



Policy Monitoring Review of Randall County's Indigent Defense Systems

January 27, 2016



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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.

Background

Texas Indigent Defense Commission staff made a site visit to Randall County in 2012 to assess the county's indigent defense systems and determine if the county was meeting Fair Defense Act requirements. In October 2012, the Commission issued the initial policy monitoring report, which made several recommendations to assist Randall County in meeting the core requirements of the Fair Defense Act. Recommendations covered the local procedures for conducting Article 15.17 hearings and the timeliness of counsel appointments in juvenile and felony cases. The report did not address the timeliness of counsel appointments in misdemeanor cases, as the monitor's case sample was not of sufficient size. The report found the county's procedures met the presumed thresholds for the other core requirements of the Fair Defense Act.

One area addressed by the 2012 report concerned Randall County's procedures for conducting magistrate warnings. The report found that, based on the records examined, Article 15.17 hearings did not always occur within 48 hours of arrest. The Commission recommended that Randall County implement procedures to ensure timely Article 15.17 hearings, which Randall County contested.

Another area addressed by the 2012 report concerned Randall County's methods for transmitting requests for counsel to the appointing authority following the Article 15.17 hearing. The monitor found that Randall County did not have a reliable method for transmitting all requests for counsel to the appointing authority. As a result, many requests were not ruled upon in a timely fashion. Randall County responded to this recommendation by having the magistrate mark on the paper magistrate warning form whether the arrestee requested counsel. For misdemeanors, the county also designated the court coordinator for County Court at Law #1 as the person to receive misdemeanor requests for counsel.

The final area addressed by the 2012 report was Randall County's method of appointing counsel for juveniles. The court appointed counsel for the juvenile after the parent requested counsel from the court. This request typically occurred at a detention hearing or at the initial appearance, often beyond statutory time frames for appointing counsel. Randall County responded to this recommendation by ordering (in the summons) the parent or guardian verify to the court that the person had either retained an attorney or wanted to request counsel.

January 2016 Follow-up Review

Staff members Joel Lieurance and Jamie Dickson conducted the follow-up review with a visit to Randall County from June 9 through June 12, 2015.¹ The purpose of this review was to examine whether Randall County successfully addressed the recommendations from the October 2012 report. As part of the review, the monitor observed Article 15.17 hearings in court, video-recorded Article 15.17 hearings, and a pro se misdemeanor docket. The monitor examined felony, misdemeanor, and juvenile case files.

Conduct Prompt and Accurate Magistration Proceedings

Article 15.17 Hearings

In Randall County, justices of the peace conduct Article 15.17 hearings on weekdays, while other judges (county court at law and district judges) conduct the hearings on weekends. Justices of the peace must report summary data of Article 15.17 hearings to the Office of Court Administration (OCA) as part of the Texas Judicial Council Monthly Court Activity Reports. According to this data, a lower percentage of arrestees request counsel at the Article 15.17 hearing in Randall County than in other justice courts across Texas. See Table 1 for this comparison.

Table 1: Requests for Counsel at Article 15.17 Hearings (October 2013 – September 2014)

	JP – Pct. 1	JP – Pct. 4	Randall County JPs Combined	All Texas JPs
Misdemeanor Warnings	567	477	1,044	152,408
Misdemeanor Requests	129	2	131	39,089
% Requesting Counsel	22.8%	0.4%	12.5%	25.6%
Felony Warnings	675	415	1,090	108,645
Felony Requests	228	8	236	36,826
% Requesting Counsel	33.8%	1.9%	21.7%	33.9%

On June 10, 2015, the monitor observed the Article 15.17 hearing in Randall County. The Justice of the Peace for Precinct 4 conducted the hearing for three misdemeanor arrestees and three felony arrestees. The magistrate delivered the warnings described in Article 15.17 (including the right to appointed counsel) to the entire group, made probable cause findings, and set bond for each of the six arrestees. The magistrate asked each person if he or she understood the rights explained to them, and then asked each person if he or she would like an appointment of counsel form (the

¹ Throughout this report, references to Commission staff will use the term “monitor.”

affidavit of indigence). Four people requested counsel and were given the financial forms to complete. Jail staff indicated the forms are collected daily by a court officer.

In addition to the observation of an Article 15.17 hearing in court, the monitor viewed twelve video-recorded Article 15.17 hearings for the period from August 3 through August 17, 2015. The recordings showed eight hearings conducted by the Justice of the Peace for Precinct 1, three hearings conducted by the Justice of the Peace for Precinct 4, and one hearing conducted by the 251st District Court Judge. Both justices of the peace explained to the group of arrestees that they had a right to appointed counsel and noted that requests for counsel could be made by asking jail staff for an affidavit of indigence form. However, neither judge asked any arrestee whether he or she was requesting counsel. In contrast to the justices of the peace, the 251st District Court Judge explained that arrestees had a right to court appointed counsel, and she asked each arrestee whether the arrestee wanted to request appointed counsel.

