



VERONICA ESCOBAR

El Paso County Judge

January 31, 2015

The Honorable Sharon Keller
Presiding Judge Court of Criminal Appeals, Chair
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

The Honorable Olen Underwood
Vice Chair
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Mr. James Bethke
Executive Director
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Re: Response to Texas Indigent Defense Commission's Review of El Paso County's Indigent Defense Systems

Dear Commission Leadership:

Thank you for your work in reviewing El Paso County's indigent defense processes last year and for the recommendations you provided in your report last November. The thorough review you conducted at Commissioner Vince Perez's request has been an important roadmap for El Paso County as we seek to improve and reform our systems. Attached is our response to the Texas Indigent Defense Commission's review.

The evaluation you provided us has been both the impetus for bringing together stakeholders in the pre-trial process as well as the starting point for more significant internal review and reform. Even before the audit was released in November, the commissioners court supported the idea of consolidating various pre-trial functions during our budget adoption. And recently, a delegation from El Paso County visited Bexar County to learn from the reforms they implemented, and we all agreed that their model (with some modifications) is a best-practice. The level of administrative and budgetary oversight by the Bexar County Commissioners Court clearly works and is something that I hope we adopt here in El Paso County.

500 E. San Antonio, Suite 301, El Paso, TX 79901

Phone: 915-546-2098 · Fax: 915-543-3888 · countyjudge@epcounty.com · www.epcounty.com

We understand that the reform we envision at El Paso County will take time as well as investment, but we are committed to creating the most efficient and fair system we can. Undoubtedly, we will need the help and support of the TIDC in order to effectuate the kind of change we need, and we hope that as we seek out grants and advice that we can count on that support.

Please let me know if you have questions about our responses, and again, thank you for your assistance and support. It is greatly appreciated.

Sincerely,



Veronica Escobar
El Paso County Judge



**PATRICK M. GARCIA
JUDGE**

384TH JUDICIAL DISTRICT COURT
EL PASO COUNTY COURT HOUSE
500 E. San Antonio, Room 906
El Paso, TX 79901

 (915) 546-2134

January 21, 2015

County Judge Veronica Escobar
500 E. San Antonio, Rm . 301
El Paso, Texas 79901

**TIDC REVIEW OF EI PASO COUNTY'S INDIGENT DEFENSE
SYSTEMS-NOVEMBER 2014**

EL PASO DISTRICT COURTS AND COUNTY COURTS' RESPONSE

The Texas Indigent Defense Commission (TIDC) reviewed El Paso County's compliance with the Fair Defense Act (FDA) by examining clerk and case management records showing case events for misdemeanors, felonies and juvenile cases. TIDC also examined public defender office records as well as attorney appointment records maintained by the Council of Judges (COJ). The audit examined criminal cases which had events occurring between October 2012 and September 2013.

El Paso County had been operating under an indigent defense plan set out by a federal court order, commonly known as the El Paso Plan, since 1986. After consulting with the El Paso County Attorney's Office, the COJ created a new indigent defense plan that fully complies with the FDA. The El Paso District Courts and County Courts' Plan lays out the standards and procedures related to the appointment of counsel for indigent defendants and was approved on August 18, 2014 and went into effect immediately. Some of the concerns expressed by TIDC have already been addressed under our current Indigent Defense Plan.

The COJ will be providing training to the Judges, court coordinators, and all the eligibility officers to ensure compliance with the proposed recommendations made by TIDC. Reports will also be generated on a monthly basis to ensure compliance with the Fair Defense Act.

REQUIREMENT ONE: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17

PROCEEDINGS: *The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.*

The El Paso Judiciary updated the magistrate warnings which set out the procedure to request an appointed attorney. The magistrate will inform the accused of the following procedures after advising him/her of the right to request court appointed counsel if they are unable to hire an attorney. The magistrate presiding over the 15.17 hearing will advise the defendant of the following, in addition to the required statutory rights:

1. You will be required to complete a written application that asks about your income and financials to determine if you qualify for a court appointed attorney. You must meet indigent standards in order to qualify for a court appointed attorney.
2. An eligibility officer will assist you with the application. The application must be verified under oath and signed by you. If you remain in custody, an eligibility officer will contact you and take the application. If you bond out before an eligibility officer takes your application, you must apply for appointed counsel at the courthouse within 24 hours.
3. You must answer these financial questions truthfully because if you lie, you may be prosecuted for perjury.
4. If you qualify for a court appointed attorney, his/her name and phone number will be given to you.
5. He/she should contact you within 24 hours of appointment.
6. It is possible that you may be required to pay El Paso County any money that is spent on your defense.

