



# **Follow-up Review of Harris County's Indigent Defense Systems for Juveniles**

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## **Background**

In April 2012, the Texas Indigent Defense Commission (Commission) issued a policy monitoring report on Harris County's indigent defense system for juveniles. The report compared local practices and procedures with the requirements of the Fair Defense Act, and made one recommendation concerning the timely appointment of counsel for juveniles who are not in custody. The recommendation stated, "For cases in which the juvenile is not detained, Harris County must implement procedures that ensure timely appointments of counsel." Harris County's response stated, "The Juvenile Probation Department will modify its present procedures to make sure the child/family is contacted and a financial statement is obtained within seven days of assignment. The information will then be forwarded to the individual court coordinator so that an attorney can be assigned if applicable."

## **September 2016 Follow-up Review**

On September 14 and 15, 2015, staff made a follow-up site visit to Harris County to examine juvenile records. The examination was made by Policy Analyst Joel Lieurance and Office of Court Administration Court Services Consultant Aurora Zamora. Throughout this report, references to reviewing staff will use the term "monitor." The review sought to determine whether Harris County had successfully addressed the recommendation identified in the April 2012 report.

### Statutory Requirements

If a juvenile is detained and kept in custody, the courts must promptly conduct a detention hearing.<sup>1</sup> Unless the court finds that the appointment of counsel at a detention hearing is not feasible due to exigent circumstances, the court must appoint counsel within a reasonable time before a detention hearing.<sup>2</sup> An appointed attorney must continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court.<sup>3</sup> If a juvenile is released from custody, counsel must be appointed within five working days of a petition being served on the juvenile (or conversely, the court must issue an order to retain counsel).<sup>4</sup>

### Examination of Records

During the on-site visit, the monitor examined 150 juvenile case files that were filed between October 2013 and January 2014. Of the 150 juvenile cases, the monitor could determine the date of an attorney appointment or retention of counsel in 118 cases. Harris County's juvenile case files have evolved since the monitor's initial visit.

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<sup>1</sup> Tex. Fam. Code § 54.01(a).

<sup>2</sup> Tex. Fam. Code § 54.01(b-1).

<sup>3</sup> Tex. Fam. Code § 51.101(a).

<sup>4</sup> Tex. Fam. Code § 51.101(d), Tex. Fam. Code § 51.10(d).

At the time of the initial visit, staff was able to determine when parents completed an affidavit of indigence. Those records, however, are no longer in case files. During the 2015 visit, the monitor gathered data from the case files and then passed this information to court administrators who attempted to supplement the monitor’s data.

From the data gathered, the monitor determined that counsel was present in a timely fashion (either through appointment, retention, or order to retain counsel) in 69 of the 118 cases — 58.5% timely. This level of timeliness falls below the Commission’s threshold for presuming a jurisdiction’s procedures ensure timely appointment of counsel. The monitor finds that, based on the sample, Harris County’s practices do not yet ensure timely appointment of counsel in cases where a juvenile has been released from custody. See the table below for details.

**Table: 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	150		
<b>TIMELINESS OF COUNSEL WHEN THE JUVENILE WAS SERVED WITH A PETITION (either appointment or retention)</b>			
Number of case files in which juvenile was served with a petition and the monitor could determine the date of appointment/retention of counsel	118		
Appointment of counsel occurred within 5 working days of petition being served on juvenile		65	55.1%
Retention of counsel / Order to retain counsel occurred within 5 working days of petition being served on juvenile		4	3.4%
<b>Total cases in which counsel present in a timely fashion</b>		<b>69</b>	<b>58.5%</b>
Total cases in which counsel not present in a timely fashion		49	41.5%

## **Status of Recommendation from April 2012 Review**

The County must respond in writing as to how it will address the recommendation.

### **REQUIREMENT 4. APPOINT COUNSEL PROMPTLY.**

April 2012 Recommendation 1: For cases in which the juvenile is not detained, Harris County must implement procedures that ensure timely appointments of counsel.

- *Issue still pending. This April 2012 recommendation must be addressed.*

### **Conclusion**

The monitor appreciated the professionalism and assistance provided by Harris County officials and staff. Harris County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, the Commission will monitor the County's transition and process improvements regarding the report's recommendations.