Article 15.17(e) requires that a magistrate ask each arrestee whether he or she is requesting the appointment of counsel. Article 15.17(e) 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.

January 2016 Recommendation 1: Randall County magistrates do not always ask arrestees if they want to request counsel. As required by Article 15.17(e), the magistrate must ask each arrestee whether the person wants to request appointed counsel.

Timeliness of Article 15.17 Hearings

The monitor analyzed the timeliness of the Article 15.17 hearings by examining data found in the case files. If the monitor's sample is at least 98% timely, the Commission's administrative rules presume that local procedures result in timely Article 15.17 hearings. For this review of case files, the monitor's sample of 218 cases was 99.5% timely, falling within the Commission's threshold for presuming local procedures ensure timely Article 15.17 hearings.² See Table 2 for a summary of the timeliness of Randall County's Article 15.17 hearings.

² Article 15.17(a) requires magistrate warnings occur within 48 hours of arrest. The monitor did not look at the actual time of arrest and magistrate warnings, but rather assumed the warnings were timely if they occurred within two days of arrest.

Table 2: Times from Arrest to Article 15.17 Hearings

Randall County Times to Magistration Data	Sample Size	Percent
Magistrate warnings where time to magistration could be determined	218	
Magistration Occurs x days after arrest:		
0 days	42	19.3%
1 day	160	73.4%
2 days	15	6.9%
Greater than 2 days	1	0.5%
Timely Magistration (0 - 2 days)	217	99.5%
Untimely Magistration (Greater than 2 days)	1	0.5%

Appoint Counsel Promptly

Under Article 15.17(a) of the Code of Criminal Procedure, once a request for counsel is made, the magistrate must ensure requests are transmitted to the appointing authority within 24 hours. Under Article 1.051(c), the appointing authority then has three working days to appoint counsel for those deemed indigent (in counties with a population under 250,000). See Table 3 showing felony and misdemeanor appointment rates in Randall County and statewide. Randall County’s felony appointment rate approximates the statewide average of 71%. The local misdemeanor rate (14%) is about a third of the statewide average (42%).

Table 3: Felony and Misdemeanor Appointment Rates³

Year	2011	2012	2013	2014	Texas 2014
Felony Charges Added (from OCA report)	1,133	1,267	1,297	1,177	270,401
Felony Cases Paid	802	969	1,206	913	192,735
% Felony Charges Defended with Appointed Counsel	70.8%	76.5%	93.0%	77.6%	71.3%
Misdemeanor Charges Added (from OCA report)	1,980	1,928	1,966	1,786	530,335
Misdemeanor Cases Paid	175	186	281	252	223,045
% Misdemeanor Charges Defended with Appointed Counsel	8.8%	9.7%	14.3%	14.1%	42.1%

Felony Cases

In order to determine the timeliness of Randall County’s felony appointments, the monitor examined 84 felony cases filed in FY2014 (October 2013 – September 2014).

³ This table determines appointment rates by the formula: cases paid / cases added.

From this sample, 73 cases involved requests for counsel (approximately 87%). Of these 73 cases, 54 received either a timely appointment of counsel or denial of indigence, and 19 cases did not receive a timely determination of indigence (74% timely).⁴ This percentage does not meet the Commission’s threshold for presuming a jurisdiction’s appointment procedures result in the timely appointment of counsel.⁵ The issue causing the delay in ruling on requests for counsel appears to involve the transmittal of requests to the appointing authority.⁶ See Table 4 for a summary of data showing the timeliness of Randall County’s appointments of counsel.

Table 4: Times to Appointment in Felony Cases

Randall Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	84		
Appointment / denial of indigence occurred in:	73		
0 work days		20	27.4%
1 work day + 24 hour transfer		11	15.1%
2 work days + 24 hour transfer		9	12.3%
3 work days + 24 hour transfer		14	19.2%
More than 3 work days		19	26.0%
Timely appointments (0 – 3 work days)		54	74.0%
Late appointments (more than 3 work days)		19	26.0%

January 2016 Recommendation 2: The district courts do not have adequate processes in place to ensure felony requests for counsel are ruled upon within statutorily required timeframes (24 hours to transmit the request to the appointing authority and three working days for the appointing authority to rule on the request).

Randall County must implement processes that ensure timely appointment of counsel in felony cases. Requests for counsel must be promptly transmitted to the appointing authority, as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 places the responsibility for this transmission on the magistrate.

⁴ Per the Policy Monitoring Rules, the monitor considers the time from request until appointment of counsel to also apply to the time from request to denial of indigence. In four of the cases, the monitor could not find a request for counsel. These cases appeared to be made in-court, and the monitor assumed the date of the request was the date of the appointment (and so were presumed to be timely).

