TRAVIS COUNTY
DISTRICT AND COUNTY
CRIMINAL COURTS

BLACKWELL-THURMAN
CRIMINAL JUSTICE CENTER
P. O. BOX 1748
AUSTIN, TX. 78767
(512) 854-9244
FAX: (512) 854-4464

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To: Texas Indigent Defense Commission Monitoring Staff

From: Debra Hale, Travis County Criminal Court Administrator

RE: Response to Findings from TIDC Monitoring Review of Travis County's Indigent
               Defense Systems

          Texas Indigent Commission staff conducted an on-site review of Travis County indigent defense practices in August 2018. The purpose was to promote local compliance with the Fair Defense Act (FDA) and provide technical assistance for improving county indigent defense processes. TIDC reviewed data from numerous sources, conducted docket observations, observed magistrate warnings and held interviews with all relevant departments, including Court Administration, Pretrial Services Defender Offices and Capital Area Private Defender Service. Additional reports related to court appointments and tracking was also reviewed. Travis County's local practices were compared to the FDA's core requirements in the following areas:

1. Conduct prompt and accurate Article 15.17 proceedings
2. Determine indigence according to standards directed by the indigent defense plan
3. Establish minimum attorney qualifications
4. Appoint counsel promptly
5. Institute a fair, neutral and nondiscriminatory attorney selection process
6. Report data required by statute

After the review, TIDC made the following 5 findings and recommendations and requested a response in writing to each. Listed below is each finding and response:

FINDING 1 AND RECOMMENDATION: Article 15.17(e) requires a record to be made of the magistrate asking whether the person wants to request appointment of counsel and whether the person requested appointment of counsel. The magistrate warning form used for cite and release arrestees does not contain a space to mark a request for counsel. Travis County must adjust its procedures to include requests for counsel at the Article 15.17 hearing for cite and release arrestees.

RESPONSE: JP5 Judge Nicholas Chu took office in May 2017 and revised the magistrate warning form used for cite and release arrestees shortly thereafter. The forms audited were used by his predecessor. The Court now uses the same Order of Commitment Form for cite and release cases as the other magistrates use in all other magistrations. That form now includes the

section of request for appointed counsel. The date JP5 started using the correct form was August 7, 2017 for cite and release cases. (Of the 5 Travis County JP's, only JP5 does magistrate duties on cases higher than Class C).

FINDING 2 AND RECOMMENDATION: Per Title 1 Tex. Admin. Code § 171.7–8, justices of the peace and municipal court judges are required to report requests for counsel as part of their Judicial Council Monthly Court Activity Reports. Neither Travis County justices of the peace nor City of Austin municipal judges enter the number of persons requesting counsel at the Article 15.17 hearing. These courts must create procedures to report this data.

RESPONSE:
As of April 1, 2019, JP5 submits the number of persons requesting counsel at the Article 15.17 hearing in its report as part of our Judicial Council Monthly Court Activity Reports and has created procedures to report this data.

Also, as of April 1, 2019, Austin Municipal Court magistrates have put in place procedures to report the number of persons requesting counsel at the Article 15.17 hearings to the Office of the Court Administration.

FINDING 3 AND RECOMMENDATION (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in felony cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases.

RESPONSE: Beginning with arrests on and after July 20, 2018, the Courts now appoint attorneys to all qualified felony arrestees within one working day of the arrest being made. Previously, some appointments were made at the first appearance, 2 weeks after arrest.

FINDING 4 AND RECOMMENDATION (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases.

RESPONSE: Beginning with arrests on and after July 20, 2018, the Courts now appoint attorneys to all qualified misdemeanor arrestees within one working day of the arrest being made. Previously, some appointments were made at the first appearance, 2 weeks after arrest.

FINDING 5 AND RECOMMENDATION (misdemeanor cases): TIDC interviews, case file reviews, and court observation indicate that courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with attorneys representing the state before denying requests for counsel. Travis County should clarify whether it has processes in place to ensure compliance with Article 1.051(f-2).

RESPONSE: Beginning with arrests on and after July 20, 2018, the Courts now appoint attorneys to all qualified misdemeanor arrestees within one working day of the arrest being made. Previously, some appointments were made at the first appearance, 2 weeks after arrest.

Additionally, effective May 21, 2019, signage is posted on each courtroom floor instructing defendants to ask court staff for an Indigence Screening Referral if they want to be considered for court appointed counsel.