



Policy Monitoring Review of Liberty County's Indigent Defense Systems

April 3, 2015

Purpose of the Limited Scope Policy Monitoring Review

The Texas Indigent Defense Commission (“Commission”) is required to monitor local jurisdictions’ compliance with the Fair Defense Act (“FDA”).¹ The policy monitor conducted a limited scope review in Liberty County to examine (1) local procedures for conducting Article 15.17 hearings and (2) local procedures for ruling on requests for counsel.

Factors Causing the Limited Scope Policy Monitoring Review

In November 2014, the Texas Indigent Defense Commission received a complaint regarding a felony defendant in Liberty County. The complaint alleged that the defendant was not asked whether he would like to request counsel at the Article 15.17 hearing. The Commission forwarded the complaint to Liberty County officials and requested Article 15.17 forms for the week of May 5 through May 11, 2014. The Sheriff’s Office promptly provided the Article 15.17 forms from both the City of Cleveland and Liberty County. The Article 15.17 forms showed that 34 persons were arrested for class B misdemeanor offenses or higher during the week in question. Only one form showed that an arrestee had requested counsel. The City of Cleveland magistrate warning form, which was provided for one arrestee, did not contain a space to mark whether an arrestee had requested counsel.

Statistics provided to the Office of Court Administration (OCA) for FY14 (October 2013 through September 2014) indicated that Liberty County justices of the peace were not reporting the number of magistrate warnings performed.² According to data reported to OCA, Liberty County justices of the peace provided Article 15.17 warnings to only fifteen arrestees for FY14, none of whom requested counsel. However, the sample of 34 warnings reviewed by the policy monitor (covering the week beginning May 5, 2014) exceeded the total reported to OCA for the entire year. This inconsistency between reported and sample data indicates a problem with reporting of magistrate warnings to OCA.

Based on the documented complaint and the low number of reported magistrate warnings, policy monitoring staff conducted a Limited Scope Policy Monitoring Review in February 2015. See the table below showing misdemeanor and felony appointment data for Liberty County (as reported by the clerk and auditor) and statewide. The table shows that across Texas about 42% of misdemeanor defendants received appointed counsel in FY14. For FY14, Liberty County appointed counsel in misdemeanor cases at roughly half the statewide average (19%). By comparison, Liberty County’s felony appointment rate in FY14 mirrored the state average (after several years of exceeding it).

¹ Tex. Gov’t Code § 79.037(a)-(b).

² These statistics are from Texas Judicial County Monthly Court Activity Reports by justice courts to OCA. The courts are statutorily required to report the number of magistrate warnings given to arrestees and the number of arrestees requesting counsel.

Table: Liberty County Felony and Misdemeanor Appointment Data

Year	2011	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	75,643	76,013	77,412		
Felony Charges Added	902	988	954	1,097	270,401
Felony Cases Paid	875	821	815	769	192,710
% Felony Charges Defended with Appointed Counsel	97.1%	83.1%	85.4%	70.1%	71.3%
Misdemeanor Charges Added (from OCA report)	2,348	2,185	2,103	2,019	530,335
Misdemeanor Cases Paid	842	342	454	386	223,043
% Misdemeanor Charges Defended with Appointed Counsel	35.9%	15.7%	21.6%	19.1%	42.1%

Timeline and Methodology

Commission staff conducted a limited scope policy monitoring review of Liberty County through a site visit on February 25 and 26, 2015. Throughout this report, all references to Commission staff use the term “monitor.” The monitor met with a justice of the peace, a district court judge, and the statutory and constitutional county judges. The monitor also observed Article 15.17 hearings, an initial appearance felony docket, and a misdemeanor docket. The monitor examined twenty (20) misdemeanor and twenty (20) felony case files. The monitor also reviewed the local indigent defense plan and Texas Judicial Council Monthly Court Activity Reports (as reported to OCA) as part of this report.

Current Review

This limited scope monitoring review examined the procedures for requesting and appointing counsel in misdemeanor and felony cases in Liberty County.