⁵ The threshold requires at least 90% of the monitor’s sample to be timely.

⁶ Twelve of the nineteen late determinations of indigence occurred when the defendant requested counsel at the Article 15.17 hearing and remained incarcerated. The resulting rulings on requests for counsel all took more than five working days from the date of the original request.

Misdemeanor Cases

The 2012 report documented a breakdown in the transmittal of misdemeanor requests for counsel from the jail to the courts. At the time of the report, no clear designee existed to receive misdemeanor requests for counsel from the jail. Randall County’s response to the 2012 report made clear that the transport deputy in the jail would send misdemeanor requests for counsel to the court coordinator for County Court at Law #1. According to interviews, this court coordinator receives requests for counsel from the jail (the overall impact of the process is discussed below). Randall County has addressed the recommendation from the October 2012 report in which it designated a person to receive misdemeanor requests for counsel.

In order to determine the timeliness of Randall County’s misdemeanor appointment processes, the monitor examined 142 misdemeanor cases filed in FY2014 (October 2013 – September 2014). From this sample, 41 cases involved requests for counsel (approximately 29%). Of those 41 requests for counsel, 34 received either a timely appointment of counsel or denial of indigence, and 7 did not receive a timely determination of indigence (83% timely).⁷ This percentage does not meet the Commission’s threshold for presuming a jurisdiction’s appointment procedures ensure timely appointment of counsel.⁸ Of the seven cases that were untimely, three did not receive any ruling on the request.⁹ See Table 5 for a summary of data showing the timeliness of misdemeanor appointments.

Table 5: Times to Appointment in Misdemeanor Cases

Randall Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	142		
Appointment / denial of indigence occurred in:	41		
0 work days		23	56.1%
1 work day + 24 hour transfer		4	9.8%
2 work days + 24 hour transfer		2	4.9%
3 work days + 24 hour transfer		5	12.2%
More than 3 work days		4	9.8%
No ruling on request		3	7.3%
Timely appointments (0 – 3 work days)		34	82.9%
Late appointments (more than 3 work days)		4	9.8%
No ruling on request		3	7.3%

⁷ Per the Policy Monitoring Rules, the monitor considers the time from request until appointment of counsel also apply to the time from request to denial of indigence. In fourteen of the cases, the monitor could not find a request for counsel. These cases appeared to be made in-court, and the monitor assumed the date of the request was the date of the appointment.

⁸ The threshold requires at least 90% of the monitor’s sample to be timely.

⁹ As with felony cases, the primary cause of late indigence determinations appears to be that courts are still not receiving all requests for counsel.

January 2016 Recommendation 3: The statutory county courts do not have adequate processes in place to ensure misdemeanor requests for counsel are ruled upon within statutorily required time frames (24 hours to transmit the request to the appointing authority and three working days for the appointing authority to rule on the request).

Randall County must implement processes that ensure timely appointment of counsel in misdemeanor cases. Requests for counsel must be promptly transmitted to the appointing authority, as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 places the responsibility for this transmission on the magistrate.

Waivers of Counsel

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers of counsel that are voluntarily and intelligently made.¹⁰ Articles 1.051(f-1) and (f-2) require a waiver of counsel for the purpose of speaking with the prosecutor. Article 1.051(g) requires a written waiver for the purpose of entering an uncounseled guilty plea.

Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is ruled upon, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. A pending request for counsel must be ruled upon before a waiver of counsel is allowed. Before a defendant enters an uncounseled plea, he or she must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).¹¹

Issues Found in Case File Review

The monitor examined misdemeanor case files to analyze the timeliness of counsel appointments, including the ability of the court to rule on a request prior to a waiver of counsel. Three cases from the monitor's misdemeanor sample included a request for counsel, but contained no appointment of counsel or denial of the request.

¹⁰ Article 1.051(f) states: "A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid."

¹¹ The waiver language of Article 1.051(g) states: "I have been advised this ____ day of _____, 2__, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

The three case files, however, all included waivers of counsel with no corresponding documentation that the request for counsel had been denied.¹² The three defendants entered uncounseled pleas. Article 1.051(f-2) states:

... If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

(1) has been given a reasonable opportunity to retain and has failed to retain private counsel; or

(2) waives or has waived the opportunity to retain private counsel.

January 2016 Recommendation 4: The statutory county courts do not have adequate processes in place to ensure requests for counsel are ruled upon prior to the procurement of a waiver of counsel.

As required by Article 1.051(f-2), Randall County must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon requests for counsel, the courts must ensure procedures are in place to: (1) receive requests and (2) appoint counsel or document the denial of indigence.

