



# **Review of El Paso County's Indigent Defense Systems**

**November 2014**



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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.

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## **Purpose of Review**

The Texas Indigent Defense Commission (“Commission”) is required to monitor local jurisdictions’ compliance with the Fair Defense Act (“FDA”).<sup>1</sup> The purpose of this review is to promote local compliance and accountability with the requirements of the FDA through evidence-based practices and to provide technical assistance to improve processes where needed. In addition, this review process is designed to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA.

## **Timeline and Methodology**

On March 24, 2014, El Paso Commissioner Vincent Perez requested that the Texas Indigent Defense Commission conduct a full monitoring assessment of El Paso County’s indigent defense processes. Executive Director Jim Bethke responded on March 28 by agreeing to the monitoring assessment. Mr. Bethke met with local officials on May 5 and held a kick-off meeting for the assessment on June 2, 2014. The review team consisted of special counsel Wesley Shackelford, policy monitor Joel Lieurance, fiscal monitor Debra Stewart, and fiscal monitor Joan Thomas. Throughout this report, references to Commission staff will use the term “monitor”.

The review team made two site visits to El Paso County, the first between June 2 and June 6, 2014 and the second between July 15 and July 17, 2014. Staff examined clerk and case management records showing case events for felony, misdemeanor, and juvenile cases. Staff also examined county auditor records showing case and payment data for indigent defense cases and examined public defender office records as well as attorney appointment list records maintained by the Council of Judges office. Staff observed Article 15.17 hearings, felony and misdemeanor dockets, juvenile detention hearings, and a juvenile docket. Staff interviewed judges overseeing felony, misdemeanor, and juvenile cases, as well as judges overseeing Article 15.17 hearings. Staff interviewed the departments that screen for indigence (the Council of Judges staff and the County Courts Administration staff) as well as defense attorneys, members of the public defender’s office, members of the district attorney’s office, and members of the county attorney’s office. Staff also conducted a survey of court coordinators regarding in-court appointment processes.

The report is broken into sections covering an overview of local indigent defense processes, the program assessment (including a comparison of local practices with statutory requirements as well as additional observations), a summary of recommendations, and appendixes providing additional detail to matters raised in the report.

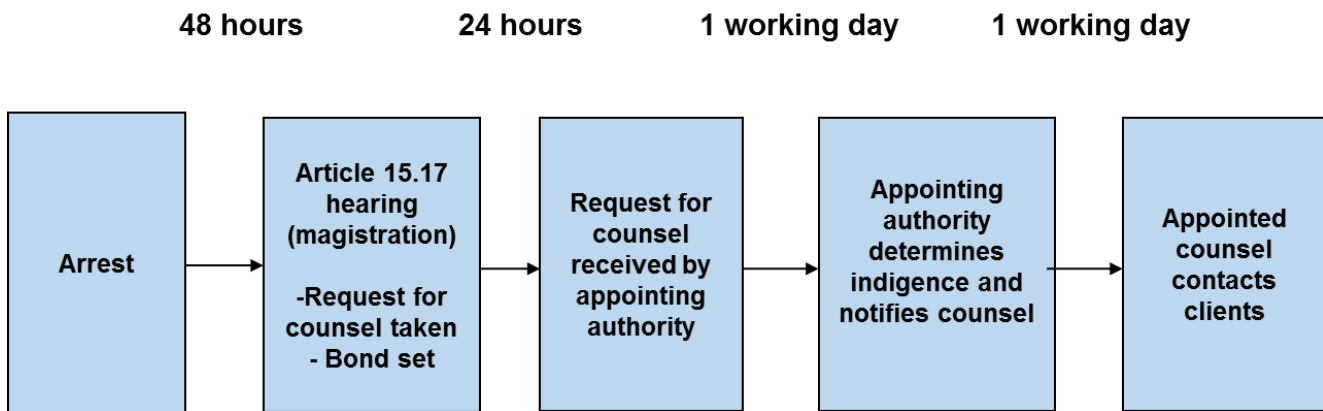
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<sup>1</sup> Tex. Gov’t Code § 79.037(a)-(b).

