



# **Policy Monitoring Follow-up Review – Willacy County**

**November 2017**



Texas Indigent Defense Commission  
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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.

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## Background

Between FY2007 and FY2011, the Texas Indigent Defense Commission provided funds for a public defender office in Willacy County.<sup>1</sup> In accordance with Article 26.044(b) of the Code of Criminal Procedure, Willacy County contracted with Texas RioGrande Legal Aid (TRLA) to operate the public defender office. Over the course of the grant, the county expended \$898,320 on the program, of which \$509,048 was reimbursed by the Commission. Grant funding for the program expired July 31, 2011, and the county has continued the program since the conclusion of grant funds.

### FY2012 Grant Evaluation

The Commission conducted a grant evaluation of the program with on-site visits to the county in August 2011 and October 2011. The grant evaluation was issued on June 22, 2012 and made several conclusions regarding the grant. Some of the issues related to statutory provisions of the Fair Defense Act (FDA). The grant evaluation conclusions, relating to the FDA, noted:

- requests for counsel were not always documented on the magistrate warning form;
- magistrate warning forms were not always timely; and
- attorney appointments were made through a blanket order. The county needed to document the date of the appointment so the timeliness of counsel appointments could be determined.

### FY2013 Policy Monitoring Review

In an effort to document whether conclusions from the grant evaluation relating to the FDA were addressed, the policy monitor made a site visit to Willacy County in August 2013. The monitor then issued a report with three recommendations:

**Recommendation 1:** In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel.

**Recommendation 2:** Willacy County must put in place a system to ensure that Article 15.17 hearings occur in a timely manner.

**Recommendation 3:** Willacy County must ensure that when there is a request for counsel, there is either a corresponding order appointing counsel or a denial of indigence for each specific case.

Willacy County responded by putting in place a system of rotation amongst magistrates, so a judge would always be available to provide timely warnings to arrestees. The county also stated that orders appointing counsel would be made for each defendant determined to be indigent.

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<sup>1</sup> According to the original Statement of Grant Award, the program was developed to provide representation “for indigent defendants in all courts and all levels of crime except in cases where the death penalty is sought” or in cases of conflict of interest.

## **Current Review**

On September 25, 2017, Commission staff members Brandon Bellows and Scott Ehlers (collectively, “the monitor”) visited Willacy County to conduct a follow-up review of the county’s indigent defense practices. The purpose of this review was to examine whether Willacy County successfully addressed the findings and recommendations from the previous monitoring review. Recommendations that must be addressed from this report are noted below, inside text boxes titled “Follow-up Recommendation.’ A full summary of recommendations made in the review process are listed at the end of this report.

The monitor attempted to reconstruct the timeline from when defendants were arrested in the county until their case disposition. The monitor examined 10 felony and 30 misdemeanor case files from the district and county clerks’ offices, and then supplemented those records with data maintained by the Willacy County Sheriff’s Office and by the public defender.<sup>2</sup> The monitor now addresses topics raised in the prior report based on the aforementioned records.

## **Conduct Prompt and Accurate Magistration Proceedings**

Article 15.17(a) of the Code of Criminal Procedure requires an arrestee to be brought before a magistrate within 48 hours of arrest. At the hearing, the magistrate must inform the arrestee of various rights, and under Article 15.17(e), the magistrate must make a record of asking whether the arrestee wants to request counsel and to record whether the arrestee requests counsel.

### ***Timeliness of Magistrate Warnings***

The 2013 review found that magistrate warnings were not always timely. A county is presumed to be in substantial compliance with the prompt magistration requirement if at least 98% of Article 15.17 hearings sampled are conducted within 48 hours of arrest.<sup>3</sup> In the current review, the monitor could determine the number of days from arrest until the Article 15.17 hearing in 27 sample cases.<sup>4</sup> From this sample, all magistrate warnings occurred within two days of arrest, indicating that Willacy County has processes in place to promptly bring arrestees before a magistrate.

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<sup>2</sup> The sample used FY2016 cases (filed between October 2015 and September 2016).

<sup>3</sup> 1 Tex. Admin. Code § 174.28. If the hearing occurred within two days of arrest, the monitor presumed warnings were timely.

<sup>4</sup> Several sample cases involved arrestees being released prior to book-in at the county jail. In these instances, arrestees were not required to be promptly brought before a magistrate.

**Table 1: Timeliness of Article 15.17 Hearings**

	<b>Sample Size</b>	<b>Percent</b>
Article 15.17 hearing occurs x days after arrest:	27	—
0 days	12	44.4%
1 day	11	40.7%
2 days	4	14.8%
<b>Timely Hearings</b>	<b>27</b>	<b>100.0%</b>
More than 2 days	0	0%

### **Requests for Counsel at Article 15.17 Hearings**

The 2013 review found that magistrates did not always mark whether an arrestee requested counsel at the Article 15.17 hearing. In the current review, the monitor found five sample cases which did not include a notation as to whether the arrestee requested counsel.<sup>5</sup> All magistrates must follow the requirements of Article 15.17(e) and make a record as to whether the arrestee requested counsel.