Waivers of Counsel at the Misdemeanor Docket

On Friday June 12, the monitor observed a misdemeanor docket for both of the statutory county courts. According to interviews, the initial docket for these defendants involved a waiver of arraignment in which unrepresented defendants spoke to the bailiff and signed a form waiving arraignment (see Appendix A).¹³ According to the bailiff, the judge does not conduct this initial appearance; instead, the bailiff reads the defendants their rights from the waiver of arraignment form and has them sign it. In addition to waiving arraignment, the form listed the rights of defendants, described the procedures for requesting counsel, and contained a waiver of counsel provision (Appendix A).¹⁴ Randall County has since adopted a new waiver of arraignment form in which the procedures for requesting counsel are displayed more prominently than on the previous version (see Appendix B).

Article 1.051(f-2) requires the court to advise the defendant of the right to counsel and the procedures for requesting court appointed counsel before procuring any waiver

¹² The county had written waivers conforming to the language of Article 1.051(g) in cases in which there was a plea agreement.

¹³ Per Section 53.0071 of the Texas Government Code, unless the appointing judge provides otherwise in the order of appointment, Randall County bailiffs are peace officers for purposes of Article 2.12, Code of Criminal Procedure.

¹⁴ The first waiver of counsel is for purposes of speaking with the prosecutor.

of counsel for the purpose of speaking with the prosecutor. Randall County's current procedures allow a bailiff to conduct the initial appearance where a form is signed, waiving both arraignment and the right to counsel. This initial appearance occurs after the Article 15.17 hearing, where the majority of defendants are never asked if they want to request appointed counsel. Randall County would benefit from implementing better front end processes to guarantee defendants are properly advised of their right to counsel and the procedures for requesting counsel before waiving these rights and speaking with the prosecutor.

The June 12 dockets observed by the monitor were the second appearance for the defendants present and consisted of defendants who were unrepresented by counsel. Defendants arrived at the courthouse and checked in with the District Attorney's Office. Defendants were then given the option of speaking with the prosecutor to negotiate a plea deal or speaking to the court administrator to determine next steps. Almost all defendants chose to speak with the prosecutor. If a defendant did not accept the prosecutor's offer, the defendant could ask for additional time to think about the offer, ask for additional time to retain counsel, or request counsel.¹⁵ Those defendants agreeing to the prosecutor's offer completed a second waiver of counsel form to be approved by the judge.¹⁶

In County Court at Law #1, after all defendants who wished to speak with a prosecutor had done so, the court took pleas from those who reached an agreement with the prosecutor. Before accepting the pleas, the judge admonished defendants of the right to counsel, including the right to appointed counsel if the defendant could not afford an attorney. The judge then asked each defendant if he or she wanted an attorney and if each had signed the waiver of counsel knowingly and voluntarily. The monitor observed four defendants agree to pleas and one request counsel.

In County Court at Law #2, ten defendants appeared before the court. The judge admonished the defendants of the right to hire an attorney or to have an attorney appointed. The judge asked if anyone wanted an attorney, and, as a group, all answered "No." The judge spoke to each defendant and accepted nine pleas. The tenth defendant received appointed counsel after the defendant could not answer basic questions about the voluntariness of the plea.

In summary, defendants were advised by the court of their right to appointed counsel at their second appearance, after a plea agreement had been reached. The lack of front end processes ensuring that defendants understand the right to appointed

¹⁵ According to interviews, a few defendants typically request counsel at each of the pro se misdemeanor dockets.

¹⁶ This second waiver of counsel is for purposes of entering an uncounseled plea.

counsel and the procedures for requesting appointed counsel could result in pleas by defendants that are not voluntarily and intelligently made.¹⁷

January 2016 Recommendation 5: The statutory county courts do not have adequate processes in place to ensure defendants understand their right to counsel and the procedures for requesting counsel until after a waiver of counsel has been procured.

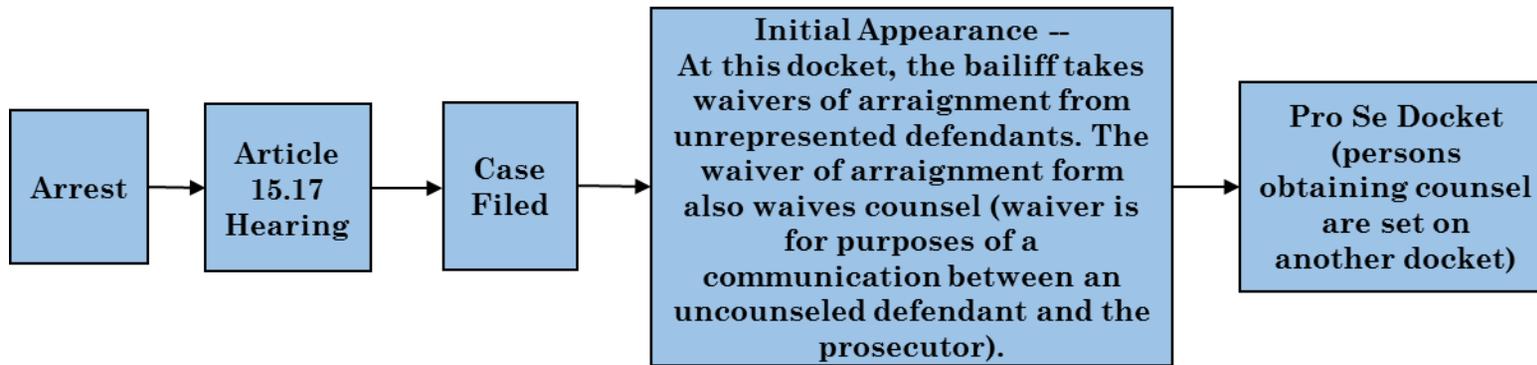
As required by Article 1.051(f-2), the court must explain the procedures for requesting counsel prior to granting a waiver of counsel, so that all persons understand both the right to appointed counsel and the procedures to request counsel.

