



# **2<sup>nd</sup> Follow-up Review of Randall County's Indigent Defense Systems**

**May 2019**



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**MISSION**

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.

## **Contents**

Background .....	4
May 2019 Follow-up Review.....	6
Conduct Prompt and Accurate Magistration Proceedings .....	6
Appoint Counsel Promptly.....	8
Waivers of Counsel.....	10
Juvenile Cases.....	11
Conclusion.....	12
Status of Past Recommendations.....	12
Findings and Recommendations from the May 2019 Review .....	15

## **Background**

In 2012 the Texas Indigent Defense Commission (TIDC) conducted an initial monitoring review of Randall County's indigent defense practices. For adult cases, the policy monitoring report made recommendations that focused on the transmittal of counsel requests to the appointing authority and on the timely appointment of counsel. For juvenile cases, the report made recommendations regarding the timely appointment of counsel at detention hearings and in instances when the juvenile was served with a petition. The 2012 report found the County's procedures met TIDC core requirements for the local standard of indigence; minimum attorney qualifications; attorney selection method; and attorney payment methods.

To address adult matters, Randall County responded with an action plan to improve the transmission of counsel requests. This plan required magistrates to make a paper record as to whether arrestees requested counsel (formerly the record was part of a hearing video). When misdemeanor arrestees requested counsel, the response designated the court coordinator for County Court at Law #1 as the person to receive misdemeanor requests for counsel. To address juvenile matters, Randall County responded with an action plan to summon the parents of a juvenile to court so they may either fill out paperwork to request counsel or retain counsel.

TIDC returned to Randall County to verify whether issues identified in the 2012 report had been addressed, and issued a follow-up report in 2016. The follow-up report found magistrates were not always asking arrestees whether they requested appointed counsel. When defendants requested counsel from the jail, the financial paperwork was not always transmitted to the courts in a prompt manner, and the resulting appointments of counsel often occurred beyond statutory time frames. When misdemeanor defendants appeared in court, the procedures for requesting counsel were not readily apparent until after a waiver of counsel had been procured. For juvenile matters, the report found that counsel was appointed timely when detention hearings were conducted, but found there were gaps in timely appointments when juveniles were served with a petition.

After the 2016 report, Randall County adjusted its procedure for transmitting counsel requests to the courts by scanning and emailing financial paperwork to all pertinent court coordinators. To address in-court counsel requests, the misdemeanor courts adopted a new form for their arraignment docket. This form clearly explained the procedures for requesting counsel, and required defendants to choose how they wished to resolve their cases (i.e. request appointed counsel, re-set to retain counsel, or waive counsel and speak with the prosecutor).

**Table 1: History of Monitoring Findings**

Topic	Description and Initial Year of Finding	Status after May 2019 Review	
		Satisfied	Pending
Magistrate Warnings	Article 15.17 hearings must occur within 48 hours of arrest (2012)	√	
Magistrate Warnings	Requests for counsel must be promptly transmitted to the appointing authority (2012)	√	
Magistrate Warnings	Magistrates do not always ask arrestees if they want to request the appointment of counsel. (2016)	√	
Magistrate Warnings	Magistrates do not ask persons arrested on out-of-county warrants if they want to request the appointment of counsel. (2019)		√
Magistrate Warnings	As part of the Texas Judicial Council Monthly Court Activity Reports, justices of the peace must report the number of persons requesting counsel at the Article 15.17 hearing. (2019)		√
Prompt Appointment of Counsel	In felony cases, counsel must be appointed within three working days of a request being made (plus 24 hours allowed in transmitting the request to the appointing authority). (2012)	√	
Prompt Appointment of Counsel	In misdemeanor cases, counsel must be appointed within three working days of a request being made (plus 24 hours allowed in transmitting the request to the appointing authority). (2016)	√	
Prompt Appointment of Counsel	In juvenile cases, counsel must be appointed prior to a detention hearing. (2012)	√	
Prompt Appointment of Counsel	In juvenile cases, counsel must be appointed within five working days of service of a petition on a juvenile. (2012)		√
Waivers of Counsel	Requests for counsel must be ruled upon prior to a waiver of counsel and a defendant's uncounseled communication with the prosecutor. (2016)	√	

## **May 2019 Follow-up Review**

Staff members Scott Ehlers and Joel Lieurance conducted the second follow-up review with a visit to Randall County from December 12 through December 14, 2019. The purpose of this review was to examine whether Randall County successfully addressed the recommendations from the January 2016 report. To determine whether the recommendations had been successfully implemented, TIDC observed Article 15.17 hearings and a misdemeanor docket, and examined felony, misdemeanor, and juvenile case files.