## Overview of El Paso County’s Indigent Defense System

The FDA timeline listed in Figure 1 sets the statutory framework according to which jurisdictions must establish local procedures to appoint counsel in adult criminal matters. These local procedures are found in El Paso County’s Adult Indigent Defense Plan (available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=518>) and Juvenile Indigent Defense Plan (available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=549>). Jurisdictions have latitude in how they implement methods to appoint counsel, but the procedures must meet the requirements set by the FDA and the Commission’s Administrative Rules. This review describes these procedures and assesses the level to which these procedures meet the FDA requirements and the Commission’s rules.

**Figure 1: Fair Defense Act Timeline Model for Criminal Cases in Counties with Populations Over 250,000**



## Program Assessment Review

In the assessment that follows, core requirements of the FDA are listed and are compared to the County’s performance with regard to each requirement.<sup>2</sup> The core requirements examined include:

- 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: Promulgate standard attorney fee schedule and payment process.
- 7: Statutory data reporting.

If the monitor found that the County met the respective requirement, a box to the left of the provision is checked. If no box is checked, the requirement was either considered unsatisfied or was found to be inapplicable. The local procedures are then described, and recommendations are made regarding areas where process improvements are needed.

<sup>2</sup> This comparison is based upon the template used in the Commission’s biennial examination of indigent defense plans.

## **Requirement 1: Conduct prompt and accurate Article 15.17 proceedings.**

### **Local Practices Compared to Adult Statutory Provisions**

- The accused must be brought before a magistrate within 48 hours of arrest.<sup>3</sup>
  - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.<sup>4</sup>**Requirement met.**
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>5</sup>**Requirement met.**
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>6</sup>**Requirement not satisfied.**<sup>7</sup>
- A record must be made of the following:
  - the magistrate informing the accused of the accused's right to request appointment of counsel;
  - the magistrate asking whether accused wants to request appointment of counsel;
  - and whether the person requested court appointed counsel.<sup>8</sup>**Requirement met.**
- If authorized to appoint counsel, the magistrate must do so within one working day after receipt of request for counsel in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>9</sup>**Requirement met.**
- If not authorized to appoint counsel, the magistrate must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours of the request being made.<sup>10</sup>**Requirement met.**

The local methods for conducting Article 15.17 warnings are somewhat complex and result in multiple paths for the appointment of counsel. In order to avoid confusion with these multiple permutations, the entire set of steps from arrest until the appointment of counsel are set out in the description of the County's procedures for conducting Article 15.17 warnings.

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<sup>3</sup> Tex. Code Crim. Proc. art. 14.06(a).

<sup>4</sup> Tex. Code Crim. Proc. art. 17.033.

<sup>5</sup> Tex. Code Crim. Proc. art. 15.17(a).

<sup>6</sup> *Id.*

<sup>7</sup> This box is not checked because affidavits of indigence are not completed for many persons who post bond after requesting counsel.

<sup>8</sup> Tex. Code Crim. Proc. art. 15.17(e).

<sup>9</sup> Tex. Code Crim. Proc. art. 15.17(a) requires the magistrate to appoint counsel according to the time frames set in Tex. Code Crim. Proc. art. 1.051.

<sup>10</sup> *Id.*

## **Jurisdiction's Process**

Persons arrested in El Paso County are brought before a magistrate for an Article 15.17 hearing.<sup>11</sup> Magistrates who give Article 15.17 warnings include: the justices of the peace in El Paso County; municipal judges from the cities of El Paso, Socorro, and Horizon City; and the associate judge who presides over the Magistrate Court of El Paso County. Magistrates provide the warnings described in Article 15.17 of the Code of Criminal Procedure, make a finding of whether probable cause exists to detain the arrestee, set bond, ask the arrestee whether he/she wants to request counsel, and document the arrestee's response. The documentation of these events is included in a magistrate warning form. If an arrestee is first brought before a municipal judge or a justice of the peace, as is most common, the arrestee is transferred to the El Paso County Jail after the Article 15.17 hearing if the arrestee does not post bond. The magistrate warning form documenting a request for counsel is sent with the arrestee to the El Paso County Jail.

### **Process for Felony Arrestees**

If an arrestee has not received Article 15.17 warnings from either the municipal court or a justice of the peace, the arrestee will receive Article 15.17 warnings from the associate judge presiding over the El Paso County Magistrate Court. Felony arrestees who initially received Article 15.17 warnings from either a municipal judge or a justice of the peace but who do not post bond will receive a second set of Article 15.17 warnings at the El Paso County Magistrate Court. Prior to the hearing, Council of Judges staff screen felony arrestees for indigence every afternoon at the El Paso County Jail.