**Follow-up Recommendation 1:** In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel.

### **Prompt Appointment of Counsel**

If adversarial judicial proceedings have been initiated, Article 1.051(c) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the third working day following receipt of the request for counsel.<sup>6</sup>

### **Local Practices**

In Willacy County, a TRLA investigator visits the county jail multiple times per week and interviews inmates requesting appointed counsel. If an inmate meets the local standard of indigence, counsel is appointed. Otherwise, indigence is denied. Many arrestees post bail prior to the interview with the TRLA investigator, and for these people, indigence is determined at the initial appearance (after a case has been filed with the county or district clerk).

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<sup>5</sup> The magistrate warning form used by the City of Raymondville does not include a space to request counsel, but the municipal judge makes a notation to indicate whether the arrestee requested counsel. The municipal judge made such a notation on 18 of 22 sample forms from the City of Raymondville. Because of this practice, the monitor considered the magistrate to have demonstrated he was complying with Article 15.17(e). However, a better practice would be to adopt the magistrate warning form used by Willacy County, which includes a space noting whether the arrestee requested counsel.

<sup>6</sup> The Supreme Court has clarified that the initiation of adversarial judicial proceedings in Texas occurs at the Article 15.17 hearing. *Rothgery v. Gillespie County*, 554 U.S. 191, 212 – 13 (2008).

## Documentation of Counsel Appointments

The 2013 review found that Willacy County had a standing order appointing counsel to all persons determined to be indigent by the public defender office. However, there was often no documentation as to when counsel was appointed for defendants. In the current review, the monitor found that appointments of counsel are now tracked, and these appointment orders are often put into the clerks' case files.

## Timeliness of Counsel Appointments

While dates for appointments of counsel (or denials of indigence) are now documented, several cases involved an appointment of counsel occurring more than three working days after the request was made.<sup>7</sup> In these instances, defendants made a request for counsel at the Article 15.17 hearing, but then posted bail prior to an indigence screening. The defendants later received appointed counsel at the initial appearance (after the case had been filed with the district or county clerk). This practice is a significant improvement over what was present before the existence of the public defender. However, the level of timeliness from the monitor's sample does not meet the Commission's threshold for presuming a jurisdiction has procedures in place to ensure timely appointment of counsel (90% of the monitor's sample must be timely).<sup>8</sup>

**Table 2: Times to Appointment in Felony and Misdemeanor Cases**

	Number from Sample	Percent of Sample
Total cases in which defendants requested counsel	30	
Request for counsel ruled upon in 'x' workdays		
0 workdays	10	33.3%
1 workday + 24 hours allowed to transmit a request	1	3.3%
2 workdays + 24 hours transmission	0	0.0%
3 workdays + 24 hours transmission	1	3.3%
<b>Timely Rulings on Requests</b>	<b>12</b>	<b>40.0%</b>
4 – 7 workdays + 24 hours transmission	3	10.0%
More than 7 workdays	14	46.7%
No ruling on request	1	3.3%
<b>Total Untimely / No Rulings on Requests</b>	<b>18</b>	<b>60.0%</b>

Practices to screen defendants for indigence are clearly in place, but the screening often occurs after the deadline for appointment of counsel or denial of indigence. The county must ensure that statutory time frames for determining indigence and appointing counsel are met. One method for ensuring these time frames are met

<sup>7</sup> The monitor checks that a determination of indigence is made within 3 working days of the request being invoked, plus an additional 24 hours for transmitting the request.

<sup>8</sup> Because the procedures for appointing counsel are the same for felony and misdemeanor cases, the monitor's sample combined felony and misdemeanor cases.

would be to create a system in which bonded arrestees could complete their financial application by either an in-person or a call-in interview with TRLA staff. If the bonded arrestee does not complete the in-person or call-in interview in a timely manner, then indigence can be denied and a ruling on the request for counsel can occur within the statutory framework. The defendant can request counsel again at the initial appearance if he or she so chooses.

**Follow-up Recommendation 2:** The county must ensure that statutory time frames for determining indigence and appointing counsel are met. One method for ensuring these time frames are met would be to create a system in which bonded arrestees could complete their financial application by either an in-person or call-in interview with TRLA staff.

## **Conclusion**

The monitor thanks Willacy County officials and staff for their cooperation with this review. Willacy County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the county's transition and adjustments to Commission findings.

## **Status of Monitoring Recommendations**

### **Recommendations Not Successfully Addressed by the Current Review.**

Willacy County must respond to the following recommendations that have not been addressed with a detailed action plan describing how it will resolve each issue.

**Follow-up Recommendation 1:** In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel.

**Initial Year Made: 2013**

**Status: *Not addressed with the November 2017 review.***

**Follow-up Recommendation 2:** The county must ensure that statutory time frames for determining indigence and appointing counsel are met. One method for ensuring these time frames are met would be to create a system in which bonded arrestees could complete their financial application by either an in-person or call-in interview with TRLA staff. **Initial Year Made: 2017**

**Status: *New Recommendation***

### **Successfully Addressed Recommendations**

**Recommendation:** Willacy County must put in place a system to ensure that Article 15.17 hearings occur in a timely manner.

**Initial Year Made: 2013**

**Status: *Successfully addressed with the November 2017 review.***

**Recommendation:** Willacy County must ensure that when there is a request for counsel, there is either a corresponding order appointing counsel or a denial of indigence for each specific case.

**Initial Year Made: 2013**

**Status: *Successfully addressed with the November 2017 review.***