For Additional Consideration: To help ensure a defendant has voluntarily and intelligently waived his or her right to counsel, Randall County would benefit from implementing a waiver of counsel form separate from the waiver of arraignment form. A sample waiver form from Fort Bend County is included in Appendix C.

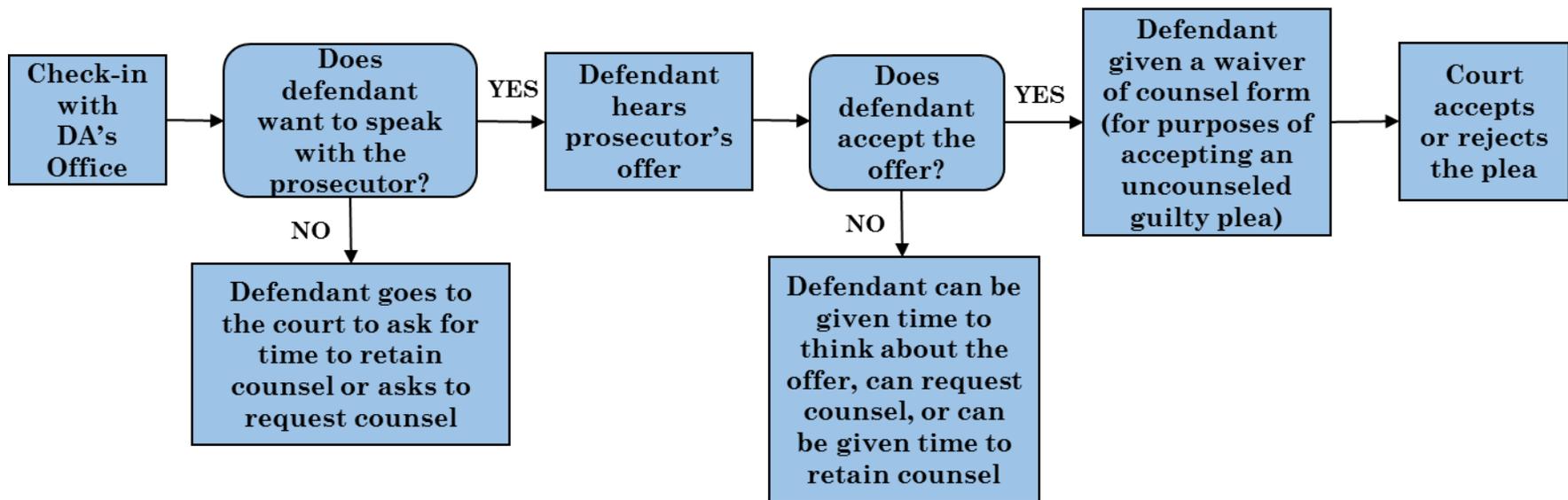
See Diagrams 1 and 2 outlining the current local procedures for defendants appearing at the pro se docket.

¹⁷ See Article 1.051(f) and (g) of the Code of Criminal Procedure. There are also constitutional requirements that must be met for a valid waiver of counsel prior to a guilty plea. A waiver of counsel at any “critical stage” of the criminal process, including the entry of a guilty plea, must be knowingly, voluntarily, and intelligently made. *Iowa v. Tovar*, 541 U.S. 77, 87-88. A waiver is knowing and intelligent where the defendant “fully understands the nature of the right and how it would likely apply in general in the circumstances – even though the defendant may not know the specific detailed consequences of invoking it.” *U.S. v. Ruiz*, 536 U.S. 622, 629 (2002). The information necessary for a defendant to make a knowing and intelligent waiver is determinate on the case-specific factors such as “the defendant’s education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding.” *Tovar*, 541 U.S. at 88.

