



# **Second Follow-up Policy Monitoring Review of Collin County's Indigent Defense Systems**

**February 2020**



## Background

The Texas Indigent Defense Commission (TIDC) issued an initial policy report of Collin County's indigent defense practices in February 2013. The report made recommendations concerning the local procedures for conducting Article 15.17 hearings and the timeliness of appointments of counsel in felony and juvenile cases. TIDC found Collin County's procedures were in compliance with the other core requirements of the Fair Defense Act.

In response to the initial report, Collin County magistrates adjusted practices for conducting magistrate warnings so that magistrates asked each arrestee whether he or she wished to request appointed counsel.<sup>1</sup> The district judges adjusted procedures for appointing counsel, giving the Indigent Defense Eligibility Specialist the authority to appoint counsel in all felony cases. Finally, in an effort to improve the timeliness of appointing counsel in juvenile cases, Collin County required the juvenile probation office to provide affidavits of indigence at intake.

In February 2016, TIDC issued a follow-up report to determine whether the 2013 recommendations had been successfully addressed. The review found the County had successfully addressed the timeliness of appointing counsel in felony cases. However, the review found that appointments in juvenile cases did not yet reach TIDC's threshold for presuming a jurisdiction's procedures ensure timely appointment of counsel. As to magistrate warnings, the review found three issues. First, the magistrate warning form asked a three-part question rather than whether the arrestee wished to request counsel. Second, in some instances, magistrates did not ask arrestees whether they wanted to request counsel. Third, some Spanish-speaking arrestees who required a licensed interpreter did not receive a live hearing.

Collin County's action plan addressed magistrate warnings in three ways: (1) the County changed the magistrate warning form counsel question to a binary question; (2) the County required all magistrates ask arrestees whether they are requesting counsel; and (3) the County stated all non-English speaking arrestees would receive magistrate warnings directly through a qualified interpreter. Collin County planned to address the timeliness of juvenile appointments by giving the Indigent Defense Eligibility Specialist authority to appoint counsel if juveniles did not have counsel at the time an appointment would have been due.

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<sup>1</sup> At the time of the initial review, Pretrial Services performed the function of inquiring whether one requested appointed counsel. After the report, Pretrial Services continued to take requests for counsel, but magistrates now performed their statutorily required duty to ask and record whether the arrestee requested counsel.

**Table 1: History of Monitoring Findings**

FDA Core Requirement	Description and Initial Year of Finding	Status after Feb. 2020 Review	
		Satisfied	Pending
1. Magistrate Warnings	Magistrates must provide the warnings listed in Article 15.17(a) wither in person or through electronic broadcast system. (2013)	√ (2016)	
1. Magistrate Warnings	Magistrates must make of record of asking whether the arrestee requests appointed counsel (2013)	√ (2020)	
1. Magistrate Warnings	Magistrates must ensure magistrate warnings are provided to deaf and non-English speaking arrestees in a manner consistent with Articles 38.30 and 38.31. (2016)		√
1. Magistrate Warnings	The magistrate warning form must track the language of Article 15.17(e) regarding whether the arrestee would like to request counsel. (2016)	√ (2020)	
4. Prompt Appointment	The timeliness of indigence determinations in sample felony cases did not meet TIDC’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2013)	√ (2016)	
4. Prompt Appointment	The timeliness of indigence determinations in sample juvenile cases did not meet TIDC’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2013)	√ (2020)	

## Second Follow-up Review

TIDC’s policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.<sup>2</sup> Staff members Kathleen Casey-Gamez and Scott Ehlers conducted a second follow-up review with a site visit from July 30 – 31, 2019. For this review, TIDC examined juvenile case file records, observed Article 15.17 hearings, and interviewed local officials and staff.

### Article 15.17 Hearings

In December 2015, TIDC staff initially learned from Office of Court Administration (OCA) interpreters that jail staff were providing the warnings required under Article 15.17 for Spanish speaking arrestees at the Collin County Jail. OCA notified TIDC that they regularly provide interpretation services for the Justice of the Peace for Precinct 3, Place 2, but the Justice of the Peace for Precinct 1 does not use interpreters. TIDC’s February 2016 report made a recommendation for Collin

<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

County magistrates to perform each duty listed in Article 15.17(a) for both English and non-English speaking arrestees.

The Justice of the Peace for Precinct 1 has not used OCA interpreters since December 11, 2017. On August 1, 2019, OCA interpreters were asked to interpret for two Spanish speakers at a 15.17 hearing. They were then told that the 15.17 hearing would be conducted by the Justice of the Peace for Precinct 1, and their services would no longer be needed.

