



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

**January 2022**



## Background

The Texas Indigent Defense Commission (TIDC) monitors local jurisdictions' compliance with the Fair Defense Act (FDA) through on-site reviews.<sup>1</sup> These reviews seek to promote local compliance and accountability with the requirements of the Fair Defense Act and to provide technical assistance to improve county indigent defense processes.

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.

TIDC's policy monitoring rules require follow-up reviews where the report included noncompliance findings.<sup>2</sup> TIDC conducted follow-up reviews in 2016 and 2020. Over the course of those reviews, TIDC found that Collin County had addressed all but one of the original report's recommendations. The remaining recommendation concerns magistrate warnings for persons needing an interpreter.

The County's action plan related to the 2020 report finding addressed magistrate warnings in five ways: (1) jail staff has been directed to not provide legal advice to inmates; (2) all magistrate warnings are conducted exclusively by magistrates; (3) OCA's Texas Court Remote Interpreter Service is used routinely in the Magistrate Court; (4) contracted vendors for both spoken and non-spoken language interpretation services are being consistently used for magistration hearings; and (5) the County was in the process of vetting and contracting with additional language service providers to ensure needs for qualified sign language and less frequently spoken languages are being met.

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

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

**Table: History of Monitoring Findings**

FDA Core Requirement	Description and Initial Year of Finding	Status before 2022 Review	
		Satisfied	Pending
1. Prompt Magistration	Magistrates did not provide Article 15.17 warnings either in person or electronically. (2013)	✓ (2016)	
1. Prompt Magistration	Magistrates did not record whether the magistrate asked the arrestee whether counsel is requested. (2013). After 2013, this applied only to persons needing an interpreter.		✓
4. Prompt Appointment	In felony cases, timeliness in sample cases did not meet TIDC’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2013)	✓ (2016)	
4. Prompt Appointment	In juvenile cases, timeliness in sample cases (when a petition is served on the juvenile) did not meet the Commission’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2013)	✓ (2020)	

### Third Follow-Up Review

TIDC’s policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.<sup>3</sup> Staff member Olivia Lee conducted a third follow-up review by observing recorded Article 15.17 hearings occurring between August 14 and August 30, 2021.

### Article 15.17 Hearings

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.

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

## Observation of Article 15.17 Hearings from Collin County Magistrate Court

TIDC requested video recorded magistrate warnings with at least one hearing being on the weekend.

TIDC watched video recordings of magistrations hearings from August 14, 2021; August 16, 2021; and August 30, 2021 that took place at the Collin County Magistrate Court. The August 14<sup>th</sup> hearing was on a Saturday and was performed by a part-time magistrate judge. The other two hearings were performed by the Magistrate Judge.

Both magistrates conducted full magistrate warnings for persons requiring interpretation services, and each warning was translated by an interpreter who was sworn in. These warnings included the right to remain silent and to terminate an interview with law enforcement or the district attorney at any time; the warning that anything the defendants said may be used against them at trial; the right to be represented by lawyer, and if they cannot afford one, the court will appoint one for them; the right to reasonable time and opportunity to consult with lawyer before questioning; and the right to have lawyer present with them during questioning. The interpreter translated each warning. The magistrates also stated that, for felony offenses, the defendant is entitled to an examining trial, but not if they have been indicted by the grand jury.

The magistrates both informed defendants that they have not been convicted at this time, only accused of a crime. Following the warnings, the magistrates also explained the different ways to post bond; that it takes 24 hours to qualify for a court appointed attorney; and that if the defendant is a veteran, he or she has a right to fill out an application to have the case heard by a special veteran's court. The interpreter translated each of these warnings.

### FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

#### **Conduct prompt and accurate magistrations 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.

*Successfully Addressed in the 2022 review.*

## **Conclusion**

TIDC finds that Collin County has successfully addressed the recommendations made in our policy monitoring reports since 2013. The County does not need to respond to this report. TIDC commends Collin County officials for their commitment to improving local indigent defense practices. TIDC would also like to thank officials and staff who assisted with our visits and access to recorded magistration sessions.