



September 21, 2018

CHAIR:
The Honorable Sharon Keller
Presiding Judge
Court of Criminal Appeals

EX OFFICIO MEMBERS:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Brandon Creighton
Honorable Joseph "Joe" Moody
Honorable Andrew Murr
Honorable Sherry Radack
Honorable Vivian Torres

MEMBERS APPOINTED BY GOVERNOR:
Mr. Alex Bunin
Honorable Jon Burrows
Honorable Richard Evans
Mr. Don Hase
Honorable Missy Medary

EXECUTIVE DIRECTOR:
Geoffrey Burkhart

The Honorable Marvin L. Moore
Local Administrative Statutory County Judge
500 N. Loraine St., Suite 601
Midland, TX 79701

Dear Judge Moore:

TIDC received Midland County's response (dated August 29, 2018) to the policy monitoring report's findings and recommendations. Thank you for the prompt reply. Please clarify your response by providing the data requested below.

Finding 1 of the report covered cite and release defendants. The monitor observed an initial appearance document which included cite and release defendants. When cite and release defendants are brought before a magistrate, Article 14.06(a) of the Code of Criminal Procedure requires the magistrate "immediately perform the duties described in Article 15.17". Amongst these duties are the requirement to make a record 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.*

The monitor did not observe a full Article 15.17 for any of the defendants at the hearing.

Midland County's response to Finding 1 states that Midland County provides all required warnings for cite and release arrestees. Since Article 15.17 requires a record of the magistrate asking the person whether the person wants to request appointment of counsel and a record of whether the person requested counsel, please provide these records (i.e. the record showing the defendant was asked whether he wants to request counsel and the defendant's response) corresponding to the cite and release defendants at the last pro se misdemeanor docket from August.

Finding 2 of the report covered the timeliness of counsel appointments. The response noted the county will endeavor to shorten the time between requests for appointed counsel and evaluation of such request by a court. The monitor will re-examine the timeliness of appointments in the follow-up review.

Finding 3 of the report deals with waivers of counsel. Article 1.051(f-2) of the Code of Criminal Procedure requires the court to deny a request for counsel prior to a defendant's communication with the prosecutor. The monitor found five sample case files without a ruling on a counsel request. Three of the defendants later entered uncounseled pleas. Those three defendants requested counsel at the Article 15.17 hearing, but later signed waivers of counsel. The relevant sample cases are CR157660, CR157940, and CR159060.

Midland County's response to Finding 3 states that all requests for counsel are ruled upon prior to the signing of a waiver. Many jurisdictions have difficulty gathering all counsel requests, and Midland County may be no exception. The will re-examine the issue in the follow-up review.

Please provide the requested data by Monday October 26, 2018. Your assistance is greatly appreciated in this matter. If you have any questions or need further clarification, please contact me at (512) 936-7560.

Sincerely,



Joel Lieurance
Senior Policy Analyst

cc: The Honorable Michael Bradford, Midland County Judge
The Honorable David Lindemood, Local Administrative District Judge

Mr. Lieurance:

Regarding Finding 1:

Midland County provides all required warnings for cite-and release defendants at arraignment.

I have included the written warnings that are now utilized at arraignment. These written admonishments were not in use at the time of your visit.

The Indigent Commission's initial report convinced me that written forms were the better practice.

At the Arraignment you were present for, all warnings were given verbally.

Regarding Finding 3:

In my initial response to Finding 3, I inadvertently left out some information.

My response should have included the highlighted material below:

Response: the county does have processes in place to meet the goal of this recommendation, although we could certainly do so in a more timely fashion. All requests for court appointed counsel, **that have reached the Court**, are ruled upon prior to a waiver being signed.

Due to the delay in transmittal of court-appointed attorney requests, there are certainly occasions in which arraignment occurs before the requests have reached the court. We are making efforts to correct this failing. However, there are many occasions in which the defendant signs such a waiver, speaks with a prosecutor and then decides to request a court appointed attorney. In these cases, the defendant is granted the opportunity to make such a request even though the waiver has been signed.

I do not disagree with the report.

Midland County will make all efforts necessary to comply with the requests of the Indigent Defense Commission and make the necessary adjustments discussed in our previous response.

Marvin L. Moore
Judge – CCAL #2
500 N. Loraine, Suite 601
Midland, TX 79701
Office: 432-688-4463
Fax: 432-688-4929

You are in Court today for ARRAIGNMENT:

The purpose of Arraignment is to inform you of the charge against you.

To inform you of the punishment range for that charge.

To have you enter a plea to that charge of either "GUILTY", "NOT GUILTY"
OR "NO CONTEST"

Before you are asked to enter a plea, please consider the following rights.

You have the right to have an attorney.

You may hire your own attorney.

If you are unable to hire an attorney, you may request a court-appointed attorney.

If you are going to request a court-appointed attorney, please do so when I call you up individually. I will discuss that with you here at the bench. The court will provide you with the forms and information necessary for you to apply for a court-appointed attorney.

You have the right to a trial for whatever charge is against you.

