

## Responses to January 2016 Recommendations – Randall County

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

1. Recommendation: 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.

Response: The magistrates who conduct the jail magistration have met and now understand that each arrestee must be asked individually about whether they wish to request counsel rather than only asking the arrestees as a group during magistration. This should correct the problem.

### Core Requirement 4. Appoint counsel promptly.

2. Recommendation: 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.

Response: The deputies in the Randall County Jail arraignment room shall have each inmate who requests appointed counsel to fill out the request form before leaving the arraignment room. For felonies, the deputy shall then scan the completed attorney request form and email it to the 181<sup>st</sup> District Court that same day.

If the inmate does not request counsel at the time of magistration but later decides to request appointed counsel, the deputy or pod officer in the jail shall give the attorney request form to the inmate who can then complete the request form at their convenience. When the request form is completed and returned to the pod officer, the deputy or pod officer will indicate the date that the request was returned to him or her, and bring the request for counsel form to the arraignment room before the end of said deputy's or pod officer's shift. The arraignment room deputy shall promptly scan the completed form and, in the case of a felony, email it to the 181<sup>st</sup> District Court.

The original paper attorney request form shall continue to be forwarded to the appropriate court as is currently done.

3. Recommendation: The statutory county courts do not have adequate processes in place to ensure misdemeanor 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 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.

Response: The deputies in the Randall County Jail arraignment room shall have each inmate who requests appointed counsel to fill out the request form before leaving the arraignment room. For misdemeanors, the deputy shall then scan the completed attorney request form and email it to County Court at Law #1 that same day.

If the inmate does not request counsel at the time of magistration but later decides to request appointed counsel, the deputy or pod officer in the jail shall give the attorney request form to the inmate who can then complete the request form at their convenience. When the request form is completed and returned to the pod officer, the deputy or pod officer will indicate the date the request was returned to him or her, and bring the request for counsel form to the arraignment room before the end of the deputy's or pod officer's shift. The arraignment room deputy shall promptly scan the completed form and, in the case of a misdemeanor, email it to the County Court at Law #1.

The original paper attorney request form shall continue to be forwarded to the appropriate court as is currently done.

4. Recommendation: 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.

Response: This occurred in very few situations where an inmate requested appointed counsel at magistration and then changed their mind and chose to plead guilty *pro se* before the written request had been received by the Court. The response under recommendation #3 should resolve this issue.

5. Recommendation: 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.

Response: We assume the "waiver of counsel" referred to in the above recommendation is the defendant's written waiver of attorney which is part of the paperwork required for a defendant's *pro se* plea.

Unless this is a reiteration of the rare jail plea situation referenced in recommendation #4 above, we disagree with this assessment and believe that the recommendation as stated does not accurately reflect the procedures practiced in Randall County.

Each misdemeanor defendant is informed of his or her right to hire counsel or to request appointed counsel and what they must do to request appointed counsel, and is asked if they want to request appointed counsel at that time during their magistration in jail. And again, when a defendant appears in court after bonding out of jail or when initially appearing on a misdemeanor citation, they are again informed of their right to counsel, informed of what they must do to request appointed counsel, and asked if they want to request appointed counsel at that time. If they request counsel, they are given the request form to fill out and once it is completed, the Court immediately rules upon the request. If an attorney is requested or appointed, the district attorney's office will not speak to the defendant. We did change the Waiver of Arraignment form as suggested by the TIDC monitors by moving the admonishment language regarding requesting appointed counsel from the middle of the admonishments of rights form to the second to last paragraph on the form. *The amended waiver of arraignment form currently used is attached to the January 2016 TIDC report as Appendix B.*

Furthermore, on each monthly docket call day thereafter, each *pro se* defendant is again informed of their right to counsel and informed what they must do to request counsel. If they state they need time to hire an attorney, they are given a one month continuance to do so. If they request appointed counsel, they are given the request form to complete. We now require they complete it immediately rather than taking it with them. The court then rules upon the request. If they do not request an attorney but choose to represent themselves, they are free to visit with the district attorney's office about their case and a potential plea agreement if they want. They are told they do not have to speak with the district attorney's office, they do not have to accept

any plea offer, and that they have the right to take time to consider any offer that may be made. They are also told that they can change their mind about representing themselves and request an attorney at any time.

If a defendant chooses to represent themselves, and subsequently enters into a plea agreement with the district attorney's office, they must complete a written waiver of attorney as part of the plea papers. During the plea, the court again informs each defendant of their right to have counsel represent them, and asks if they wish to ask for an attorney or if they want to represent themselves. If a defendant asks for an attorney at that time, the plea is halted and the defendant is given an attorney request form to complete while in the court room. The court then immediately rules upon the request. If a defendant states they wish to represent themselves, they are then asked if they have read the written waiver of attorney, if they understand it, if they have any questions, and if they signed it knowingly and voluntarily. Only if they have knowingly and voluntarily waived their right to counsel and signed the written waiver of attorney does the court proceed with the plea.

So the procedures in place for *pro se* misdemeanor pleas guarantee each defendant has had their right to counsel explained and the procedure for requesting appointed counsel explained to them at least once and usually more than once prior to their signing the written waiver of attorney required for a *pro se* plea. And also the *pro se* defendant is required to acknowledge at least twice their choice to represent themselves.

