



# **Follow-up Review of Smith County's Indigent Defense Systems**

**December 2018**



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## **Background**

The Texas Indigent Defense Commission (TIDC) issued a limited-scope report of Smith County's indigent defense practices in May 2014. The purpose of the review was to: (1) determine whether the County had adopted indigent defense contracts meeting TIDC's Contract Defender Rules; (2) review the procedures for tracking data reported to TIDC; and (3) assess actual operations of the contract defender system, including the procedures for the determination of indigence and appointment of contract counsel. At the time of the review, TIDC staff were not able to obtain magistrate warning forms corresponding to case files examined, and so were not able to fully assess the procedures for determining indigence and appointing counsel. Nevertheless, the report made recommendations to the County regarding:

- Documentation of counsel requests at the Article 15.17 hearing;
- Judicial Council Monthly Court Activity Reports by the justice courts;
- Payment procedures for contract attorneys; and
- Annual data reports to the Texas Indigent Defense Commission.

## **October 2018 Follow-up Review**

TIDC's policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.<sup>1</sup> Staff members Debra Stewart, Scott Ehlers, and Joel Lieurance conducted the follow-up review. The review consisted of site visits to Smith County between April 10th and 13th, 2018 and on May 25, 2018 and of records sent remotely to TIDC. The purpose of this review was to examine: (1) procedures for determining indigence and appointing counsel; (2) procedures for making indigent defense payments; and (3) procedures for reporting indigent defense data to TIDC. TIDC staff relied on the following items in drawing report conclusions: felony and misdemeanor cases filed in FY2017 (October 2016 – September 2017); magistrate warning forms obtained from the Sheriff's Office; felony and misdemeanor dockets; a magistrate warning docket; vouchers paid to attorneys; indigent defense expense report (IDER) data; and the local indigent defense plans. The County must respond to this report's findings and recommendations.

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<sup>1</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

## Summary of Monitoring Findings

Topic	Description and Initial Year of Finding	Status after Oct. 2018 Review	
		Satisfied	Pending
Magistrate Warnings	Magistrates must document whether an arrestee requests counsel, even if the arrestee expects to make bail. (2014)	√	
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. (2014)	√	
Indigence Determinations	The courts require defendants to gather proof of income and obtain quotes from private attorneys. The time frames for this information extend beyond time frames set in Article 1.051. (2018)		√
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). (2018)		√
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). (2018)		√
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. (2018)		√
Attorney Payments	Attorney fee vouchers must be approved by the court prior to payment. (2014)	√	
Attorney Payments	Reduced fee vouchers must include written findings for the reduction. (2018)		√
Data Reporting	All cases where an attorney's appointed representation has been completed are to be reported annually to TIDC. (2014)	√	
Data Reporting	The County must put in place procedures to ensure accurate reporting of contract case totals to TIDC. (2014)	√	
Data Reporting	The County must put in place procedures to ensure only defense expenses and not general court expenses related to mental health are reported to TIDC. (2018)		√