The updated version of the 15.17 warnings will be distributed to all the magistrates of El Paso County. The magistrate will inquire whether the arrestee wishes to request a court appointed attorney and the answer will be noted on the document. The county jail will then input the request as part of the booking process. A report will be generated every morning of all defendants that were booked the day before and requested court appointed counsel. If the accused is in custody, an eligibility officer will take an application at the jail either in person or by phone. If the accused was given his/her 15.17 magistrate warnings and requested court appointed counsel but bonded out of the County Jail before an eligibility officer completed an application, the accused is provided instructions on the procedure to request court appointed counsel. (See *Forms: Notice To Defendants Charged with a Class A or B Misdemeanor or Felony Released Prior to Appointment of Lawyer*). The notice informs the defendant where to report and lists the necessary documents that need to be brought in.

REQUIREMENT TWO: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN: *The Courts were considering factors not allowed under CCP 26.04(m) when determining whether a defendant is indigent.*

The Texas Code of Criminal Procedure article 26.04(m) allows the Courts to consider the defendant's income, source of income, assets, property owned, outstanding obligations,

necessary expenses, the number and ages of dependants, and spousal income that is available to the defendant to determine indigence.

Prior to 2014, the eligibility officers would inquire as to household income and expenses. It was brought to their attention that only income and expenses from the defendant and his/her spouse were to be utilized in order to determine indigence. The indigence affidavit used today by the eligibility officers only inquires about the income and expenses of the defendant and his/her spouse, if applicable. Our Judges, court coordinators and eligibility officers have been provided training on what may be considered in order to determine indigence under CCP 26.04(m) and our Indigent Defense Plan. Our procedures and standards apply equally to anyone charged with a misdemeanor or a felony, and to a defendant in custody or out on bond. (*See Forms: Motion for Appointment of Counsel*).

A request by the appointing authority for additional information, documentation, and/or verification cannot delay appointment of counsel beyond the timelines specified in the Code of Criminal Procedure and the El Paso Indigent Defense Plan.

A defendant who has been determined to be indigent is presumed to remain indigent for the remainder of the proceedings in the case unless a material change in the defendant's financial circumstances occurs. Training has been provided to the trial courts informing the Judges that the only factors that may be considered to ascertain whether a financial material change has indeed occurred, factors listed under CCP 26.04(m).

REQUIREMENT FOUR: APPOINT COUNSEL PROMPTLY: *Incarcerated Persons: After receipt of a request for counsel, counsel must be appointed within one working day. Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.*

Once a request for counsel is made at any 15.17 hearing, the County has 24 hours to transmit the request to the appointing authority, and the appointing authority has one working day to rule on the request by denying the request or appointing an attorney.

To ensure compliance with our time guidelines, the time the request is made is noted on the 15.17 magistrate warnings form. At booking, the request for court appointed attorney is inputted into Odyssey. Every morning a report of all the felony and misdemeanor arrestees requesting an attorney is generated by the eligibility officers. The OCA and COJ notifies the County Jail of all the inmates who requested an attorney and need to be interviewed. The COJ and the OCA eligibility officers go to the County Jail every morning and conduct indigent screening interviews. The defendant signs the affidavit under oath and the eligibility officer makes a determination at that time. The inmate is given the name of his appointed counsel or is told that he didn't meet the indigence qualifications. An arrestee who does not wish to request a court appointed attorney must sign a waiver of court appointed attorney.

Any attorney appointed to a criminal case is faxed an appointment letter along with a verification form that needs to be filled out when the arrestee is seen by his attorney for the first time. The verification form must be sent to the appointing authority who appointed the attorney

in order to verify that the defendant was contacted no later than the end of the first working day after the appointment date.

If a misdemeanor arrestee is incarcerated for seven days, or a felony arrestee is incarcerated for fourteen days, a finding of indigence is made and an attorney is appointed by OCA, COJ or the trial court.

All the inmates arrested through the DIMS program are interviewed the next business day in the morning and taken to the jail magistrate court in the afternoon. An attorney is appointed on the spot if the arrestee qualifies for an attorney. An assistant public defender and a private attorney are scheduled every day to represent those who qualify for a court appointed attorney. The appointed attorney interviews the inmate and reads the DA's file. The defendant can plead guilty to the charges after his 15.17 rights are read by the Jail Magistrate. If the defendant does not wish to plead guilty the trial court will schedule an arraignment hearing within a few days.