### **CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS**

#### **Article 15.17 Hearings**

Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.<sup>1</sup> At this hearing, the magistrate must inform the accused of his or her right to counsel; inform the accused of the procedures for requesting counsel; and ensure the accused has reasonable assistance in completing the necessary forms for requesting assistance of counsel.<sup>2</sup> Finally, within 24 hours of receiving a request for counsel, the magistrate must transmit this request to the entity authorized to appoint counsel.<sup>3</sup> In Randall County, justices of the peace are the primary magistrates who conduct Article 15.17 hearings, while other judges (county court at law and district judges) often fill in on weekends.

On December 12, 2018, TIDC observed Article 15.17 hearings at the Randall County Jail. TIDC also viewed video-recorded Article 15.17 hearings for the period from November 28 through December 11, 2018. TIDC observed that all persons arrested for Randall County offenses were told of the right to counsel and were asked whether they wanted to request the appointment of counsel. Randall County has successfully addressed this recommendation from the 2016 policy monitoring report.

Based on the observation of video-recorded Article 15.17 hearings, persons arrested on out-of-county warrants were not asked if they wanted to request appointed counsel. Article 15.18 requires out-of-county arrestees to be asked if they want to request counsel.<sup>4</sup> Once a request is made, the request and associated

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<sup>1</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>2</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>3</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>4</sup> Article 15.18(a) - (a-1) states:

(a) A person arrested under a warrant issued in a county other than the one in which the person is arrested shall be taken before a magistrate of the county where the arrest takes place or, to provide more expeditiously to the arrested person the warnings described by Article 15.17, before a magistrate in any other county of this state, including the county where the warrant was issued. The magistrate shall:

paperwork must be transmitted to the warrant issuing county within 24 hours. A list of contacts for each county is available on the TIDC website at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

Justices of the peace must report summary data of Article 15.17 hearings to the Office of Court Administration (OCA) as part of the Texas Judicial Council Monthly Court Activity Reports. These summary data points include the number of magistrate warnings given and the number of persons who request counsel at the Article 15.17 hearings.<sup>5</sup> One of the justices of the peace did not report any requests for counsel during FY2018. However, in our case file review, TIDC found that arrestees were requesting counsel from this magistrate. Justices of the peace must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

**Table 2: Requests for Counsel at Article 15.17 Hearings (October 2017 – September 2018)**

	JP – Pct. 1	JP – Pct. 4	Randall County JPs Combined
Misdemeanor Warnings	428	367	795
Misdemeanor Requests	44	0	44
% Requesting Counsel	10.3%	0%	5.5%
Felony Warnings	641	639	1,280
Felony Requests	188	0	188
% Requesting Counsel	29.3%	0%	14.7%

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(1) take bail, if allowed by law, and, if without jurisdiction, immediately transmit the bond taken to the court having jurisdiction of the offense; or

(2) in the case of a person arrested under warrant for an offense punishable by fine only, accept a written plea of guilty or nolo contendere, set a fine, determine costs, accept payment of the fine and costs, give credit for time served, determine indigency, or, on satisfaction of the judgment, discharge the defendant, as the case may indicate.

(a-1) If the arrested person is taken before a magistrate of a county other than the county that issued the warrant, the magistrate shall inform the person arrested of the procedures for requesting appointment of counsel and ensure that reasonable assistance in completing the necessary forms for requesting the appointment of counsel is provided to the person at the same time. If the person requests the appointment of counsel, the magistrate shall, without unnecessary delay but not later than 24 hours after the person requested the appointment of counsel, transmit, or cause to be transmitted, the necessary request forms to a court or the courts' designee authorized under Article 26.04 to appoint counsel in the county issuing the warrant.

<sup>5</sup> 1 TEX. ADMIN. CODE § 171.7. Additionally, 1 TEX. ADMIN. CODE § 171.28(c) states: “. . . Policy monitoring may also include a review of statutorily required reports to the Office of Court Administration and Commission. . . .”

**May 2019 Finding and Recommendation 1:** Randall County magistrates do not always ask persons arrested on out-of-county warrants if they want to request counsel. As required by Article 15.18, the magistrate must ask each person arrested on an out-of-county warrant whether the person wants to request appointed counsel. The request must be transmitted to the warrant issuing county.

**May 2019 Finding and Recommendation 2:** Texas Judicial Council Monthly Activity Reports do not always include the number of persons who request counsel at the Article 15.17 hearing. Justices of the peace must report the number of persons requesting counsel in their Texas Judicial Council Monthly Court Activity Reports.

## **APPOINT COUNSEL PROMPTLY**

Under Article 15.17(a) of the Code of Criminal Procedure, once a request for counsel is made, the magistrate must ensure the request is transmitted to the appointing authority within 24 hours. Under Article 1.051(c), the appointing authority then has three working days to appoint counsel for those found to be indigent (in counties with a population under 250,000).