Methods to Conduct Article 15.17 Hearings

Arrestees in Liberty County are initially booked into either a municipal facility or the Liberty County Jail. According to staff at the Cleveland Municipal Court, arrestees in Cleveland are given Article 15.17 warnings within the municipality before transfer to the Liberty County Jail. These individuals, along with those initially booked into the Liberty County Jail, receive Article 15.17 warnings from the justice of the peace at the county facility. At the Article 15.17 hearing, the judge must determine whether probable cause exists to detain individuals, set bond, and take requests for counsel.

Currently, arrestees given Article 15.17 warnings at the Cleveland Municipal Court are not afforded an opportunity to request counsel and as a result there is no documentation on whether the arrestee requested counsel as is required by statute. The City of Cleveland magistrate warning form specifies that a defendant has a right to request an appointed attorney if he/she cannot afford one, **but does not contain a method to document whether a defendant is requesting court appointed counsel.**³ According to Article 15.17(e) of the Code of Criminal Procedure, the defendant must be not only informed of the right to counsel, but also asked whether or not he/she is requesting court appointed counsel. **The defendant’s response must then be recorded.**

³ Appendix, City of Cleveland Magistrate Warning Form.

While the Liberty County magistrate warning form includes a method to document requests for counsel, arrestees who receive Article 15.17 warnings in the Liberty County Jail are generally not afforded an opportunity to request counsel. During the site visit, the monitor observed the Justice of the Peace for Precinct 1 give magistrate warnings to eleven arrestees at the Liberty County Jail. The magistrate informed the arrestees of their Article 15.17 rights, including the right to counsel. After the magistrate notified each arrestee of his or her charges and set a bond, he asked each individual to sign the Article 15.17 warning form and marked “No” regarding whether an arrestee had requested counsel. The Article 15.17 of the Code of Criminal Procedure provision that requires the magistrate ask individuals whether they want court appointed counsel and record each response was not met.

Article 15.17(e) of the Code of Criminal Procedure states:

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

- (1) the magistrate informing the person of the person’s right to request appointment of counsel;*
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and*
- (3) whether the person requested appointment of counsel.*

Article 15.17(a) also requires a magistrate to inform arrestees of the procedures for requesting counsel and ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence. Requests for counsel (at both the county and municipal level) must be transmitted to the appointing authority within 24 hours of the request being made.

Methods to Determine Indigence and Assign Counsel

Once a process for taking requests for counsel and transmitting those requests to the appointing authority has been implemented, the county must also develop procedures to determine indigence and assign counsel. According to Article 1.051(c) of the Code of Criminal Procedure, the appointing authority has three working days from receipt of the request to appoint counsel for those determined to be indigent. After an initial request for counsel is received (whether the request was made at the Article 15.17 hearing or at a later time), the appointing authority must rule upon the request according to the standards set in its indigent defense plan. The local indigent defense plan provides the following standard of indigence:

An accused is presumed indigent if any of the following conditions or factors are present:

- 1. At the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;*
- 2. The accused’s net household income does not exceed 165% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or*
- 3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.*

Following the determination of indigence, the county must either appoint counsel or document the denial of court appointed counsel. This appointment/denial must occur within the timeframe established by

Article 1.051 (within 3 working days). Under Article 1.051(f-1) and (f-2) of the Code of Criminal Procedure, if a defendant has requested counsel and pleads pro se, the associated waiver of counsel is presumed invalid unless the request for counsel has been denied.

Under current practices in Liberty County, few arrestees request counsel at the Article 15.17 hearing because they are not individually asked whether they want appointed counsel. However, arrestees who remain in custody may request and have counsel appointed at one of two weekly inmate dockets. For arrestees who post bond, there is no method to request counsel prior to the initial appearance. Local procedures for appointing counsel will need adjustment once arrestees are given the opportunity to request counsel at the Article 15.17 hearing. The county must implement procedures to transmit requests for counsel to the appointing authority within 24 hours of the request being made. The appointing authority must rule upon those requests within three working days of receipt (whether arrestees post bond or remain in custody).