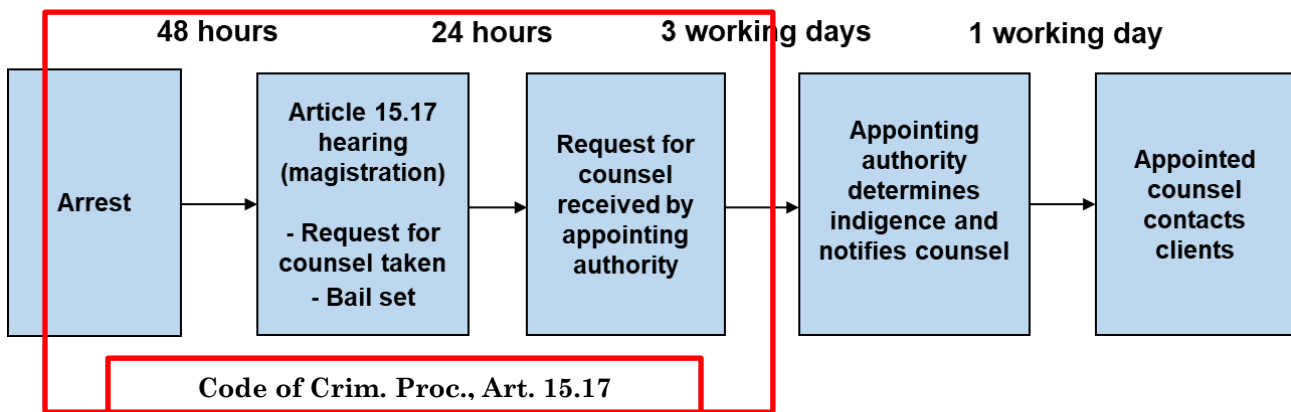
## Program Assessment

### Procedures for Determining Indigence and Appointing Counsel

- **Conduct prompt and accurate Article 15.17 proceedings.**

Once arrested, an accused must be brought before a magistrate within 48 hours.<sup>2</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 that the accused has reasonable assistance in completing the necessary forms for requesting assistance of counsel.<sup>3</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>4</sup>

**Figure 1a: Timeline for Appointment of Counsel in Adult Criminal Cases**



#### ***a. Timeliness of Warnings***

The accused must be brought before a magistrate within 48 hours of arrest.<sup>5</sup> TIDC presumes a county is in substantial compliance with the prompt magistration requirement if at least 98% of Article 15.17 hearings are conducted within 48 hours.<sup>6</sup> To determine the timeliness of Article 15.17 warnings in Smith County, TIDC staff examined the time from arrest until the Article 15.17 hearing in sample case files. All Article 15.17 warnings in which TIDC staff could determine the time from arrest until the warnings were timely. Therefore, TIDC presumes Smith County is in compliance with this requirement. See Table 1 for a summary.

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

<sup>5</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>6</sup> 1 TEX. ADMIN. CODE § 174.28.

**Table 1: Timeliness of Article 15.17 Hearings**

	Sample Size	Percent
Article 15.17 hearing occurs x days after arrest:	—	—
0 days	34	25%
1 day	103	75%
2 days	0	0%
More than 2 days	0	0%
<b>Timely Hearings</b>	<b>137</b>	<b>100%</b>

***b. Ability of Arrestees to Request Counsel***

At the time of the initial review in May 2014, justice courts in Smith County did not regularly report Article 15.17 requests for counsel as part of their Judicial Council Monthly Court Activity Reports. Some of the courts were unaware of the reporting requirement, and local case management systems did not automatically track it. To accurately report the element, justices of the peace had to manually track requests for counsel, and they committed to doing so when informed of the gap in reporting.

To verify the reporting gap has been addressed, TIDC staff queried monthly activity report data for FY2017 (October 2016 – September 2017). This query showed all justices reported requests for counsel as part of their monthly reports (detailed in Table 2 below). Based on this data, about 36% of misdemeanor arrestees and 34% of felony arrestees request counsel at the Article 15.17 hearing.

**Table 2: Texas Judicial Council Monthly Justice Court Activity Reports (Oct. 2016 – Sept. 2017)**

Court	Misd. Requests	Misd. Warnings	Misd. Req. Rate	Felony Requests	Felony Warnings	Fel. Req. Rate
JP1	61	252	24%	118	414	29%
JP2	236	338	70%	257	340	76%
JP3	22	0	n/a	29	246	12%
JP4	60	296	20%	83	324	26%
JP5	57	331	17%	100	409	24%
<b>Total</b>	<b>436</b>	<b>1,217</b>	<b>36%</b>	<b>587</b>	<b>1,733</b>	<b>34%</b>

The 2014 report found that magistrates did not document whether each arrestee requested appointed counsel. Magistrates would only document a counsel request if the arrestee did not think bail was possible. In the current review, TIDC staff observed magistrate warnings on April 13, 2018. At this hearing, all arrestees were asked if they wanted to request appointed counsel. Eight of the 15 arrestees requested appointment of counsel. Based on the monthly data report submissions and the observed magistrate warnings, TIDC believes arrestees are given a reasonable opportunity to request counsel, and many arrestees avail themselves of this opportunity.

