

Recommendation: Article 15.17(a) of the Code of Criminal Procedure states, "... The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. ...". Wichita County must ensure that reasonable assistance is provided to arrestees in completing affidavits of indigence. Article 15.17 puts this responsibility on magistrates who conduct the Article 15.17 hearing.

Action Plan:

The application for court appointed attorney will be completed to the best of their ability at the time of Magistration. They will be given time prior to seeing the magistrate to complete the form.

Contact person(s): Deputy Chief Derek Meador, Wichita County Sheriff's Office

Completion date: Monday, July 25, 2011

The monitor's case sample examined cases filed during FY2009. Some of these cases were from arrests made much earlier than FY2009. *Rothgery v. Gillespie County* was decided in June 2008 and affected the timing of appointments for persons who bonded out of jail. Those cases where the defendant requested counsel prior to July 2008 were thrown out of the monitor's sample. The timeliness of appointments samples included both appointments for bonded persons and for detained persons.

Misdemeanor Appointments:

The monitor examined 52 misdemeanor cases that were filed in FY2009 where an arrestee requested appointed counsel. The time from request until appointment of counsel ranged from 0 work days to 104 work days. Twenty-eight (28) of these files contained timely determinations of indigence. Twenty-four (24) contained late determinations of indigence. Nine of those 24 late determinations were cases in which a request for counsel had been made to the magistrate but where no corresponding determination of indigence had been made. Another ten late determinations were cases where counsel was requested at magistration, but where an affidavit of indigence was completed on some day later than the day when counsel was originally requested.

counsel to the magistrate, the courts must still be made aware of the request so that they can rule on the request.

Action Plan:

Your recommendation stated that Article 1.051(f-2) stated that the request for Counsel must be transmitted within 24 hrs to the Court. This article only applies if the Magistrate is authorized under Article 26.04 to appoint counsel for indigent defendants in the County. Wichita County's Plan and Standing Rules and Orders for Procedures for timely and fair appointment of counsel for indigent accused persons under Magistrate Responsibilities, paragraph (f) The Court Administrator shall be the designee for the County, County Courts at Law and the District Courts to receive, review and process the Application for Court Appointed Counsel. The Court Administrator shall be responsible for monitoring status of the Request for Counsel so the determination of indigence status and appointment of counsel by the appropriate judge is complete within 3 working days after receiving the Request for Counsel.

Will meet with the County Court Judges and recommend that on the form, Judge's Explanation of Rights to Defendant Without an Attorney/Waiver of Right to Counsel under DEFENDANT'S CHOICE that according to Article 15.17(g) that this statement be added to the form: I wish to waive the right to apply for court appointed counsel and request the Court to proceed with my case without an attorney being appointed to me.

Contact person(s): Miltzi Brotherton, Wichita County Court Coordinator

Completion date: Monday, July 25, 2011

Felony Appointments:

The monitor examined 79 felony cases that were filed in FY2009 where an arrestee requested appointed counsel. The time from request until appointment of counsel ranged from 0 work days to 130 work days. Forty-nine (49) of these files contained timely determinations of indigence. Thirty (30) files contained late determinations of indigence. Two of the late determinations were cases in which a request for counsel had been made to the magistrate but where no corresponding determination of indigence had been made. Another twenty late determinations were cases where counsel was requested at magistration, but where an affidavit of indigence was completed on some day later than the day when counsel was originally requested.

Wichita Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Indigence Determinations Examined	79		
Appointment / Denial of Indigence Occurred in:			
0 work days		15	19.0%
1 work day + 24 hour transfer		19	24.1%
2 work days + 24 hour transfer		9	11.4%
3 work days + 24 hour transfer		6	7.6%
Timely appointments		49	62.0%
Late Appointments		30	38.0%

Recommendation: Task Force rules require that a recommendation be made regarding timely appointments of counsel if less than 90 percent of the monitor's sample is timely. Wichita County must examine its appointment processes for both felony and misdemeanor cases and must implement procedures that ensure timely appointment of counsel. From my review, a number of these untimely determinations of indigence may have been caused by requests which were forwarded to the appointing authority more than 24 hours after the requester signaled a desire to have counsel appointed.

Action Plan:

The Court Administrator's office has discussed with the Sheriff's Jail Administrator to implement the following procedure:

The Jail Administrator/Jail staff is going to receive the completed application for Court Appointed Counsel after magistration and

before the defendant is taken back to his/her cell; if the Court Appointed Counsel is requested at the time of magistration.

Contact person(s): Miltzi Brotherton, Wichita County Court Coordinator

Completion date: Monday, July 25, 2011

Juvenile Appointments:

In Wichita County, if a juvenile has a detention hearing or if a petition is to be filed, the juvenile judge appoints counsel for the juvenile. The County's processes ensure that if a petition is filed that counsel will be appointed in a timely manner because counsel is appointed before the petition is filed. The juvenile's parents (or other caretaker) are required to fill out an affidavit of indigence, but this is often done after the appointment of counsel. If the parents are deemed able to afford counsel, attorney fees are assessed against them, but the appointed attorney continues to represent the juvenile. If the parents desire retained counsel, they can hire retained counsel. Absent such retention, juveniles are represented by court appointed counsel.

The monitor examined cases for 16 juveniles that had either a detention hearing or a petition filed in FY2009. All cases had counsel appointed for the respective detention hearings. All cases had counsel appointed within five working days of the petition being served on the juvenile.

Wichita Juvenile Appointment Sample Data	Sample Size	Number from sample	Percent
Number of Juvenile Case Files Examined	16		
Number of detention hearings listed in case files		37	
Number of detention hearings with an attorney representing the juvenile		37	100%
Petitions filed		13	
Petitions filed where juvenile received counsel within 5 working days of being served:		13	100%

Commendation: Wichita County has solid procedures for making timely attorney appointments for juveniles.