPROVEMENT GRANTS

TIDC Improvement Grant Program

Goals

- Develop new programs or processes to improve indigent defense services
- Support policy initiatives and strategic objectives of TIDC
- Aimed at permanent programs sustainable beyond end of grant

How It Works

- Competitive (evaluated by committee of outside reviewers)
- Grant payments made on a reimbursement basis
- Require county matching funds
- I-Year Grant for Indigent Defense Coordinators; 50% match; other improvement grants are 50% over 4 years.

TIDC Improvement Grant Program (cont'd)

FY 2020 Discretionary Grant Request for Applications (RFA)

Available on TIDC Website
Under “Grants and Reporting” Tab

<http://tidc.texas.gov/media/58061/fy20-discretionary-grant-rfa-final.pdf>

Essential Reading!



FY2020 Indigent Defense Improvement Grant Request for Applications (RFA)

Section I: Overview

The Texas Indigent Defense Commission (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. The Commission may provide Improvement Grants for any program that improves the provision of indigent defense services.

Period for Funding and Program Operation: October 1, 2019 to September 30, 2020.

Application Due Dates: Applications must be submitted online through the Commission's [Grant and Plan Management Website \(http://tidc.tamu.edu\)](http://tidc.tamu.edu). New applications for Improvement Grants follow a two-tier process.

- First, applicants must submit a brief Intent to Submit Application (ISA) by 5pm on March 11, 2019.
- Second, applicants that receive a Notice to Proceed with Full Application must submit by 5pm on May 10, 2019.
- Streamlined “Menu-Option” applications for certain types of standardized programs (see below) must be submitted by 5pm on May 10, 2019 and do not require an ISA.

Late or incomplete submissions will not be accepted.

Improvement Grant Categories

Multi-Year Improvement Grants

- Minimum of \$50,000 per application.
- Funding for direct client service programs that represent indigent defendants.
- Typically pays up to 80% of total project costs for the first year; 60% for the second year; 40% for the third year; and 20% for the fourth year.
- Awards for multi-year programs are made each fiscal year, with funding of eligible expenses provided on a reimbursement basis. Grantees will be required to re-apply for continued funding each grant year.
- Require a cash match as described above.

Single-Year Improvement Grants

- Minimum of \$5,000 per application.
- Funding for indigent defense process improvement projects including technology projects.
- These projects require a cash match as detailed in Section II below.

TIDC Improvement Grant Program (cont'd)

FY20 Discretionary Grant Timeline

- Request for Application (RFA) issued **January 2019**
- Intent to Submit Application due **March 2019**
- Full Applications due **May 2019**
- Start Date for Funded Programs **October 1, 2019**

Webinar Training: Feb. 5, 2pm

<https://register.gotowebinar.com/register/5216600328660792323>

TIDC Improvement Grant Program (cont'd)

More FY20 Funding Details

- Grant period: October 1, 2019 to September 30, 2020
- Quarterly fiscal and progress reports required
- Multi-year programs awarded year by year

TIDC Contacts

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