The attorney appointment is made to all unfiled and filed cases. COJ and OCA do not wait for the charges to be filed with the County Clerk or the District Clerk in order to appoint an attorney. The same attorney is appointed for all the charges an arrestee may have, if the attorney is qualified to handle all the charges. If the arrestee already has a court appointed attorney handling other pending cases, the same attorney shall be appointed as long as the attorney is qualified to handle the new charges.

If the arrestee bonds out before he requests court appointed counsel or before an eligibility officer conducts an indigent screening interview, the arrestee is given a flyer, upon release, instructing him to go to COJ or OCA to request a court appointed attorney. The flyer also informs the defendant of the procedure and documents that are needed when requesting a court appointed attorney. The defendants are told to report within 24 hours or soon thereafter in order to try to make the indigence determination as quickly as possible. That same day, the COJ and OCA eligibility officer denies the request or appoints an attorney. This procedure applies to all filed and unfiled cases. The goal is to appoint an attorney within 24 hours after request regardless of whether the case has been filed or not. The current flyer replaces the notice to misdemeanor arrestees instructing them to appear at OCA 21 days after release for an indigence screening. The COJ and OCA will be appointing counsel for those who qualify instead of taking the completed and approved application to the trial courts in order to comply with the 24 hour time frame required by the CCP.

The trial courts will not allow a defendant to represent himself unless the request for a court appointed attorney is denied; otherwise the waiver of counsel is presumed invalid. The clerks will be instructed to include all the 15.17 magistrate warnings and all the motions for court appointed attorneys in the Odyssey case management system or the paper file. Training on this matter will also be included for all the trial courts and their staff. Our goal is to ensure that timely appointment of counsel occurs in more than 90% of next year's audit.

REQUIREMENT FIVE: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS: *Rotational method: The court must appoint an attorney*

from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.

CCP article 26.04(b) (6) requires courts to adopt procedures ensuring appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory. A jurisdiction is presumed to have a fair, neutral, and nondiscriminatory appointment system if the top ten percent of recipient attorneys at a given level (felony, misdemeanor, and juvenile) receive no more than three times their representative share of appointments.

The distribution fell outside the Commission's threshold that presumes a jurisdiction's appointment methods are fair, neutral and nondiscriminatory. Under the old indigent defense plan we had 189 attorneys for assigned counsel felony cases in FY13. The top 19 attorneys (top 10.1%) received 37.3% of available cases. Under the old indigent defense plan we had 194 attorneys for assigned counsel misdemeanor cases in FY13. The top 19 attorneys (top 9.8%) received 47.1% of available cases. Both of these distributions fell outside the Commission's threshold that presumes a jurisdiction's appointment is fair, neutral, and nondiscriminatory.

Under our current indigent plan, all the attorneys on the wheel list are qualified to take criminal cases and have been approved by a majority of the judges hearing criminal cases. Training has been provided to all the Judges, court coordinators, and eligibility officers on the appointment process using the wheel lists. The majority of the attorney appointments are being conducted by the COJ and OCA using the wheel lists in order to comply with the timelines.

The executive director of the COJ, Mike Izquierdo, has been in contact with TIDC and was given the formula needed to determine if our top 10 percent felony and misdemeanor attorneys are receiving more than 30 percent of the cases assigned. Mr. Izquierdo will run a monthly report and report to the Council of Judges at every monthly meeting.

All these changes will include more training for everyone involved in the attorney appointment process with the goal of fully complying with the Fair Defense Act.

Accused: _____
DOB: _____
Agency/ Case No: _____

Time: _____
Warrant No: _____

MAGISTRATE WARNINGS

THE STATE OF TEXAS §
COUNTY OF EL PASO §

BEFORE ME, the undersigned Magistrate of El Paso County, Texas, at the above time, and on the date shown below, appeared the above-named accused at _____, at which time I informed the accused of the charge of _____ filed against the accused and of any affidavit filed therewith.