Since the last monitoring review, Randall County has adjusted its procedures for transmitting requests for counsel from the jail to the courts. Prior to the current review, requests for counsel were manually sent from the jail to the courts. In several instances, requests for counsel were not promptly delivered to the appropriate court. Local procedures for transferring requests to the courts have since changed, and now all requests for counsel are electronically scanned at the jail and sent to all of the court coordinators. Each court examines the list and appoints counsel for cases filed in their respective court. If no case has been filed in a particular court, a designated court makes the determination of indigence. Based on TIDC's file review, Randall County has successfully addressed past issues in transmitting requests for counsel to the courts.

### **Felony Cases**

In order to determine the timeliness of Randall County's felony appointments, TIDC examined 100 felony cases filed in FY2018 (October 2017 – September 2018). From this sample, 76 cases included a request for counsel. From these 76 cases, 75 appointments were timely (99% timely). This percentage exceeds TIDC's 90% timely threshold for presuming a jurisdiction's procedures ensure prompt appointment of counsel. Notably, all requests for counsel were ruled upon. Randall County has successfully addressed the past recommendation that local procedures must ensure the timely appointment of counsel in felony cases. See Table 3 for a summary of data showing the timeliness of Randall County's appointments of counsel in felony cases.



**Table 3: Times to Appointment in Felony Cases**

<b>Randall Felony Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of case files examined	100		
<b>Appointment / denial of indigence occurred in:</b>	<b>76</b>		
0 work days		34	44.7%
1 work day + 24 hour transfer		35	46.1%
2 work days + 24 hour transfer		3	3.9%
3 work days + 24 hour transfer		3	3.9%
<b>Timely appointments (0 – 3 work days)</b>		<b>75</b>	<b>98.6%</b>
More than 3 work days		1	1.4%
No ruling on request		0	0.0%
Late appointments (more than 3 work days)		1	1.4%

**Misdemeanor Cases**

In order to determine the timeliness of Randall County’s misdemeanor appointments, TIDC examined 117 misdemeanor cases filed in FY2018 (October 2017 – September 2018). From this sample, 44 cases included a request for counsel. From these 44 cases, 40 appointments were timely (91% timely). This percentage exceeds TIDC’s 90% timely threshold for presuming a jurisdiction’s procedures ensure prompt appointment of counsel. Notably, all requests for counsel were ruled upon. Randall County has successfully addressed the past recommendation that local procedures must ensure the timely appointment of counsel in misdemeanor cases. See Table 4 for a summary of data showing the timeliness of Randall County’s appointments of counsel in misdemeanor cases.

**Table 4: Times to Appointment in Misdemeanor Cases**

<b>Randall Misdemeanor Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of case files examined	117		
<b>Appointment / denial of indigence occurred in:</b>	<b>44</b>		
0 work days		26	59.1%
1 work day + 24 hour transfer		10	22.7%
2 work days + 24 hour transfer		3	6.8%
3 work days + 24 hour transfer		1	2.3%
<b>Timely appointments (0 – 3 work days)</b>		<b>40</b>	<b>90.9%</b>
More than 3 work days		4	9.1%
No ruling on request		0	0.0%
Late appointments (more than 3 work days)		4	9.1%

## WAIVERS OF COUNSEL

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers that are voluntarily and intelligently made. Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is denied, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. If a defendant enters an uncounseled plea, he or she must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).<sup>6</sup>

### Case File Review

The 2016 report found that some persons requesting counsel waived their right to counsel without the court ruling on their requests. In the present review, all misdemeanor requests for counsel were ruled upon, so no defendants waived their right to counsel while having a pending request. Randall County has addressed this waiver of counsel issue by improving its procedures for transmitting requests for counsel.

### Waivers of Counsel at the Misdemeanor Docket

For the 2016 report, TIDC observed a pro se misdemeanor docket. Several defendants did not seem to understand their right to appointed counsel until after reaching a plea agreement with the prosecutor.<sup>7</sup> At the time, the county utilized a waiver of arraignment form which notified defendants of the procedures for requesting counsel, but those procedures were not clear to many defendants. Since TIDC's past review, Randall County has adjusted its forms to prominently display the procedures for requesting counsel and to require defendants to choose how to proceed with their cases (i.e., options to retain counsel, apply for court-appointed counsel, or to waive counsel).

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<sup>6</sup> The waiver language of Article 1.051(g) states:

"I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

<sup>7</sup> During the 2016 review, one defendant withdrew from his plea agreement upon learning he could request counsel. Another defendant had reached a tentative agreement with the prosecutor, but the defendant did not speak English and did not have a licensed interpreter. The court appointed counsel for him after seeing he could not answer basic questions.