Current Process Diagram 1: Randall County Steps to Pro Se Docket



Current Process Diagram 2: Randall County Steps to Plea at Pro Se Docket



Juvenile Cases

The monitor examined the timeliness of indigence determinations for juveniles (both for instances in which the juvenile was detained and for instances in which a petition was served on the juvenile). To ascertain the timeliness of local processes, the monitor examined 52 juvenile case files from FY2014 (October 2013 – September 2014).

Juvenile Detention Hearings

Under Section 54.01(b-1) of the Family Code, unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing. From the juvenile cases examined, the monitor found 22 cases with detention hearings.¹⁸ All 22 cases had an attorney present for the hearing, meeting the requirements of Section 54.01(b-1). Randall County has successfully addressed the 2012 report recommendation concerning the timeliness of attorney appointments at juvenile detention hearings.

Petitions Served on Juveniles

Under Subsections 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to either appoint counsel for the juvenile or order the parents to retain counsel. From the juvenile cases examined, 40 involved a petition served on the juvenile.¹⁹ Counsel was present in a timely fashion in 26 of the 40 cases (65% timely).²⁰ This is below the Commission's threshold for presuming a jurisdiction's appointment procedures ensure timely appointment of counsel.²¹ According to the judge over juvenile matters, the court adjusted its internal procedures so that the summons to the juvenile and his/her parents now requires parents to appear in court within five business days.

Efforts to address this matter have been made by the juvenile court. The data gathered, however, still show the court falling short of the Commission's threshold for ensuring timely appointment of counsel. If Randall County officials wish to discuss additional options for improving the timing of counsel appointments, Commission staff

¹⁸ Three 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.

¹⁹ Two additional sample cases in which a petition was served on the juvenile were not considered, as the date of the appointment was unclear.

²⁰ The monitor presumed the case had a timely appointment of counsel if, within five working days of the petition being served on the juvenile: counsel was appointed; counsel was retained; or indigence was denied (an implied order to retain counsel). From this sample, counsel was not present in a timely fashion for fourteen sample cases. Thirteen of those cases received appointed counsel, and one retained counsel. All fourteen had counsel present before the cases proceeded on the merits, but the timing of counsel (either being appointed or entering an appearance of record) was beyond the five working day requirement set in Section 51.101.

²¹ The threshold requires at least 90% of the monitor's sample to be timely.

are available.²² See Table 6 for a summary of the timeliness of counsel appointments in juvenile matters.

Table 6: Times to Appointment in Juvenile Cases

Randall Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of juvenile case files examined	52		
TIMELINESS OF COUNSEL FOR DETENTION HEARINGS (either appointment or retention)			
Number of case files with detention hearings ²³	22		
Number of instances where the case file indicated an attorney was present on the date of the hearing²⁴		22	100%
TIMELINESS OF COUNSEL WHEN THE JUVENILE WAS SERVED WITH A PETITION (either appointment or retention)			
Number of case files in which juvenile was served with a petition ²⁵	40		
Appointment of counsel occurred within 5 working days of petition being served on juvenile		21	52.5%
Retention of counsel occurred within 5 working days of petition being served on juvenile (and no order to retain counsel)		5	12.5%
Total cases in which counsel present in a timely fashion		26	65.0%
Total cases in which counsel not present in a timely fashion		14	35.0%

January 2016 Recommendation 6: The statutory county courts do not have adequate processes in place to ensure timely appointment of counsel when a petition is served on a juvenile. Randall County must implement processes that ensure timely appointment of counsel in juvenile cases.

²² As a possible process change, the court may wish to make provisional appointments of counsel in instances when the court is not aware if counsel represents a juvenile by the fifth working day after service of the petition on the juvenile. Once the court can make a determination of indigence, the court could continue the appointment for those determined to be indigent or order the retention of counsel for those the court finds are not indigent. Under Section 51.101(d) of the Texas Family Code, an attorney appointed under the subsection continues to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the court.

²³ Three 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.

²⁴ Three cases had retained counsel for the detention hearing, and nineteen had appointed counsel.

²⁵ Two additional cases in which a petition was served on the juvenile were not considered, as the date of the appointment was unclear.

Conclusion

The monitor enjoyed meeting with Randall County officials and staff, and appreciates their cooperation during this review. Commission staff stands ready to provide any assistance the County may need in addressing the issues identified in this report.

Status of Recommendations from the October 2012 Review

Core Requirement 1. Conduct prompt and accurate magistration proceedings.

October 2012 Recommendation 1: The monitor's sample of magistrate warnings did not fall within the Commission's threshold for presuming that a jurisdiction's processes ensure timely magistrate warnings. Randall County must implement procedures that ensure warnings are timely. *Successfully addressed.*

October 2012 Recommendation 2: Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate. *Issue still pending. For the 2016` report, the issue is folded into timely appointment of counsel recommendations.*

October 2012 Recommendation 3: Misdemeanor requests for counsel made before a case filing must be directed to the person listed in the local indigent defense plan: Judge Anderson's court. *Successfully addressed.*

Core Requirement 4. Appoint counsel promptly.