For those cases not yet filed in the district clerk's office, Council of Judges staff conduct screening interviews with felony arrestees booked at the El Paso County Jail, and rule on these requests on the same day as the interview. The system is designed to ensure timely appointment of counsel for these cases. However, there is no system in place to process requests made by persons who posted bond prior to the interview.

For those cases filed in the district clerk's office, the court of dispositive jurisdiction rules on requests for counsel rather than Council of Judges staff. In order for the court to rule on a request, Council of Judges staff must send the arrestee's completed affidavit of indigence to the court. The time from transmittal to ruling on the request is not always within statutory time frames. Article 15.17 of the Code of Criminal Procedure allows 24 hours to transfer a request for counsel to the appointing authority. Article 1.051(c) allows one working day for the appointing authority to rule on the request. Any delays may mean counsel will not be appointed in a timely manner.

For arrestees who post bond prior to an Article 15.17 hearing in the El Paso County Magistrate Court, requests for counsel (made earlier at an Article 15.17 hearing before a municipal judge or justice of the peace) are not routinely ruled upon. Instead the arrestee is given paperwork directing him/her to report to the Council of Judges office in one week for an indigence screening interview. This interview differs from a jail screening in that a defendant must bring documentation of financial status to this interview. If a determination of indigence is made, counsel is to be appointed by the initial appearance after a case has been filed. This process does not comport with statutory time frames for appointment of counsel.

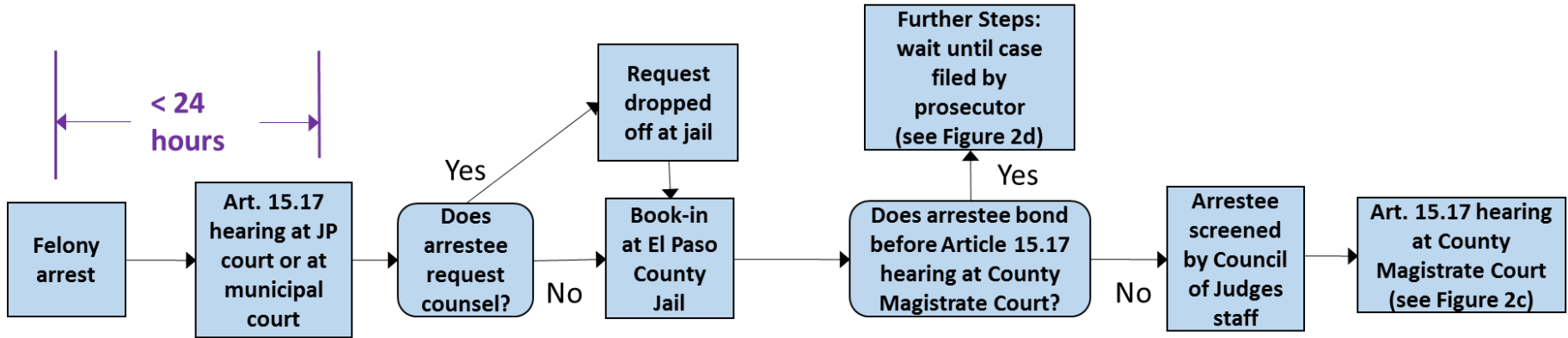
See Figures 2a through 2d for a flow chart depicting the felony appointment process.

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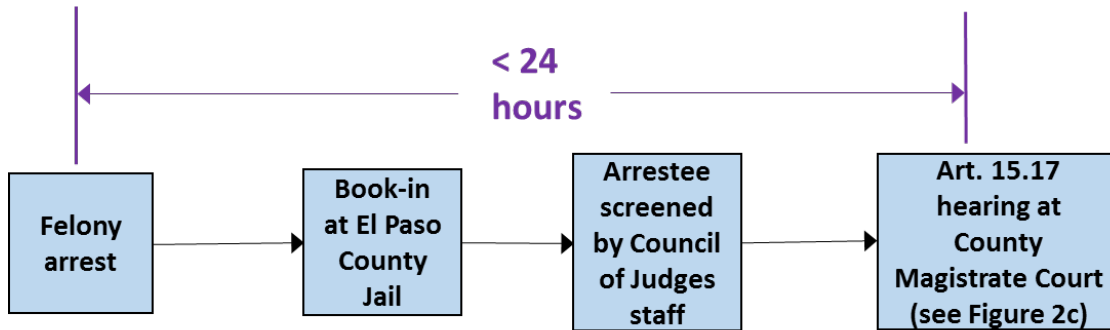
<sup>11</sup> In misdemeanor cases, pre-set bonds are available to many arrestees, and these arrestees may post bond before the Article 15.17 hearing.