## FINDINGS AND RECOMMENDATIONS

### **Conduct Prompt and Accurate Article 15.17 Proceedings.**

No findings. Smith County has addressed past findings and recommendations.

- **Determine indigence according to standards directed by the indigent defense plan.**

Under Article 26.04(l) of the Code of Criminal Procedure, counties must adopt procedures and financial standards for determining whether a defendant is indigent. Article 26.04(m) lists the factors courts may consider in determining indigence. Article 26.04(m) states:

*In determining whether a defendant is indigent, the court or the courts' designee may consider the defendant's income, source of income, assets, property owned, outstanding obligations, necessary expenses, the number and ages of dependents, and spousal income that is available to the defendant. The court or the courts' designee may not consider whether the defendant has posted or is capable of posting bail, except to the extent that it reflects the defendant's financial circumstances as measured by the considerations listed in this subsection.*

The local standards for determining indigence are set in each county's indigent defense plans.<sup>7</sup> According to both the district and county court plans, a defendant is presumed indigent if:

- (1) The accused is eligible for food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
- (2) The accused's net household income does not exceed 125% of the Federal Poverty Guidelines; or
- (3) The accused is currently serving a sentence in a correctional institution, is residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such mental health facility is sought.

The plans declare neither the posting of bail nor the resources available to friends or relatives may be considered in determining indigence. As to indigence determination proceedings, the plans allow the appointing authority to require the accused to respond to questions about financial status and/or to produce documentation. These requests for information cannot delay the appointment of counsel beyond timelines specified in the plan and contained in the Code of Criminal Procedure.

Based on court observations and case file examination, several courts require defendants to produce income documentation and quotes from attorneys prior to a determination of indigence. The number of quotes varies by court (between three and

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<sup>7</sup> Smith County has two adult criminal indigent defense plans:

- a district court plan (<http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=395>); and
- a county court plan (<http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=512>).



twelve quotes from private attorneys). These indigence proceedings occur beyond the time frames set by Article 1.051 of the Code of Criminal Procedure and delay the appointment of counsel. According to Smith County's indigent defense plans, the courts may require defendants to produce documentation, but the plans disallow the collection of this documentation to delay a determination of indigence.

If Smith County were to include a reasonable cost of counsel as part of its local standard of indigence, delays in appointing counsel because of the attorney quote process could be eliminated, and the method for relating the cost of counsel to the defendant's income could be formalized. As an example, the Denton District Court Plan states:

*Where resources are available, the Court shall look at the current financial circumstances of the defendant and verify that they do not exceed the national poverty level by an amount needed to hire an attorney for the case(s) charged, the appointing judge should deem the defendant indigent. For this determination the judge should consider the amount necessary to hire an attorney to be:*

- \$10,000 for a first degree felony;*
- \$7,500 for a second degree felony;*
- \$5,000 for a third degree felony; or*
- \$2,500 for a state jail felony.*

This report is not making a finding that Smith County must adopt Denton County's standard of indigence. We find only that indigence determinations must be timely. However, the County may improve the timeliness of indigence determinations by adopting a standard which presumes a reasonable cost for retaining counsel.