October 2012 Recommendation 4: Randall County must implement processes that ensure timely appointment of counsel in felony cases. *Issue still pending.*

October 2012 Recommendation 5: Randall County must implement processes that ensure timely appointment of counsel when there is a decision to detain a juvenile. *Successfully addressed.*

October 2012 Recommendation 6: Randall County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile. *Issue still pending.*

Findings and Recommendations from the January 2016 Review

Core Requirement 1. Conduct prompt and accurate magistration proceedings.

January 2016 Recommendation 1: Randall County magistrates do not always ask arrestees if they want to request counsel. As required by Article 15.17(e), the magistrate must ask each arrestee whether the person wants to request counsel.

Core Requirement 4. Appoint counsel promptly.

January 2016 Recommendation 2: The district courts do not have adequate processes in place to ensure felony requests for counsel are ruled upon within statutorily required timeframes (24 hours to transmit the request to the appointing authority and three working days for the appointing authority to rule on the request).

Randall County must implement processes that ensure timely appointment of counsel in felony cases. Requests for counsel must be promptly transmitted to the appointing authority, as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 places the responsibility for this transmission on the magistrate.

January 2016 Recommendation 3: The statutory county courts do not have adequate processes in place to ensure misdemeanor requests for counsel are ruled upon within statutorily required time frames (24 hours to transmit the request to the appointing authority and three working days for the appointing authority to rule on the request).

Randall County must implement processes that ensure timely appointment of counsel in misdemeanor cases. Requests for counsel must be promptly transmitted to the appointing authority, as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 places the responsibility for this transmission on the magistrate.

January 2016 Recommendation 4: The statutory county courts do not have adequate processes in place to ensure requests for counsel are ruled upon prior to the procurement of a waiver of counsel.

As required by Article 1.051(f-2), Randall County must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon requests for counsel, the courts must ensure procedures are in place to: (1) receive requests and (2) appoint counsel or document the denial of indigence.

January 2016 Recommendation 5: The statutory county courts do not have adequate processes in place to ensure defendants understand their right to counsel and the procedures for requesting counsel until after a waiver of counsel has been procured.

As required by Article 1.051(f-2), the court must explain the procedures for requesting counsel prior to granting a waiver of counsel, so that all persons understand both the right to appointed counsel and the procedures to request counsel.

For Additional Consideration: To help ensure a defendant has voluntarily and intelligently waived his or her right to counsel, Randall County would benefit from implementing a waiver of counsel form separate from the waiver of arraignment form.

January 2016 Recommendation 6: The statutory county courts do not have adequate processes in place to ensure timely appointment of counsel when a petition is served on a juvenile. Randall County must implement processes that ensure timely appointment of counsel in juvenile cases.

Appendix A – Waiver of Arraignment Form on June 12, 2015

NO. 2014-5432-2

THE STATE OF TEXAS § IN THE COUNTY COURT AT LAW NO. 2
VS. § IN AND FOR
§ RANDALL COUNTY, TEXAS

WAIVER OF ARRAIGNMENT

On this day 29th July, 2014, comes now the Defendant in the above styled and numbered cause, and would show the court that I have full knowledge that I have heretofore been charged by Information in the above styled and numbered cause and of the allegations contained therein, that I have received a copy of said Information, and that I am entitled to be arraigned in open court in this cause. I acknowledge that I have the following rights in this cause filed against me, to-wit:

- To be informed of the accusations against me and of any affidavit filed therewith;
That I have the right to retain counsel;
That I have the right to remain silent;
That I have the right to have an attorney present during any interview with peace officers or attorneys representing the State;
That I have the right to terminate an interview at anytime;
That I have the right to an examining trial;
That I have the right to request appointment of counsel if I cannot afford counsel;
That if I wish to request appointment of counsel, I must complete a financial questionnaire and sworn affidavit of inability to hire counsel, and that the said questionnaire and affidavit are available to me at any time from the jail and during business hours from the court;
That I am not required to make any statement, and
Any statement I make may be used against me.

I further acknowledge that I understand these rights.

I waive formal pre-trial arraignment and enter this waiver as my appearance. I agree to be arraigned at the time of trial, and I plead NOT GUILTY as charged in the Information. I ask the Court to enter this waiver for all purposes of arraignment.

I waive my right to be represented by an attorney in this cause at this time. I UNDERSTAND THAT I MAY REVOKE THIS WAIVER OF ATTORNEY AT ANY TIME, AND THAT I MAY HIRE AN ATTORNEY OR REQUEST A COURT-APPOINTED ATTORNEY AT ANY TIME.