We do appreciate the suggestion by Mr. Joel Lieurance with TIDC that Randall County might have the defendants more clearly indicate their choice to waive or request counsel on a separate form to be signed at the time of arraignment, prior to entering into plea discussions with a prosecutor. To that end, we have adapted the form used by Fort Bend County which he provided us, and have begun using it and do find it helpful. The district attorney's office now requires a *pro se* defendant show them their copy of this new form indicating their choice to represent themselves before speaking with the defendant about their case or about any potential plea offers. *This new "Explanation of Right to an Attorney" form is attached as Appendix "A".*

6. Recommendation: 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.

Response: This is an issue in juvenile cases when the juvenile has not been detained prior to the filing of a petition. In juvenile cases, when a petition and

summons is served on a juvenile and their parent, they are ordered to appear with a parent or guardian on the second Thursday following the date of the filing of the petition at 8:30 a.m. for an attorney status docket (they are given a date certain in the summons). If an attorney is obtained prior to that docket date, they do not have to appear. When they appear at the attorney status docket, the parent is informed that they must obtain an attorney to represent the juvenile, and are ordered to do so. If they request appointed counsel, they complete the request form right then, then the court reviews it immediately, and if they qualify, appoints counsel at that time. If they do not qualify, they are informed immediately, and are ordered to obtain an attorney for their juvenile before the next court date. If they indicate at the attorney status docket they wish to hire an attorney, they are ordered to obtain an attorney before the next court date. In each instance, the juvenile is then continued to a new court date, generally two to three weeks from that date.

The change that we have made is that we adopted the recommendation of the TIDC monitors. The juvenile and the juvenile's parent, in the summons accompanying the petition when served, are now ordered to hire counsel within five days or to come to court within five days to request appointed counsel. We still hold the attorney status hearing to verify whether they have obtained an attorney as ordered. *The new summons is attached as Appendix "B".*

Appendix A — Explanation of Right to an Attorney Form

NO. \_\_\_\_\_

THE STATE OF TEXAS

§ IN THE COUNTY COURT AT LAW NO. \_\_\_

VS.

§ IN AND FOR

\_\_\_\_\_

§ RANDALL COUNTY, TEXAS

EXPLANATION OF RIGHT TO AN ATTORNEY

As a defendant in a criminal case, you have three options regarding how you proceed in your case:

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

If you want an attorney to represent you and you are financially able to hire one, the Court will give you time to do so.

If you want an attorney to represent you and are not financially able to hire one, you must fill out a financial information sheet so that the proper person can determine whether or not to appoint an attorney to represent you.

If you choose to waive your right to an attorney and represent yourself, remember you always have the right to change your mind at any time while your case is pending and obtain an attorney either through hiring one or requesting the Court to appoint one to represent you.

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

\_\_\_\_\_  
Presiding Judge

DEFENDANT'S CHOICE

\_\_\_\_\_ I want to represent myself. **I understand I can change my mind and ask for an attorney at any time.**

\_\_\_\_\_ I want to hire an attorney.

\_\_\_\_\_ I want to apply for a court appointed attorney.

\_\_\_\_\_ I already have an attorney, whose name is: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

Appendix B — Juvenile Summons

NO. «CauseNo»

IN THE MATTER OF: \* IN THE COUNTY COURT AT LAW #1  
\* FOR RANDALL COUNTY, TEXAS  
«JUVENILE» \* SITTING AS A JUVENILE COURT

**S U M M O N S**

TO: ANY PROBATION OFFICER OR PEACE OFFICER OF THE STATE OF TEXAS,  
YOU ARE HEREBY COMMANDED TO SUMMON:

The Child: «JUVENILE»  
who resides at: «JuvenileAddress»  
  
The Parents: «JuvenileParents»  
who reside at: «ParentAddress»  
  
The Father: «JuvenileFather»  
who resides at: «FatherAddress»  
  
The Mother: «JuvenileMother»  
who resides at: «MotherAddress»  
  
The Grandparents: «JuvenileGrandparents»  
who reside at: «GrandparentAddress»

if to be found in your county, to be and appear in person before the County Court at Law #1 at 2309 Russell Long Boulevard, Suite 132, in Canyon, Texas, on «HearingDate», at 8:30 AM, and all subsequent settings and hearings in this cause from day to day and from term to term, until discharged by the court, to answer the petition filed herein alleging that the said «JUVENILE» is a child who has engaged in conduct indicating a need for supervision and/or delinquent conduct. The nature of the Petition for Adjudication is set out and shown by a true and correct copy of the Petition for Adjudication accompanying this summons and made a part hereof.

**THE LAW REQUIRES THAT THE CHILD BE REPRESENTED BY AN ATTORNEY AT THESE PROCEEDINGS. IT IS ORDERED THAT THE PARENT OR GUARDIAN OF THE CHILD CONTACT, OR APPEAR BEFORE THE COURT WITHIN FIVE (5) DAYS TO ADDRESS THE ISSUE OF OBTAINING AN ATTORNEY TO REPRESENT THE CHILD.**

The officer executing this writ shall promptly serve the same according to the requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN under my hand and seal of said Court at Canyon, Texas, this \_\_\_\_ day of «MonthYear».

JO CARTER, District Clerk  
County Court at Law Sitting as a Juvenile  
Court and of the District Court

\_\_\_\_\_  
By Deputy

All of the aforementioned persons are required to appear before said Court at said time. A person who violates this order may be proceeded against under Section 54.078 of the Texas Family Code for contempt.

**RETURN**

Came to hand on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_ o'clock \_\_\_\_ M. and executed by personally serving on the above named person(s) a copy hereof on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, at \_\_\_\_\_ o'clock \_\_\_\_ M.

Sheriff's Fee: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_

Assistant/Deputy