### FINDINGS AND RECOMMENDATIONS

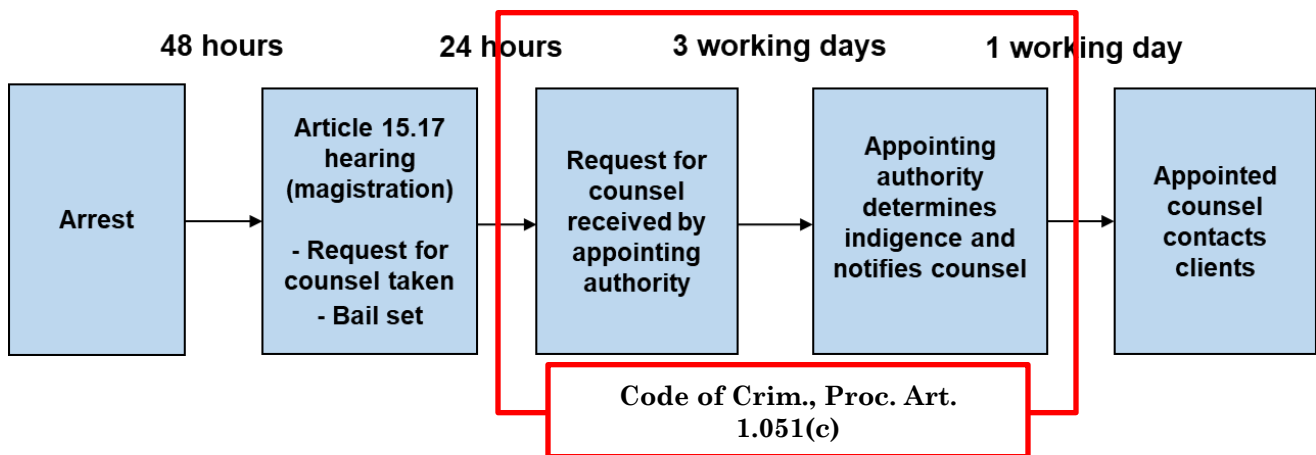
#### **Determine indigence according to standards directed by the indigent defense plan.**

**FINDING 1:** The courts require defendants to produce income documentation and to obtain quotes from private attorneys. However, the time frames for gathering this information extend beyond those set in the indigent defense plans and in Article 1.051 of the Code of Criminal Procedure. The courts may require defendants to produce documentation indicating whether the defendant's financial resources meet the local standard of indigence, but this documentation cannot delay a determination of indigence.

- **Appoint counsel promptly.**

Article 1.051(c) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the third working day following receipt of the request for counsel made at the Article 15.17 hearing.<sup>8</sup> To assess the timeliness of Smith County’s appointment procedures in felony and misdemeanor cases, TIDC examined the time from request for counsel to appointment or denial of indigence. Under TIDC’s monitoring rules, a county is presumed in compliance with the prompt appointment of counsel requirement if at least 90% of sample indigence determinations are timely.<sup>9</sup>

**Figure 1b: Timeline for Appointment of Counsel in Adult Criminal Cases**



### Timeliness of Appointments in Felony Cases

To assess the timeliness of Smith County’s current appointment procedures in felony cases, TIDC staff examined 109 sample felony cases filed in FY17 (October 2016 – September 2017). Counsel was appointed in a timely manner in 36 of 72 sample cases in which the defendant requested counsel, and staff could ascertain the timeliness of the indigence determination (**50% timely**).<sup>10</sup> This level does not meet TIDC’s 90% timeliness threshold for presuming procedures are in place that ensure the prompt appointment of counsel.

<sup>8</sup> *Rothgery v. Gillespie County* clarified that the initiation of adversarial judicial proceedings occurs at the Article 15.17 hearing. 554 U.S. at 212 – 13.

<sup>9</sup> 1 TEX. ADMIN. CODE § 174.28.

<sup>10</sup> Staff found 87 sample felony cases containing counsel requests, but excluded 15 samples. In seven cases, the magistrate warning form stated the defendant had been appointed counsel, but staff could find no other evidence of the appointment in the case file (such as the name of the attorney). In eight cases, staff found the defendant had been appointed counsel, but could not determine the date of the appointment.