At trial, you have the right to remain silent. You will not be required to testify and if you do not testify, that fact will not be used against for any reason. You have the right to cross-examine any witnesses the state brings against you. You have the right to bring your own witnesses to testify for you.

If you are under 21 years of age and are here today for a DWI or possession of some type of drug you may be subject to having your driver's license suspended. Those procedures are through the DPS in Austin, not through this court.

If you are not a citizen of the United States, entering a plea of "guilty" or "no contest", you may be deported or refused naturalization. Those procedures are through the Federal Courts not this Court, but you need to be aware of that possibility.



TEXAS INDIGENT DEFENSE COMMISSION

November 8, 2018

CHAIR:
The Honorable Sharon Keller
Presiding Judge
Court of Criminal Appeals

EX OFFICIO MEMBERS:
Honorable Sharon Keller
Honorable Nathan Hecht
Honorable John Whitmire
Honorable Brandon Creighton
Honorable Joseph "Joe" Moody
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EXECUTIVE DIRECTOR:
Geoffrey Burkhart

The Honorable Marvin L. Moore
Local Administrative Statutory County Judge
500 N. Loraine St., Suite 601
Midland, TX 79701

Dear Judge Moore:

TIDC received Midland County's supplemental response to the policy monitoring report's findings and recommendations. Thank you for the prompt reply. The defendant notification form is a great improvement and will clarify the purpose of the arraignment hearing and the options available to defendants.

While we are very appreciative of your response, Texas law regarding cite and release defendants (set in Articles 14.06 and 15.17) requires the judge to ask each person whether he or she would like to request counsel and to record whether the person requested appointed counsel (see Article 15.17(e)). Please send us a magistrate warning form for cite and release defendants that meets the requirements of Articles 14.06 and 15.17. If you wish to use the current Midland County magistrate warning form, that will certainly meet these requirements (see enclosure).

Please provide the requested data by Friday December 14, 2018. Your assistance is greatly appreciated in this matter. If you have any questions or need further clarification, please contact me at (512) 936-7560.

Sincerely,

Joel Lieurance
Senior Policy Analyst

cc: The Honorable Michael Bradford, Midland County Judge
The Honorable David Lindemood, Local Administrative District
Judge

(enclosure)

FORM 1

Law Enforcement Agency: _____
Date of Arrest: ___/___/___
Time of Arrest: ___:___ .M.
Place of Arrest: _____

Court #: _____
County/State: _____
Warrant #, If Any: _____
Bail Set: \$ _____

HAS A PROBABLE CAUSE AFFIDAVIT BEEN FILED? YES NO

MAGISTRATE'S WARNING

THE STATE OF TEXAS
COUNTY OF MIDLAND

§
§

Before me, the undersigned, magistrate of Midland County, Texas on the ___ day of _____, 20___, at ___:___ o'clock AM / PM appeared _____.

I gave said person the following warning:

- ___ You are charged with the offense of _____ a felony / misdemeanor.
- ___ You have a right to hire an attorney to represent you.
- ___ You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- ___ You have the right to remain silent.
- ___ You are not required to make a statement, and any statement you make may be used against you in court.
- ___ You have the right to stop any interview or questioning at any time.
- ___ You have the right to have an examining trial (felonies only).
- ___ You have the right to request appointment of counsel if you cannot afford counsel.

THE MAGISTRATE SHALL ENSURE THE PERSON IS INFORMED OF THE FOLLOWING PROCEDURES:

- a. An Affidavit Regarding Indigence and a Financial Information Statement must be completed to determine if he/she qualifies for a court appointed attorney;
- b. Affidavit is a written or printed declaration or statement of facts made voluntarily and confirmed by oath before a person having authority to administer such oath;
- c. Reasonable assistance will be provided to him/her when filling out the documents for a court appointed attorney, if needed;
- e. If he/she meets indigence standards he/she will qualify for court appointed attorney; and,
- f. Such attorney should attempt to contact him/her by the end of the first working day after appointment and to interview him/her as soon as practicable after appointment. If appointment is made when he/she is before the court, he/she will be given the attorney's name, address, and phone number.

If you are not a United States citizen and you have been arrested or detained, you may be entitled to have us notify your country's consular representatives here in the United States. Do you want us to notify your country's consular officials? No Yes If you responded "yes," what country? _____

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible. What country? _____

THE ACCUSED DOES / DOES NOT WANT TO REQUEST COURT APPOINTED ATTORNEY. (Circle One)

Magistrate

I acknowledge I was given the above warnings
(This is NOT an admission of guilt):

Person warned

Accused refused to sign acknowledgement
of warning:

Magistrate Remarks:

Place of warning: _____
Time: ___:___ .M.
Date: ___/___/___
Witness (if any):
Name: _____
Address: _____

This hearing was interpreted by:

Mr. Lieurance,

I will utilize the current Magistrate County magistrate warning form.

Marvin L. Moore
Judge – CCAL #2
500 N. Loraine, Suite 601
Midland, TX 79701
Office: 432-688-4463
Fax: 432-688-4929