The accused was informed the following:

1. You have the right to remain silent. You do not have to speak to the police or anyone else about your case.
2. You have the right to hire a lawyer; and have him/her present prior to and during any interview and questioning by peace officers or attorneys representing the state. If you are questioned about your case and you are unable to hire a lawyer, you have the right to request that one be appointed and be present with you prior and during any such interview or questioning. You may have a reasonable time and opportunity to consult with your lawyer, if you desire.
3. You have the right to stop the interview or questioning at any time. If you decide to answer questions, you may stop answering those questions at any time.
4. You are not required to make any statement and any statement you make can and may be used against you in court.
5. You have the right to have an examining trial.
6. You have the right to request court appointed counsel if you are unable to hire an attorney:
 - a. You will be required to complete a written application that asks about your income and financials to determine if you qualify for a court appointed attorney. You must meet indigent standards in order to qualify for a court ordered attorney.
 - b. An eligibility officer will assist you with the application. The application must be verified under oath and signed by you. If you remain in custody, an eligibility officer will contact you and complete the application. If you bond out before an eligibility officer completes your application, you must apply for appointed counsel at the El Paso County courthouse within 24 hours.
 - c. You must answer these financial questions truthfully because if you lie, you may be prosecuted for perjury.
 - d. If you qualify for a court appointed attorney, his/her name and phone number will be given to you.
 - e. He/she should contact you within 24 hours of appointment.
 - f. It is possible that you may be required to pay back to El Paso County any money that is spent on your defense

_____The accused is requesting court appointed counsel.
_____The accused is not requesting court appointed counsel.
7. If you are not a U.S. citizen, you have the right to contact the consulate of your native country.

_____You are remanded without bond.

BOND \$ _____

Signed on this _____ day of _____, 20__.

Magistrate

**Notice to Defendants Charged with a Class A or B
Misdemeanor or Felony Released Prior to
Appointment of Lawyer**

You must show up in person today or tomorrow

Because you are being released before your request for appointment of a lawyer has been fully processed, no attorney has yet been appointed. You must qualify under the county financial guidelines to obtain a court appointed attorney if you are charged with a Class A or B Misdemeanor or a Felony only. You will not be appointed an attorney for a traffic ticket or other Class C misdemeanors.

If you believe you are unable to afford an attorney you must complete a questionnaire about you and your spouse's financial circumstances. *If you have the following financial documents for you and your spouse, please bring them; valid picture identification card, paystub, W-2, tax return, bank statement, receipts for the following; mortgage/rent, utilities, car payment, child support, award letter for food stamps, TANF, SSI, and Medicaid.* The judge will rule on whether or not under the law you qualify for a court-appointed attorney. Defendants with court-appointed counsel may be ordered to repay El Paso County for legal fees paid to the appointed attorney.

Attorneys are appointed by the end of the business day following your request; therefore you must report in person **today or the next business day (Monday through Friday) between the hours of 8:30 am - 11:30 am and 1:30 pm - 4:00 pm.** If you are released on a Saturday, Sunday, or courthouse holiday, report by the next business day.

Report to the following location only if you are asking for a court appointed attorney. If you are going to hire your own attorney, you DO NOT need to report.

MISDEMEANORS

El Paso County Courthouse
Office of Court Administration
500 E. San Antonio, Rm. LL117
Telephone: (915) 546-2093 Fax :(915)546-2192
El Paso, Texas 79901

FELONIES

El Paso County Courthouse
Council of Judges
500 E. San Antonio, Rm. 101
Telephone: (915) 546-2143 Fax :(915)546-2019
El Paso, Texas 79901

Parking – You may park at the County Garage for \$5.00 and there are paid parking lots within walking distance. THERE IS NO FREE PARKING AT THIS LOCATION.

NO TANK TOPS, T-SHIRTS, SPORT JERSEYS, SLEEVELESS TOPS, MID-RIF BLOUSES, SHORTS, SWEATPANTS, JEANS WITH HOLES OR PATCHES OR SANDALS.

INTAKE DATE/INTAKE: _____
 APPT DATE/INITIALS: _____

MOTION FOR APPOINTMENT OF COUNSEL

STATE OF TEXAS
 VS.

WARRANT(S): _____
 SO#: _____
 OFFENSE(S): _____
 ARREST DATE: _____
 CAUSE NO(S): _____
 STATUS/HOLD: _____ BOND AMT: _____

DOB: _____ SEX: _____

STREET ADDRESS: _____ PHONE NO(S): _____
 CITY, STATE, ZIP CODE: _____ TIME AT THAT ADDRESS: _____
 MARITAL STATUS: S / M / D / W
 SPOUSE: _____ SPOUSE'S PHONE NO(S): _____
 NUMBER OF DEPENDANTS: _____ AGES: _____ HOUSEHOLD SIZE: _____

ARE YOU CURRENTLY RECEIVING ANY OF THE FOLLOWING?