Texas Judicial Council Monthly Court Activity Reports

Beginning in FY12, OCA started collecting additional data in its Texas Judicial Council Monthly Court Activity Reports. As part of these additional reporting requirements, counties must now report the number of individuals requesting counsel at Article 15.17 hearings administered by justices of the peace. For FY14 (October 2013-September 2014), Liberty County justices of the peace reported fifteen magistrate warnings and zero requests for counsel. Local justices of the peace indicated they were initially unaware of the new reporting requirement but have now begun tracking and reporting the required data elements. Because the Cleveland Municipal Court has taken on the additional duty of conducting Article 15.17 warnings, it must also report the additional activity on Texas Judicial Council Monthly Court Activity Reports.⁴ During FY14, the Cleveland Municipal Court reported zero magistrate warnings and zero requests for counsel. Because the Texas Judicial Council's reporting requirements apply to both justices of the peace and to municipal courts, it is imperative that both the city and county implement procedures to accurately report data to OCA.⁵

⁴ 1 Tex. Admin. Code § 171.7 – 8.

⁵ In light of these requirements, the monitor is copying the Cleveland Municipal Court to provide notice to the court of the relevant issues so that it may coordinate with the county in meeting the requirements.

Recommendations Regarding Methods to Administer Article 15.17 Hearings

Policy Monitoring Recommendation 1: The City of Cleveland must update its Article 15.17 magistrate form to comply with Article 15.17(e). The new form must state whether the individual is requesting counsel (for offenses with a Class B misdemeanor grade and higher).

Policy Monitoring Recommendation 2: For offenses with a Class B misdemeanor grade and higher, the magistrate must inform arrestees of the procedure for requesting counsel, ask all arrestees whether they want to request counsel, and record each individual's response. The magistrate must then ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence.

Recommendation Regarding Texas Judicial Council Monthly Court Activity Reports

Policy Monitoring Recommendation 3: Justices of the peace and municipal courts must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

Conclusion

Because the City of Cleveland is conducting Article 15.17 hearings for arrestees, two of the recommendations in this report involve municipalities. When a municipal court undertakes the responsibility of admonishing individuals charged with a Class B or higher charge, it must comply with the requirements of the Fair Defense Act. In light of these requirements, the municipality must coordinate with the county to ensure that requests for counsel are recorded and ruled upon in a timely manner.

The monitor appreciated the professionalism and assistance provided by Liberty County officials and staff. Liberty County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, the Commission will monitor the County's transition and process improvements regarding the report's recommendation.

CITY OF CLEVELAND STATUTORY WARNING

State of Texas
County of LIBERTY

Before me, the undersigned magistrate of the State of Texas on this day personally appeared [REDACTED], [REDACTED]

Race B Sex F Age 47 in the custody of _____, a peace

officer, and said person was given the following warning by me:

(1) You are charged with the offense of CRIMINAL TRESPASS 30.05 (a) (B)
An Affidavit with the offense *(has) *(has not) been filed in this court,

(2) You have the right to hire a lawyer and have him present prior to and during any interview and questioning by peace officers or attorneys representing the State. If you are too poor to afford a lawyer, you have the right to request the appointment of a lawyer to be present prior to and during any such interview and questioning. You may have reasonable time and opportunity to consult your lawyer if you desire.

(3) You have the right to remain silent.

(4) You are not required to make a statement, and any statement you make can and may be used against you in Court.

(5) You have the right to stop any interview or questioning at any time.

(6) You have the right to have an examining trial.

• Your bail is set at \$ 4,000.00

• Bail not determined.

• Bail is denied.

Check while reading.

Place of warning: MUNICIPAL COURT ROOM
CLEVELAND, TEXAS

TIME: 9:30 A M.

DATE: 5-8-14

REMARKS: _____

[REDACTED]
Person Warned [Signature]
Magistrate [Signature]
Title Judge

WITNESSES:

Name: D. Folts

Address: 226 Pappel St.

City: Cleveland, TX 77327

Name _____

Address _____

City _____

*Delete what is not applicable