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

	Sample Size	Number from sample	Percent
Number of case files examined	109		
Total cases with a counsel request		72	
Appointment / denial of indigence occurred in:			
0 work days		22	
1 – 3 work days + 24 hour transfer		14	
<b>Total timely appointments / denials</b>		<b>36</b>	<b>50%</b>
4 to 10 work days + 24 hour transfer		9	
More than 10 work days + 24 hour transfer		18	
No ruling on request		9	
Total untimely appointments / denials		36	50%

**Timeliness of Appointments in Misdemeanor Cases**

To assess the timeliness of Smith County’s current appointment procedures in misdemeanor cases, TIDC staff examined 137 sample misdemeanor cases filed in FY17 (October 2016 – September 2017). Counsel was appointed in a timely manner in 12 of 67 sample cases in which the defendant requested counsel, and staff could ascertain the timeliness of the indigence determination (**18% timely**).<sup>11</sup> This level does not meet TIDC’s 90% timeliness threshold for presuming procedures are in place that ensure the prompt appointment of counsel. Many of the counsel requests occurred at the Article 15.17 hearing and were never ruled upon.

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

	Sample Size	Number from sample	Percent
Number of case files examined	137		
Total cases with a counsel request		67	
Appointment / denial of indigence occurred in:			
0 work days		11	
1 – 3 work days + 24 hour transfer		1	
<b>Total timely appointments / denials</b>		<b>12</b>	<b>18%</b>
4 to 10 work days + 24 hour transfer		0	
More than 10 work days + 24 hour transfer		12	
No ruling on request		43	
Total untimely appointments / denials		55	82%

<sup>11</sup> In two additional cases, TIDC staff found a request for counsel, but could not ascertain the timeliness of appointment. Staff excluded those two cases from the timeliness analysis.

## Waivers of Counsel in Misdemeanor Cases

The courts over misdemeanor cases failed to rule on a defendant's request for counsel in 43 of 137 sample misdemeanor cases. In 29 of these cases, despite the absence of a ruling on the request for counsel, the defendant nonetheless later waived counsel and pled guilty.

Article 1.051 governs the right to counsel. In pertinent part, Article 1.051(f-2) states the following:

*In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:*

- (1) Has been given a reasonable opportunity to retain and has failed to retain private counsel; or*
- (2) Waives or has waived the opportunity to retain private counsel.*

The absence of a ruling on 43 requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). It is unclear from TIDC's monitoring visit whether these possible failures resulted from procedural breakdown, recording errors, or something else. Smith County must clarify its procedures for receiving, transmitting, and ruling on requests for counsel.

### FINDINGS AND RECOMMENDATIONS

#### **Appoint Counsel Promptly.**

**FINDING 2 (felony cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (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.

**FINDING 3 (misdemeanor cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three 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.

**FINDING 4 (misdemeanor cases):** The absence of a ruling on 43 requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). It is unclear from TIDC’s monitoring visit whether these possible failures resulted from procedural breakdown, recording errors, or something else. Smith County must clarify its procedures for receiving, transmitting, and ruling on requests for counsel.

## Procedures for Making Indigent Defense Payments

Under Article 26.05(c) of the Code of Criminal Procedure, a defense attorney must submit a voucher to the judge presiding over a case prior to receiving payment for the case. The voucher documents the services rendered (including the information necessary for the county auditor to complete the IDER).<sup>12</sup> The judge may sign off on the voucher and approve payment or may approve a different amount. Under Article 26.05(c),

*... If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. ...*

No payment may be made to the attorney until the judge signs the voucher approving the payment.

In Smith County, three district courts hear felony cases, and each court uses three contract defenders.<sup>13</sup> Three statutory county courts hear misdemeanor cases, and each of these courts uses assigned counsel for their indigent defense cases. Smith County Court at Law #3 hears juvenile cases, and this court uses an assigned counsel system. Two contract defenders handle indigent appeals in the County.

The 2014 report found that some contract attorneys received payment for services even though no voucher had been submitted and approved by the judge. When vouchers were submitted, relevant case information was not easily transferrable to the annual expenditure report (the IDER, submitted by the county auditor’s office to TIDC).

To assess whether Smith County addressed the 2014 report’s finding and now meets the requirements of Article 26.05(c), TIDC staff examined: (1) 88 randomly selected FY2017 assigned counsel vouchers, and (2) all monthly contract attorney vouchers for FY2017. TIDC tested each voucher for the following attributes:

- Was the expenditure for one of the four categories outlined on the IDER?