**Figures 2a – 2d: Local Attorney Appointment Process for Felony Cases**

**Figure 2a: Arrestees Who Receive Art. 15.17 Hearing at Municipal Court or Justice Court**

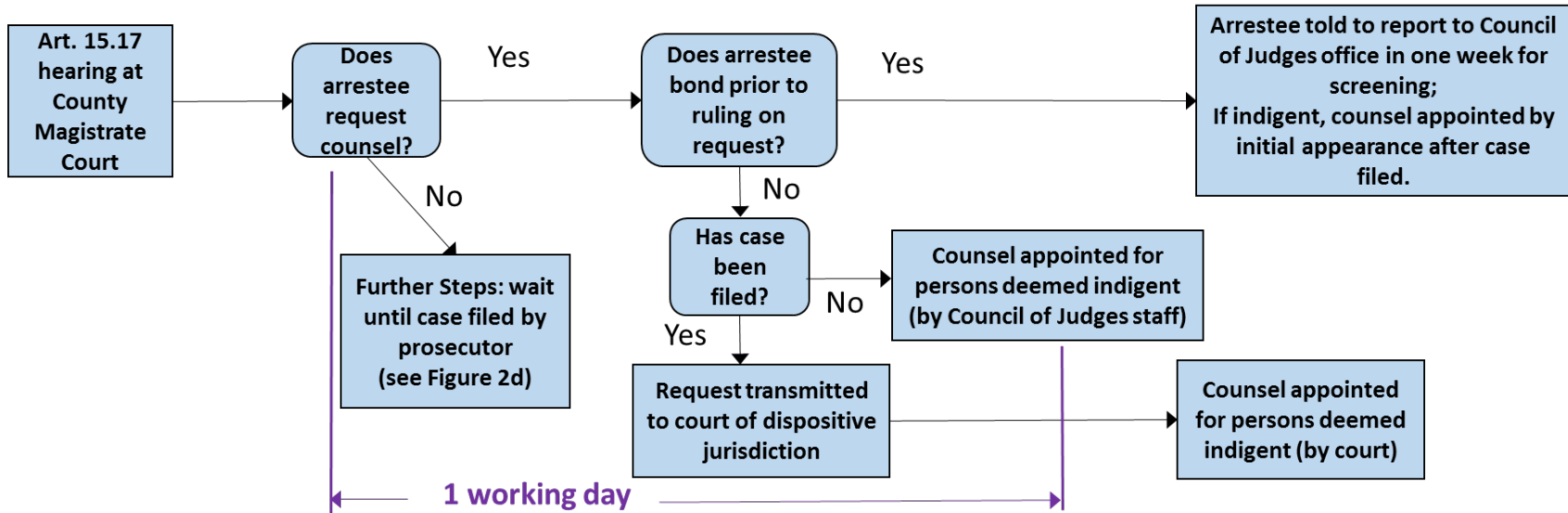


**Figure 2b: Arrestees Who Initially Receive Art. 15.17 Hearing at County Magistrate Court**

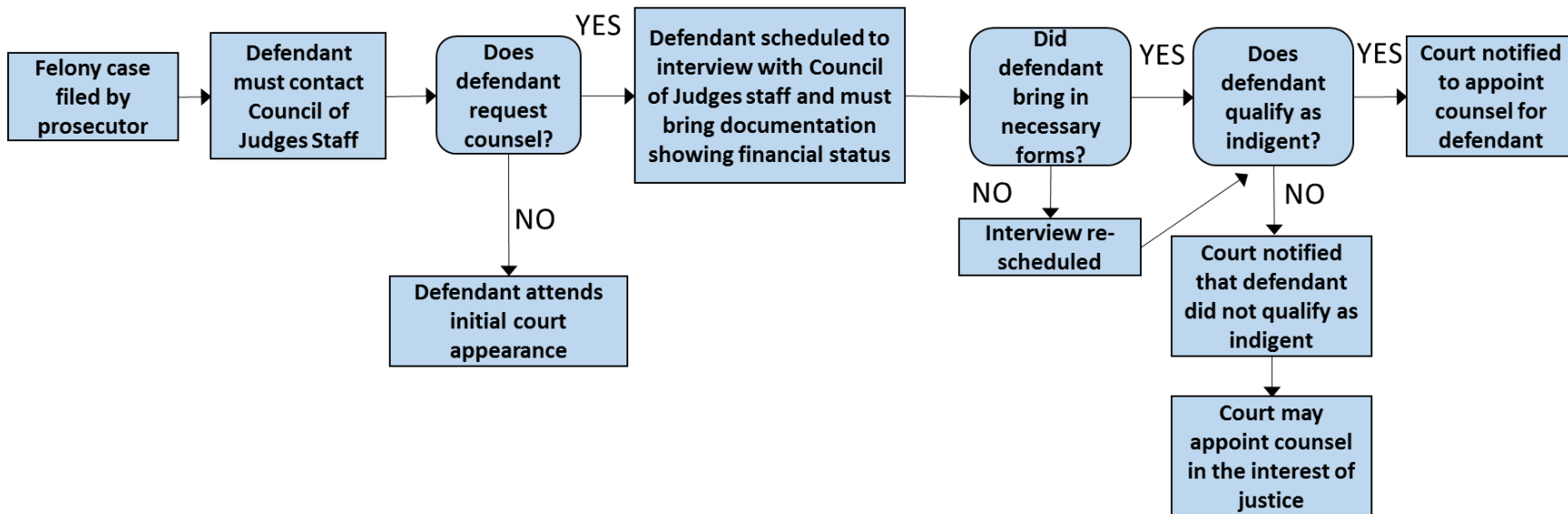




**Figure 2c: Art. 15.17 Hearing at County Magistrate Court through Case Filing or Appointment of Counsel**



**Figure 2d: Defendants Who Post Bond Prior to Determination of Indigence (Case Filing through Appointment of Counsel)**



## **Process for Misdemeanor Arrestees**

Misdemeanor arrestees have multiple points at which they post bond. Some misdemeanor arrestees post bond prior to the Article 15.17 hearing through a pre-set bond. Others receive Article 15.17 warnings from a municipal judge or a justice of the peace, but post bond shortly after this hearing. If an arrestee remains incarcerated but has not received Article 15.17 warnings from either the municipal court or the justice of the peace, the arrestee will receive Article 15.17 warnings from the associate judge presiding over the El Paso County Magistrate Court. For those arrestees who received Article 15.17 warnings from a municipal judge or a justice of the peace but who did not post bond after the hearing, they will receive a second Article 15.17 hearing at the El Paso County Magistrate Court.<sup>12</sup>

If an arrestee makes a request for counsel at an Article 15.17 hearing conducted in a justice court or municipal court but posts bond prior to an Article 15.17 hearing at the El Paso County Magistrate Court, there is no process in place to rule on requests for