FOOD STAMPS TANF PUBLIC HOUSING WIC MEDICAID SSI
 HOW LONG HAVE YOU BEEN RECEIVING ASSISTANCE? _____

(DEPENDANT) EMPLOYED: YES / NO OCCUPATION: _____
 NAME OF EMPLOYER: _____ ADDRESS: _____
 YEARS EMPLOYED: _____ HRS/WEEK: _____ \$/HR: _____ AMOUNT OF WKLY / BIWKLY INCOME / TAKE HOME PAY \$ _____
 IF UNEMPLOYED PREVIOUS OCCUPATION _____
 PREVIOUS EMPLOYER: _____ LENGTH OF TIME UNEMPLOYED: _____

SPOUSE EMPLOYED: YES / NO OCCUPATION: _____
 NAME OF EMPLOYER: _____ ADDRESS: _____
 YEARS EMPLOYED: _____ HRS/WEEK: _____ \$/HR: _____ AMOUNT OF WKLY / BIWKLY INCOME / TAKE HOME PAY: \$ _____
 IF UNEMPLOYED PREVIOUS OCCUPATION _____
 PREVIOUS EMPLOYER: _____ LENGTH OF TIME UNEMPLOYED: _____

MONTHLY INCOME	AMOUNT	NECESSARY MONTHLY LIVING EXPENSES	AMOUNT	NON-EXEMPT ASSETS
YOUR SALARY		RENT/MORTGAGE		CASH ON HAND
SPOUSE'S SALARY		TRANSPORTATION: MAKE: MODEL: YEAR:		STOCKS/BONDS
V.A. BENEFITS		CAR PAYMENT		SAVINGS/CHECKING
UNEMPLOYMENT		EXCESSIVE MEDICAL EXPENSES		OTHER REAL PROPERTY
SOCIAL SECURITY		DAY CARE/CHILD CARE		OTHER ASSETS
CHILD SUPPORT		CHILD SUPPORT		
WORKMANS COMP		SPOUSAL SUPPORT		
RENTAL INCOME				
ALIMONY				
PENSIONS/ANNUITIES/IRA				
OTHER INCOME				
OTHER GOVERNMENT ASSISTANCE				
TOTAL INCOME:		TOTAL NECESSARY EXPENSES:		TOTAL ASSETS:

By signing my name below, I swear that all of the above information about my financial condition is current, accurate, and true. Intentionally or knowingly giving false information may result in your prosecution for the offense of aggravated perjury, a felony. The punishment for aggravated perjury includes imprisonment not to exceed ten (10) years and a fine not to exceed ten thousand (\$10,000).

By signing below, I understand that a court official will verify any of the information for accuracy as required to determine my eligibility. I have been advised by the Court of my right to representation by counsel in the trial of the charge pending against me. I am without means to employ counsel and hereby request the Court to appoint counsel for me. I further understand that the cost of any attorney appointed may be added to my court costs and I will be responsible for paying all ordered court costs.

I hereby authorize the release of any financial information to any representative of El Paso County from any person, group or company named in the affidavit.

 DEFENDANT'S SIGNATURE

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS _____ OF _____, 20____.

 ELIGIBILITY OFFICER

QUALIFIES: YES / NO INTERPRETER: YES / NO



RECEIVED

JAN 30 2015

COUNTY JUDGE

YAHARA LISA GUTIERREZ

JUDGE

FAMILY DISTRICT COURT, 65TH JUDICIAL DISTRICT

500 E. San Antonio, Room 1105

El Paso, Texas 79901

(915) 546-2102 / Fax (915) 546-8157

ylgutierrez@epcounty.com

January 30, 2015

MAYTE ESCOBEDO
COURT COORDINATOR

HOWARD L. CAPSHAW
BAILIFF

ISABEL CARRASCO
LEGAL SECRETARY

TERESITA FONSECA
OFFICIAL COURT REPORTER

RUTH ANN FIERRO
DRUG COURT COORDINATOR

BELINDA ACUÑA
DRUG COURT CASE MANAGER

Veronica Escobar
County Judge
500 E. San Antonio, Room 301
El Paso, TX 79901

Dear Judge Escobar;

Family Code Section 51.101(d) provides that if a court makes a finding of indigency under (c), the court shall appoint an attorney to represent the child on or before the 5th working day after the date the petition was served on the child.