I further acknowledge that this case is set for docket, pretrial announcements and motions in the courtroom of the County Court at Law #2 in Canyon, Randall County, Texas, and that I must appear in court INSTANTER or on August 15, 2014 at 8:00 AM, whichever occurs first.

[Handwritten signature of the defendant]

Defendant

None
Bonding Company

ORDER

The waiver of the Defendant in the above styled and numbered cause is hereby accepted and entered upon the minutes of the Court for all purposes.

SIGNED AND ENTERED this 29 day of July, 2014.

[Handwritten signature of the judge]
Judge Presiding

FILED
RANDALL COUNTY, TEXAS

2014 JUL 30 A 9:08

Appendix B – Current Waiver of Arraignment Form

NO. «Cause_»

THE STATE OF TEXAS § IN THE COUNTY COURT AT LAW NO. 1
VS. § IN AND FOR
«Defendants_Name» § RANDALL COUNTY, TEXAS

WAIVER OF ARRAIGNMENT

On this «Day_Signed» day of «Month_Signed», «Year_Signed», comes now the Defendant in the above styled and numbered cause, and would show the court that I have full knowledge that I have heretofore been charged by Information in the above styled and numbered cause and of the allegations contained therein, that I have received a copy of said Information, and that I am entitled to be arraigned in open court in this cause. I acknowledge that I have the following rights in this cause filed against me, to-wit:

- To be informed of the accusations against me and of any affidavit filed therewith;**
- That I have the right to retain counsel;**
- That I have the right to remain silent;**
- That I have the right to have an attorney present during any interview with peace officers or attorneys representing the State;**
- That I have the right to terminate an interview at anytime;**
- That I have the right to an examining trial;**
- That I have the right to request appointment of counsel if I cannot afford counsel;**
- That I am not required to make any statement, and**
- Any statement I make may be used against me.**

I further acknowledge that I understand these rights.

I waive formal pre-trial arraignment and enter this waiver as my appearance. I agree to be arraigned at the time of trial, and I plead **NOT GUILTY** as charged in the Information. I ask the Court to enter this waiver for all purposes of arraignment.

I waive my right to be represented by an attorney in this cause at this time. **I UNDERSTAND THAT I MAY REVOKE THIS WAIVER OF ATTORNEY AT ANY TIME, AND THAT I MAY HIRE AN ATTORNEY OR REQUEST A COURT-APPOINTED ATTORNEY AT ANY TIME. I UNDERSTAND THAT IF I WISH TO REQUEST APPOINTMENT OF COUNSEL, I MUST COMPLETE A FINANCIAL QUESTIONNAIRE AND SWORN AFFIDAVIT OF INABILITY TO HIRE COUNSEL, AND THAT THE SAID QUESTIONNAIRE AND AFFIDAVIT ARE AVAILABLE TO ME AT ANY TIME FROM THE JAIL AND DURING BUSINESS HOURS FROM THE COURT.**

I further acknowledge that this case is set for docket, pretrial announcements and motions in the courtroom of the County Court at Law #1 in Canyon, Randall County, Texas, and that I must appear in court INSTANTER or on «Return_Date»,. at 9:00 a.m. whichever occurs first.

Defendant
Address: _____

Witness

Bonding Company

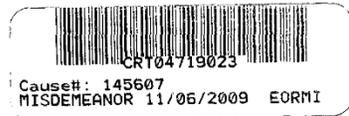
ORDER

The waiver of the Defendant in the above styled and numbered cause is hereby accepted and entered upon the minutes of the Court for all purposes.

SIGNED AND ENTERED this «Day_Signed» day of «Month_Signed», «Year_Signed».

Judge Presiding

Appendix C – Sample Waiver of Counsel Form (for purposes of speaking with the prosecutor) from Fort Bend County



IN THE COUNTY COURT AT LAW NUMBER TWO (2)
FORT BEND COUNTY, TEXAS

Judge's Explanation of Rights to Defendants

As a defendant in a criminal case, you have three options:

1. You may hire an attorney;
2. You may request an attorney be appointed to represent you, if you are financially unable to hire one; or
3. You may represent yourself.

If you want an attorney to represent you and are financially able to hire an attorney, I will reset this case to give you time to do so.

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.

You may not speak to one of the prosecutors about your case unless you decide to waive your right to an attorney.

Judge Presiding

FILED FOR RECORD

DEFENDANT'S CHOICE

NO TIME A.M. P.M. **UD**

_____ I want to reset this case to hire my own attorney.

_____ I want to apply for a court-appointed attorney.

_____ I want to waive my right to an attorney and represent myself.

_____ I have hired an attorney, whose name is: _____

_____ I have a court-appointed attorney whose name is: _____

Name: _____

Signature: _____

Date: _____

Cause Number: _____

NOV 06 2009

Shirley Wilson
County Clerk Fort Bend Co. Tex.