



# **Follow-up Review of Erath County's Indigent Defense Systems**

**November 2, 2016**



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## **Monitoring Background**

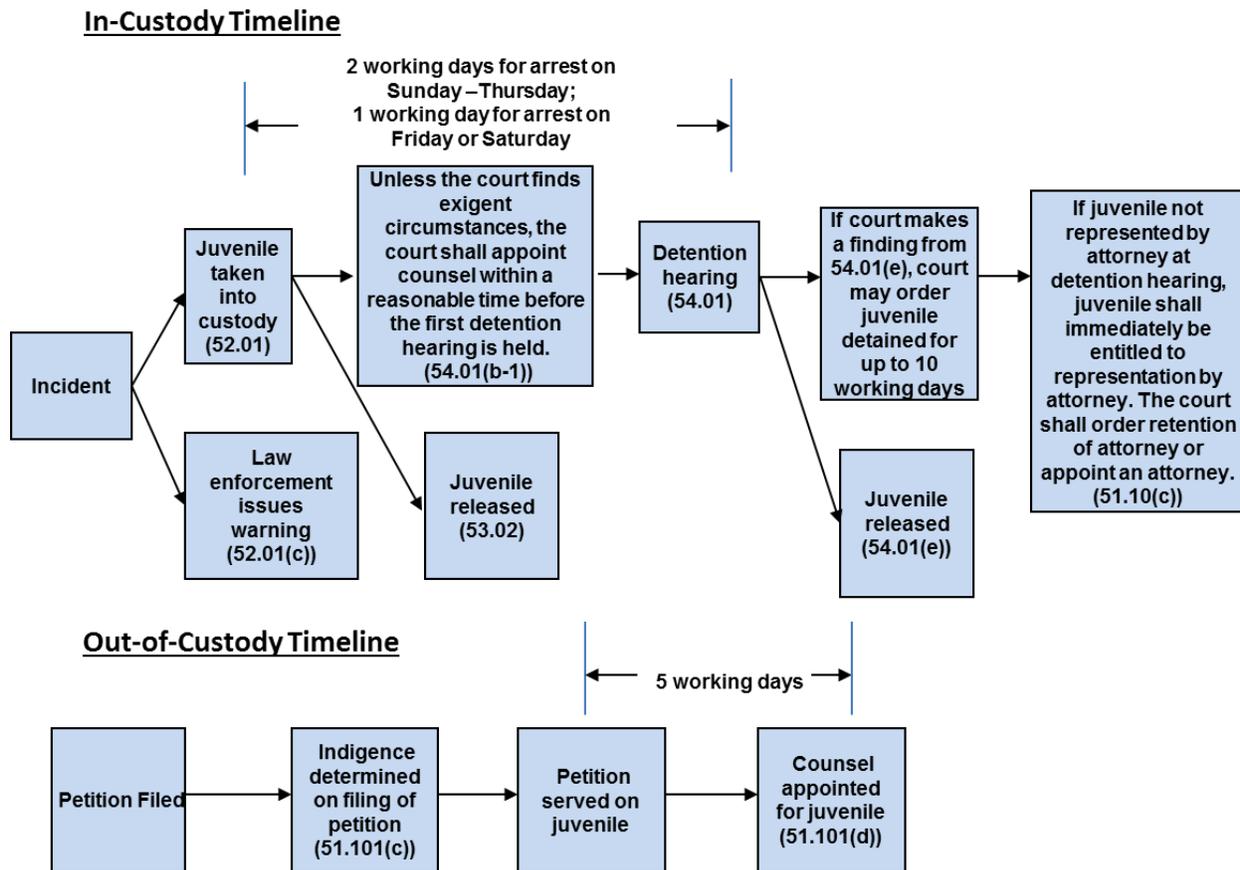
The Texas Indigent Defense Commission (Commission) conducted a policy monitoring visit in Erath County in the fall of September 2011. Staff issued a report with five recommendations in January 2012. Erath County responded to these recommendations with proposed action plans. In 2013, the Commission conducted a follow-up review and determined that four of the five previous recommendations had been addressed. The Commission found that the county had implemented processes to ensure prompt and accurate magistrate proceedings and the timely appointment of counsel in felony cases. The county had also established minimum attorney qualifications, as recommended.

The 2013 review found that the county had not successfully addressed Recommendation 5, which required the county implement processes to ensure timely appointment of counsel for juvenile detention hearings. A subsequent follow-up visit was conducted in October 2016 to determine whether the county had successfully addressed this issue. In this report, the term “monitor” is used to refer to actions conducted by Commission staff.

## Timely Appointment of Counsel – Juveniles

The Fair Defense Act provides a statutory framework for the appointment of counsel in juvenile matters. Timeframes for in-custody and out-of-custody appointments are illustrated below.<sup>1</sup> Jurisdictions must establish local procedures to appoint counsel in juvenile matters that meet these requirements.

### Statutory Attorney Appointment Timeline for Juveniles



### Juvenile Detention Hearings

Under Section 54.01(b-1) of the Family Code, unless the court finds exigent circumstances are present, the court must appoint an attorney for a juvenile in detention within a reasonable time before the first detention hearing is held. If the court finds that exigent circumstances are present, Section 51.10(c) of the Family Code requires either the immediate appointment of counsel or an order to retain counsel for juveniles whom the court orders detained at the first detention hearing. If no attorney was present for the first detention hearing, the attorney who is subsequently appointed or retained may request a de novo hearing under Section 54.01(n).

<sup>1</sup> Relevant sections of the Texas Family Code are listed in parenthesis.

In juvenile cases, if a juvenile is taken into custody, and intake for the juvenile probation department determines that continued detention is needed, the juvenile is promptly brought to a detention hearing. For juveniles released at intake, the attorney appointment process begins once a petition is filed and is served on a juvenile. At this time the parents of the juvenile may apply for court appointed counsel. If a parent meets the indigence threshold, counsel must be appointed. If the parent does not meet the threshold and is able to afford counsel, the court issues an order to the parents to retain counsel.

For juvenile cases, the monitor examined the timeliness of indigence determinations in instances when the juvenile was detained and in instances when a petition was served on the juvenile. To ascertain the timeliness of local processes, the monitor examined juvenile case files filed between October 2014 and September 2015. Of these eighteen sample cases, seven cases had detention hearings. All seven cases with detention hearings had counsel appointed for the hearing.

**Table: Times to Appointment in Juvenile Cases**

<b>Erath Juvenile Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of juvenile case files examined	18		
<b>TIMELINESS OF COUNSEL FOR DETENTION HEARINGS (either appointment or retention)</b>			
Number of case files with detention hearings <sup>2</sup>	7		
<b>Number of instances where the case file indicated an attorney was present on the date of the hearing</b>		<b>7</b>	<b>100%</b>

The monitor found that Erath County has successfully addressed the recommendations made by the Commission in 2012. The Commission would like to commend Erath County officials for their commitment to improving local indigent defense practices. The Commission would also like to thank officials and staff who assisted with our visit. Your help was greatly appreciated.

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<sup>2</sup> Two additional sample cases had detention hearings, but the monitor could not tell which attorney was present for the hearing. For purposes of this review, those cases were discarded from the sample.