On December 13, 2018, TIDC again observed a pro se misdemeanor docket. Multiple defendants from this docket requested counsel, and all were required to complete a form in which each chose between three options for proceeding with their cases (retain counsel, apply for court appointed counsel, or waive counsel). Randall County has successfully addressed the recommendation to ensure defendants are likely to understand their right to counsel and how to request counsel before signing a waiver of counsel.

## **JUVENILE CASES**

### **Petitions Served on Juveniles**

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 either appoint counsel for the juvenile or order the parents to retain counsel. To determine the timeliness of appointments for juveniles who are served with a petition, TIDC examined 56 juvenile case files from FY2018 (October 2017–September 2018). Counsel was present in a timely fashion in 38 of the 56 cases (68% timely). This is below TIDC’s 90% timeliness threshold for presuming a jurisdiction’s appointment procedures ensure timely appointment of counsel. See Table 5 for a summary of the timeliness of counsel appointments in juvenile matters.

Timely appointment of counsel in juvenile matters can be difficult because the court may not have any contact with the parents until after the appointment is due. Randall County has placed a directive (on the summons) for parents to promptly appear before the court to address the issue of the juvenile’s attorney representation. While the inclusion of this directive was a good initiative, the percent of cases that received timely appointments fell below TIDC’s 90% timely threshold. Randall County may wish to pursue additional initiatives, such as requiring that all families complete a financial affidavit upon being brought into juvenile intake.

**Table 5: Times to Appointment in Juvenile Cases**

<b>Randall Juvenile Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of juvenile case files examined	56		
<b>TIMELINESS OF COUNSEL WHEN THE JUVENILE WAS SERVED WITH A PETITION (either appointment or retention)</b>			
Appointment of counsel occurred within 5 working days of petition being served on juvenile		33	58.9%
Retention of counsel (or order to retain) occurred within 5 working days of petition being served on juvenile		5	8.9%
<b>Total cases in which counsel present in a timely fashion</b>		<b>38</b>	<b>67.9%</b>
Total cases in which counsel not present in a timely fashion		18	32.1%

**May 2019 Finding and Recommendation 3:** 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.

## **Conclusion**

TIDC enjoyed meeting with Randall County officials and staff, and appreciates their cooperation during this review. TIDC stands ready to provide any assistance the County may need in addressing the issues identified in this report.

## **Status of Past Recommendations**

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

**October 2012 Recommendation 1:** The monitor’s sample of magistrate warnings did not fall within the Commission’s threshold for presuming that a jurisdiction’s processes ensure timely magistrate warnings. Randall County must implement procedures that ensure warnings are timely. *Successfully addressed in 2016.*

**October 2012 Recommendation 2:** Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate. *Successfully addressed in 2019.*

**October 2012 Recommendation 3:** Misdemeanor requests for counsel made before a case filing must be directed to the person listed in the local indigent defense plan: Judge Anderson's court. *Successfully addressed in 2016.*

**January 2016 Recommendation 1:** 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. *Successfully addressed in 2019.*

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

**October 2012 Recommendation 4:** Randall County must implement processes that ensure timely appointment of counsel in felony cases. *Successfully addressed in 2019.*

**October 2012 Recommendation 5:** Randall County must implement processes that ensure timely appointment of counsel when there is a decision to detain a juvenile. *Successfully addressed in 2016.*

**October 2012 Recommendation 6:** Randall County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile. *Issue still pending.*

**January 2016 Recommendation 3:** The statutory county courts do not have adequate processes in place to ensure misdemeanor requests for counsel are ruled upon within statutorily required time frames (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. Article 15.17 places the responsibility for this transmission on the magistrate. *Successfully addressed in 2019.*

**January 2016 Recommendation 4:** 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.

As required by Article 1.051(f-2), Randall County must rule upon requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon requests for counsel, the courts must ensure procedures are in place to: (1) receive requests and (2) appoint counsel or document the denial of indigence. *Successfully addressed in 2019.*

**January 2016 Recommendation 5:** 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. ***Successfully addressed in 2019.***

**For Additional Consideration:** To help ensure a defendant has voluntarily and intelligently waived his or her right to counsel, Randall County would benefit from implementing a waiver of counsel form separate from the waiver of arraignment form. ***Successfully addressed in 2019.***

## **Findings and Recommendations from the May 2019 Review**

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

**May 2019 Finding and Recommendation 1:** Randall County magistrates do not always ask persons arrested on out-of-county warrants if they want to request counsel. As required by Article 15.18, the magistrate must ask each person arrested on an out-of-county warrant whether the person wants to request appointed counsel. The request must be transmitted to the warrant-issuing county.

**May 2019 Finding and Recommendation 2:** Texas Judicial Council Monthly Activity Reports do not always include the number of persons who request counsel at the Article 15.17 hearing. Justices of the peace must report the number of persons requesting counsel in their Texas Judicial Council Monthly Court Activity Reports.

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

**May 2019 Finding and Recommendation 3:** 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.