



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

**November 22, 2016**



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## Monitoring Background

In the fall of 2010, the Texas Indigent Defense Commission (Commission) conducted a policy monitoring visit in Wichita County. The monitor's 2010 report made three recommendations related to assistance with affidavits of indigence and the transmission of and ruling on requests for counsel.<sup>1</sup> Wichita County responded to these recommendations with proposed action plans. In July 2012, the monitor conducted a follow-up visit to determine whether the county had successfully implemented the action plans to meet the Commission's recommendations. The monitor's review indicated that requests for counsel were still not being ruled upon in a timely manner.<sup>2</sup> Based on this finding, the monitor made three follow-up recommendations:

**Follow-up Recommendation 1:** Wichita County must examine its appointment processes for both felony and misdemeanor cases and must implement procedures that ensure timely appointment of counsel.

**Follow-up Recommendation 2:** Wichita County must ensure that reasonable assistance is provided to arrestees to complete affidavits of indigence at the time of magistration as required by Article 15.17 of the Code of Criminal Procedure.

**Follow-up Recommendation 3:** Wichita County must ensure that all requests for counsel are ruled upon before any waivers of counsel are signed, pursuant to Article 1.051(f-2).

In October 2016, staff made a second follow-up visit to Wichita County. The monitor reviewed misdemeanor and felony case files and interviewed administrative personnel. This report examines whether the county successfully implemented procedures that address each of the Commission's recommendations from the two previous reports.

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<sup>1</sup> In this report, the term "monitor" is used to refer to actions conducted by Commission staff.

<sup>2</sup> The monitor's case file sample was 66% time, falling under the Commission's threshold of 90%.

## I. Timely Appointment of Counsel – Adults

Article 1.051(c) of the Code of Criminal Procedure requires appointment of counsel (for counties with a population under 250,000) occur within three working days of the appointing authority receiving the request. In Wichita County, requests for counsel made at the Article 15.17 hearing (magistration) are transferred to the indigent defense coordinator, who uses the financial information submitted by the defendant to make a determination of indigence and appoint counsel. The coordinator also handles requests for counsel made after magistration, but before a court appearance.

In 2010 and 2012, the monitor found that requests for counsel were not promptly transmitted to the indigent defense coordinator, resulting in untimely appointments. The monitor's 2012 case sample contained thirteen cases in which a request for counsel was made, but the resulting indigence determination was either late or did not occur. Eight of these late determinations were instances where the affidavit of indigence was completed more than three days after the request for counsel was originally initiated. The remaining five cases were instances in which the arrestee requested counsel at magistration but bonded before completing an affidavit of indigence.

For the 2016 review, the monitor examined county and district clerk files from FY2015 (October 2014-September 2015) to determine the timeliness of attorney appointments. From this sample, misdemeanor and felony appointments were 100% timely. The Commission commends Wichita County for creating and implementing processes that ensure timely appointments of counsel in adult cases.

### Timeliness of Appointments

	Felony Cases	Misdemeanor Cases	Combined Total
Total Records Reviewed	20	22	42
Total Requests for Counsel	16	10	26
Timely Determinations of Indigence	16	10	26
<b>Percent of Timely Determinations of Indigence</b>	100%	100%	<b>100%</b>
Late Determinations of Indigence	0	0	0
No Determination of Indigence	0	0	0

**Follow-up Recommendation 1:** Wichita County must examine its appointment processes for both felony and misdemeanor cases and must implement procedures that ensure timely appointment of counsel. **Successfully Addressed.**

## II. Reasonable Assistance with Affidavits of Indigence

Under Article 15.17(a), the magistrate is required to ensure reasonable assistance in completing the necessary forms for requesting counsel at the time of the magistrate warnings. The 2010 review found that the county did not have a process in place to ensure the assistance required under Article 15.17 was provided to arrestees. The county's response to the monitoring report indicated that affidavits of indigence would be provided to arrestees prior to magistrate warnings and collected from arrestees prior to returning to their cells. The monitor's 2012 review found that county processes were still not ensuring affidavits of indigence were promptly completed and sent to the indigent defense coordinator.

To determine whether magistrates are ensuring reasonable assistance in filling out the necessary financial information for the appointment of counsel, the monitor observed an Article 15.17 hearing, interviewed relevant personnel, and reviewed misdemeanor and felony files). On October 13, 2016, the monitor observed an Article 15.17 hearing conducted by Justice of the Peace for Precinct 4 Judy Baker. Prior to the hearing, arrestees were asked if they would be requesting counsel and were provided assistance in filling out the financial affidavit.

Jail personnel reported occasional problems having forms properly notarized, resulting in incomplete affidavits. Interviews indicated that affidavits may not be completed before a defendant bonds and that the indigent defense coordinator may receive incomplete affidavits from the jail. A proposed solution to this problem is to use unsworn affidavits that do not require a clerk or notary's signature.<sup>3</sup> The county may also want to consider giving each defendant who bonds a "Notice to Defendant Released Prior to Appointment of Lawyer," such as that in use by Tarrant County.<sup>4</sup>

While there may still be some issues with transmission of completed affidavits, all requests made at the Article 15.17 hearing (5 misdemeanor requests and 7 felony requests) in the monitor's file review were ruled upon. This is an indication that magistrates are now ensuring reasonable assistance in completing affidavits of indigence at the time of the Article 15.17 hearing.

**Follow-up Recommendation 2:** Wichita County must ensure that reasonable assistance is provided to arrestees to complete affidavits of indigence at the time of

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<sup>3</sup> Section 132.001 of the Texas Civil Practice and Remedies Code permits an "unsworn declaration" in lieu of an oath or affidavit "required by statute or required by a rule, order, or requirement adopted as provided by law." The Commission's new model Affidavit of Indigence can be signed by the defendant in the form prescribed by Section 132.001, unsworn. The model affidavit was provided to Court Administration in October.

<sup>4</sup> A copy of the form in use in Tarrant County was provided to Court Administration in October.

magistration as required by Article 15.17 of the Code of Criminal Procedure. **Successfully Addressed.**

### **III. Waivers of Counsel under Article 1.051, Code of Criminal Procedure**

Under Article 1.051 of the Code of Criminal Procedure, all requests for counsel must be ruled upon prior to any waiver of counsel. During the 2012 review, the monitor found five misdemeanor cases in which the defendant requested counsel at magistration and then bonded prior to completing the affidavit of indigence. Four of the cases resulted in defendants pleading pro se without a ruling on the request for counsel. In the present review, all requests for counsel from the monitor's sample were promptly ruled upon. There were no cases in which defendants waived counsel with a request for counsel pending.

**Follow-up Recommendation 3:** Wichita County must ensure that all requests for counsel are ruled upon before any waivers of counsel are signed, pursuant to Article 1.051(f-2). **Successfully Addressed.**

### **Conclusion**

The monitor found that Wichita County has successfully addressed the Commission's recommendations from 2010 and 2012. The county has implemented processes for meeting Fair Defense Act requirements and is to be commended on the progress made. The ability to continually improve methods of operation is a result of judges who are dedicated to advancing the performance of indigent defense services and of a conscientious and professional administrative staff. The Commission would like to thank all officials and staff who assisted with our visit. Your help was greatly appreciated.