### **Observation of an Article 15.17 Hearing Conducted by the Justice of the Peace for Precinct 3, Place 2**

On July 31, 2019, TIDC observed magistrate warnings conducted by the Justice of the Peace for Precinct 3, Place 2. Prior to the warnings, arrestees were brought to a room where a sheriff's office deputy provided advice to arrestees about the hearing. The deputy stated he could not provide legal advice to arrestees but then advised them of the following points:

- Not to share facts of the case
- To stay on top of the case; you have to push attorneys to do their job
- Not to ask the judge for a personal bond
- Not to ask the judge for a bond reduction on warrants
- To plead guilty to time served on Class C misdemeanor tickets

Staff asked arrestees to fill out a form regarding whether they wanted to request counsel. Those persons requesting counsel completed affidavits of indigence. This questionnaire formerly phrased the counsel request question as a three-part question. The new form phrases this as a binary question.

The hearing was conducted by videoconference for 31 persons arrested for a Class B misdemeanor offense or higher. The magistrate asked all arrestees if they wanted to request counsel. An interpreter from the Office of Court Administration provided interpretation services for Spanish-speaking arrestees.

### **Observation of Article 15.17 Hearings Conducted by the Justice of the Peace for Precinct 1**

TIDC also requested video recorded magistrate warnings for the period from August 5 – 7, 2019. These hearings were conducted by the Justice of the Peace for Precinct 1. The magistrate did not conduct full magistrate warnings for persons requiring interpretation services.<sup>3</sup> Instead, the magistrate only set bail and found probable cause for arrest.

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<sup>3</sup> The video recording on the afternoon of August 5, 2019 included an arrestee who the Justice of the Peace discovered could not speak English. After the discovery, the Justice of

Article 15.17(a) of the Code of Criminal Procedure requires that persons needing interpretation services be given magistrate warnings. Article 15.17(a) states in part, “. . . If the person does not speak and understand the English language or is deaf, the magistrate shall inform the person in a manner consistent with Articles 38.30 and 38.31, as appropriate. . . .” Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings.**

**February 2016 Recommendation 1:** Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.

***Issue Pending.***

**February 2016 Recommendation 2:** Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel.

***Successfully Addressed in the 2020 review.***

**February 2016 Recommendation 3:** The magistrate warning form must track the language of Article 15.17(e) regarding whether the arrestee would like to request counsel.

***Successfully Addressed in the 2020 review.***

## **Appointment of Counsel in Juvenile Cases**

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 appoint counsel or order the retention of counsel for the juvenile. TIDC examined 43 sample cases in which petitions were filed against juveniles. Counsel was present within five working days of the petition service for 42 of the 43 sample cases. This level of timeliness (**98% timely**) meets TIDC’s 90% threshold.

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the Peace decided the arrestee should not appear before him. He set bail for the person, but did not conduct a full Article 15.17 hearing, either in English or another language. The video recording on the morning of August 5, 2019 also included an arrestee who was not brought before the Justice of the Peace for a regular Article 15.17 hearing. Instead, he set a bail bond of \$10,000.

**Table 2: Timeliness of Counsel Appointments Where Juvenile Served with a Petition**

	Sample Size	Number from Sample	Percent
Total juvenile cases examined in which petition filed	43		
Counsel appointed within 5 working days of service		35	
Counsel retained within 5 working days of service		7	
<b>Total cases with timely presence of counsel</b>		<b>42</b>	<b>98%</b>
Total cases in which counsel not present within 5 working days of service		1	2%

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

**Prompt Appointment**

**February 2016 Recommendation 4 (juvenile cases):** Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody.

*Successfully Addressed in the 2020 review.*

**Conclusion**

TIDC appreciated the professionalism and assistance provided by Collin County officials and staff. TIDC stands ready to provide technical assistance to the County in addressing issue raised in the report. As mandated by statute, TIDC will continue to monitor the County’s progress on meeting the requirements of the Fair Defense Act.

## **Status of Recommendations from the February 2016 Review**

### **Core Requirement 1. Conduct prompt and accurate magistration proceedings.**

**February 2016 Recommendation 1:** Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.

***Issue Pending.***

**February 2016 Recommendation 2:** Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel. ***Successfully Addressed in the 2020 review.***

**February 2016 Recommendation 3:** The magistrate warning form must track the language of Article 15.17(e) regarding whether the arrestee would like to request counsel. ***Successfully Addressed in the 2020 review.***

### **Core Requirement 4. Appoint counsel promptly.**

**February 2016 Recommendation 4 (juvenile cases):** Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody.

***Successfully Addressed in the 2020 review.***

## **Finding and Recommendation from the February 2020 Review**

### **Core Requirement 1. Conduct prompt and accurate magistration proceedings.**

**February 2020 Recommendation:** Collin County magistrates must perform each duty listed in Article 15.17(a), including giving the required warnings to non-English speaking or deaf arrestees in a manner consistent with Articles 38.30 and 38.31.