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<sup>12</sup> The itemized fee voucher is defined in TIDC’s Contract Defender Rules. Per 1 TEX. ADMIN. CODE § 174.10(5):

*An itemized fee voucher is any instrument, such as an invoice, that details services provided by a contractor providing indigent defense services. The itemized fee voucher may be in paper or electronic form. It shall include at a minimum all the information necessary for the county auditor or other designated official to complete the expenditure report required to be submitted to the Office of Court Administration by §71.0351, Government Code.*

<sup>13</sup> Assigned counsel attorneys represent defendants when there is an attorney-client conflict.

- Was the voucher submitted by the attorney?
- Is there documentation that the payment is related to a criminal case, including a case number?
- Is there more than one case listed on the voucher?
- Was there an itemized list of services performed?
- Was the court identified?
- Were fees consistent with the published fee schedule?
- Is the date within 60 days of disposition?
- Did the presiding judge approve the requested amount, and if not, was a written explanation provided?

In this review, TIDC found:

- (1) All sample assigned counsel fee vouchers were itemized with the necessary data required for the auditor’s office to complete the IDER;
- (2) All sample payments to contract attorneys were made pursuant to an itemized fee voucher that was signed by the respective judge; and
- (3) The requested payment amount of one voucher was reduced without a written explanation for the variance (from \$287.50 to \$237.50).

Based on the examination of fee vouchers and payment procedures, Smith County has addressed the past finding in which payments were made without an approved voucher. However, if a court reduces any vouchers, the court must make written findings for approving an amount different than requested.

**FINDINGS AND RECOMMENDATIONS**

**Procedures for Making Indigent Defense Payments**

**FINDING 5:** One sample fee voucher was reduced without a written finding. Article 26.05(c) requires the court to make written findings if it approves an amount different than requested. The Smith County courts must make written findings for approving amounts different than requested.

**Procedures for Reporting Indigent Defense Data**

Section 79.036(e) of the Texas Government Code requires the county auditor to annually report indigent defense expenditure data to TIDC. To test the accuracy of data reporting, TIDC examined: (1) the FY2017 general ledger of relevant accounts from the auditor’s office; (2) a spreadsheet of the attorney fee voucher information (sorted by court, attorney, and case number); and (3) the sample assigned counsel and contract counsel fee vouchers from FY2017.

TIDC reconciled expense totals reported by Smith County on the FY2017 IDER with the general ledger. Case counts listed on vouchers also supported case totals listed on the IDER’s attorney detail report. These reconciliations are evidence that when the

auditor receives vouchers, the office has procedures to accurately list expense totals and case totals on the IDER.

### **Competency Evaluation Expenditures**

From the voucher review, TIDC examined 15 fee vouchers with expenses for investigations, expert witnesses, and other litigation expense categories. Seven of the 15 vouchers were for general court expenses (which are unallowable for reporting). These expenditures included:

- Five payments for competency to stand trial examinations and
- Two “bills of cost” for mental health placement (one for Montgomery County and one for Wilbarger County).

Mental health expenses for competency evaluations are generally ineligible to be reported on the IDER. However, mental health expert expenses are allowable if the expert worked for the defense attorney under derivative attorney-client privilege. If mental health expert fees were initiated through an ex parte motion by the defense, the resulting reports would be privileged information provided to the defense attorney. These costs should be included on the IDER. By contrast, psychological evaluations ordered by the court and which yield expert reports made available directly to the court or to all parties would not be counted as eligible indigent defense expenditures.<sup>14</sup> The reported expenses should have been classified as general court expenses since they were not for the exclusive use of the defense. Smith County must develop recording procedures to only report expenses related to the defense.