The 2015 amendment to the El Paso Juvenile Board plan should address Prompt Appointment of Counsel Rule 4- Appointing Judge (b) (3) and (4) and (c) and Rule 7-Notice of Appointment Decisions to incorporate the recommended changes contained herein to insure compliance with the "5 working day rule" found in Texas Family Code Section 51.101 (d).

In that regard it is recommended that a policy be established that directs the process server to notify the court by notifying the court employee designated by the district judge (presently Liliana Martinez, titled court receptionist) within 1 business day of the date and time that service is accomplished. It would be that person's duty to prepare the financial assessment form and make a conditional recommendation to the court as to whether the family qualifies for appointment of counsel within 1 business day. Such information would be provided to the court and the court after reviewing that information and any other information that the court deems relevant, would either generate an order finding that the family is indigent and appointing the attorney on the wheel within 72 hours of receiving verification of service or it shall make a

finding that the family is not indigent. The order signed by the court shall be promptly served upon the child.

The financial assessment form identified as plan document "Affidavit of Indigence" needs to be updated to ask for the disclosure of liquid assets, excluding the value of one vehicle, in excess of \$2500.

JIS, the juvenile information system used by JPD regarding juvenile cases reflects in the "JIS Wheel queue" the name of the juvenile whose referral resulted in the filing of a petition at the time of the filing of the petition. Thus, if Liliana Martinez checks the JIS Wheel queue each business day, she can know that a new case has been filed and can then begin the screening process for a family's indigency sooner, even before service is accomplished, essentially at or near the time of filing

Further, right now Ms. Martinez's qualification of the family as being indigent and eligible for appointed counsel is done manually. JPD is exploring the ways through JIS or Caseworker (the other data system used by the department) in which the recommendation of eligibility can be incorporated into the data system/s electronically for the courts and others to view immediately.

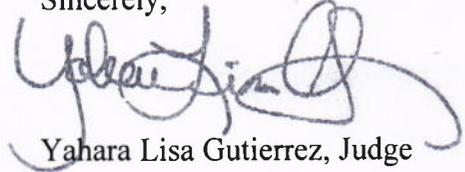
It is anticipated that the training of Ms. Martinez to use presently existing information can be done in 30 days or by February 27, 2015 with the modification of the data systems being accomplished within 90 days or by April 30, 2015.

Alternatively, intake could be assigned the task of requesting that families fill out the financial assessment form prior to the filing of the petition on those cases in which pleadings are anticipated to be filed. Some financial information is already incorporated into the Caseworker data system and then transported into JIS. To minimize the burden on intake workers, some triggering event or criteria needs to be developed so that intake does not unnecessarily spend time on securing financial assessment forms in those cases that will not be filed. It might be that once the livescan is done that could be the event that triggers intake's collection of additional financial assessment information.

Should additional procedures and policies be formulated I will forward the same to you. Progress in implementing these changes will be monitored and reported to you as well.

Please feel free to contact me should you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Yahara Lisa Gutierrez", enclosed within a thin rectangular border.

Yahara Lisa Gutierrez, Judge



COUNTY OF EL PASO
OFFICE OF THE COUNTY AUDITOR

EDWARD A. DION, CPA, CIO
COUNTY AUDITOR
edion@epcounty.com
www.epcountv.com/auditor

County Administrative Offices
800 East Overland Street, Rm. 406
EL PASO, TEXAS 79901-2407
(915) 546-2040
(915) 546-8172 FAX

01-31

January 21, 2015

The Honorable Veronica Escobar, County Judge
County of El Paso
Room 301, County Courthouse Building
500 East San Antonio Street
El Paso, Texas 79901

Dear Judge Escobar:

The Auditor's Office response to Requirements 6 and 7 from the Texas Indigent Defense Commission's (TIDC) assessment report is provided for your review. Please let us know if you have any questions concerning this matter.

Requirement 6: Promulgate standard attorney fee schedule and payment process.

Local Practices Compared to Adult and Juvenile Statutory Provisions.

No Payment shall be made until the judge approves payment after submission of the attorney fee voucher.

Requirement not satisfied.

Recommendations for Requirement 6: Promulgate standard attorney fee schedule and payment process.

Recommendation 9: Under Article 26.05(c) all payments for indigent defense services must be approved by the judge presiding over the proceedings. El Paso County must implement procedures so that any differences between voucher totals and amounts paid to attorneys are approved by the judge presiding over the proceedings.