### **Contempt of Court Expenditures**

Two sample vouchers were for civil contempt cases. Under past TIDC guidance, costs associated with contempt of court charges (arising out of a civil action) were eligible to be reported on the IDER, provided that the defense representation was limited to the loss of liberty and not the underlying civil action. Beginning with FY2018 IDER reports, contempt of court expenses which arise out of a civil matter will be disallowed.<sup>15</sup>

## FINDINGS AND RECOMMENDATIONS

### **Procedures for Reporting Indigent Defense Data**

**FINDING 6:** Smith County included general court expenditures in the FY2017 IDER. The general court expenditures were for mental health competency evaluations, which are ineligible expenses. Smith County must develop recording procedures to only report expenses related to the defense.

<sup>14</sup> Texas Indigent Defense Commission, *Indigent Defense Expenditure Manual Fiscal Year 2017* at 6 (available at <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>).

<sup>15</sup> Texas Indigent Defense Commission, *Indigent Defense Expenditure Manual Fiscal Year 2018* at 5 (available at <http://www.tidc.texas.gov/media/58006/fy18-ider-manual.pdf>).

## **Conclusion**

TIDC appreciated the professionalism and assistance provided by Smith County officials and staff. Smith County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, TIDC will monitor the County's transition and adjustments to TIDC's findings. TIDC staff is available to assist Smith County officials meet their statutory and constitutional obligations in regard to providing counsel to indigent defendants, either through technical assistance or potential grant funding. Please contact Joel Lieurance, Senior Policy Monitor, to discuss how TIDC can be of assistance.



## **Status of Monitoring Findings and Recommendations**

Smith County must respond to each recommendation that has not been successfully addressed with a detailed action plan describing how it will resolve each issue.

### **Status of Recommendations from the May 2014 Review**

**Recommendation 1:** Magistrates in Smith County must document whether an arrestee is requesting counsel, even if the arrestee expects to make bond. Article 15.17 requires that all magistrate warnings record whether the arrestee is requesting counsel. *Successfully Addressed.*

**Recommendation 2:** Justices of the peace must report the number of persons requesting counsel as required for the Texas Judicial Council Monthly Court Activity Report. *Successfully Addressed.*

**Recommendation 3:** Attorney payments may not be made until an attorney submits an itemized voucher that is approved by the judge as required by Article 26.05(c) and Title 1 Texas Administrative Code, Section 174.25. Any payment made without an approved voucher is in contravention of Article 26.05(c). *Successfully Addressed.*

**Recommendation 4:** All cases where an attorney's appointed representation has been completed are to be reported to the Commission as cases paid. *Successfully Addressed.*

**Recommendation 5:** Methods must be put in place to accurately report the Indigent Defense Expense Report case total information required by Texas Government Code Section 79.036(e). Accurate reporting will necessitate a method to ensure the accuracy and completeness of the cases listed on the attorney fee vouchers. *Successfully Addressed.*

### **Additional Findings / Recommendations from the October 2018 Review**

**Finding and Recommendation 1:** The courts require defendants to produce income documentation and to obtain quotes from private attorneys. However, the time frames for gathering this information extend beyond those set in the indigent defense plans and in Article 1.051 of the Code of Criminal Procedure. The courts may require defendants to produce documentation indicating whether the defendant's financial resources meet the local standard of indigence, but this documentation cannot delay a determination of indigence. *Issue Pending.*

**Finding and Recommendation 2 (felony cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (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. *Issue Pending.*

**Finding and Recommendation 3 (misdemeanor cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (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. *Issue Pending.*

**Finding and Recommendation 4 (misdemeanor cases):** The absence of a ruling on 43 requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). It is unclear from TIDC's monitoring visit whether these possible failures resulted from procedural breakdown, recording errors, or something else. Smith County must clarify its procedures for receiving, transmitting, and ruling on requests for counsel. *Issue Pending.*

**Finding and Recommendation 5:** One sample fee voucher was reduced without a written finding. Article 26.05(c) requires the court to make written findings if it approves an amount different than requested. The Smith County courts must make written findings for approving amounts different than requested. *Issue Pending.*

**Finding and Recommendation 6:** Smith County included general court expenditures in the FY2017 IDER. The general court expenditures were for mental health competency evaluations, which are ineligible expenses. Smith County must develop recording procedures to only report expenses related to the defense. *Issue Pending.*