Response: The El Paso County Auditor's Office concurs that payments were made where the amount approved by a judge for payment was adjusted by the Auditor's Office in instances where the submitted voucher amount deviated from the existing fee schedule, previously approved by the Council of Judges, or when mathematical errors were identified when calculating the total voucher amount. Historically, the Auditor's Office has notified the court of a voucher deviation and obtained the Judges approval to adjust the voucher amount by returning the voucher to the court and have the Judge sign or initial the amended voucher, via e-mail or through a verbal authorization for material deviations. In instances where the deviation was deemed immaterial, the Auditor's Office has amended the voucher without the Judge's approval. The Auditor's

Office also acknowledges that in multiple instances documentation reflecting the judges' approval, such as an e-mail, on adjusted voucher amounts was not included with the voucher payment support. Adjustments on vouchers identified by the monitor where the payment amount differed from the amount approved by the judge were attributed to changes in the fee schedule approved by the Council of Judges at the inception of fiscal year 2013. Effective October 1, 2012, the hourly rate for attorney time spent in court was increased from \$65 to \$75 per hour and the hourly rate for out-of-court services was increased from \$50 to \$60 per hour. During FY 13, multiple vouchers were submitted where the dates of service overlapped between the different fee schedules in effect for fiscal years 2012 and 2013. In these instances, vouchers were submitted exclusively under the old or the new fee schedule. The Auditor's Office adjusted the submitted voucher amount to reconcile the dates of service against the proper fee schedule.

The Auditor's Office will ensure that documentation reflecting the judges' approval on adjusted payment amounts is a component of the voucher payment support in the future. The Auditor's Office will also seek the formal approval from the Council of Judges to allow the Auditor's Office to adjust the payment amount on attorney voucher deviations, without a judge's approval, solely in instances where the deviations are attributed to mathematical calculation errors, inconsistencies with the established fee schedule and the total deviation amount per voucher is less than a \$100. This approval would then become a component of the El Paso Criminal District and County Court Schedule of Fees. The Auditor's Office will still be required to notify the court of the adjustment in these instances. The Auditor's Office has a written Standard Operating Procedures manual that explains the procedures in place to process attorney vouchers for payment. The Auditor's Office will incorporate and follow the specific procedures in addressing attorney voucher billing deviations into the existing Standard Operating Procedures manual.

Requirement 7: Statutory data reporting.

Local Practices Compared to Statutory Provisions

The County Auditor shall prepare and send to TIDC an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:

- In each district, statutory county and appellant court;
- In cases for which a private attorney is appointed for an indigent defendant;
- In cases for which a public defender is appointed for an indigent defendant;
- In cases for which counsel is appointed for an indigent juvenile; and
- For investigation expenses, expert witness expenses, or other litigation expenses

Requirement not satisfied.

Recommendations for Requirement 7: Statutory Data Reporting.

Recommendation 10: The auditor's procedures for reporting the number of assigned counsel cases paid must be amended to accurately reflect the number of cases in which attorneys were paid.

Response: The Auditor's office concurs with the monitor's assessment that the assigned counsel case counts were inaccurate. Numerous attorney vouchers contained multiple cases per voucher. The total number of cases on these vouchers was recorded, but there was no check against reporting duplicate cases reported on other vouchers. The Auditor's Office has amended their procedures to accurately reflect the number of assigned counsel cases paid. Each and every case number is now recorded in the Auditor's Office indigent defense expenditure worksheet and reconciled against the criminal justice information system (Odyssey) to ensure that assigned counsel cases are reported accurately and do not include investigative and expert witness cases. The FY 13 expenditure report has been amended and provided to TIDC and the submitted FY 14 report also reflects the amended case count procedures.

Recommendation 11: Public Defender personnel expenses must be properly categorized on the IDER.

Response: Personnel expenditures for the Public Defender's Office are reported under the following categories: Attorney, Investigator, Mitigation Specialist, Mental Health Professionals and Administrative Support. Social worker salaries were inaccurately reported under "Administrative Support" instead of their proper category "Mental Health Professionals". The Public Defender's Office and the County Auditor's Office have established procedures to identify and report all personnel under each appropriate category. The FY 14 expenditure report accurately reports the personnel expenditures under the appropriate categories.

If you need further information in this regard, please let me know.

Very truly yours,



Edward A. Dion
County Auditor

EAD:VP:ya