counsel. Instead, arrestees are given an order to schedule an indigence screening interview with the County Courts Administration Department. The County Courts Administration Department is only able to appoint counsel for bonded persons if a case has been filed against the defendant with the county clerk. After a case has been filed, the County Courts Administration Department may screen for indigence, and if the defendant is indigent, the court in which the case is filed selects the attorney to represent the defendant. If the defendant is not deemed indigent, the court is notified of the reason why the defendant did not qualify, and the court may appoint counsel for the defendant (as many defendants narrowly miss the local standard of indigence but may not have a reasonable ability to retain counsel).

A misdemeanor arrestee will appear at the afternoon Article 15.17 hearing at the El Paso County Magistrate Court unless the arrestee posts bond prior to the hearing. Two criminal defense attorneys represent misdemeanor defendants at the hearings; one a public defender, and the other, assigned counsel. Misdemeanor defendants may enter a guilty plea at this hearing. Counsel continues to represent defendants if they choose not to enter a guilty plea. This method for providing continuous representation to misdemeanor defendants is new, and was initiated in June 2014. Prior to our visit, attorneys representing defendants at the Article 15.17 hearing only provided counsel at the hearing, and new counsel would be appointed at a later time if the defendant was deemed indigent and did not enter a guilty plea.

See Figures 3a through 3e for a flow chart depicting the misdemeanor appointment process.

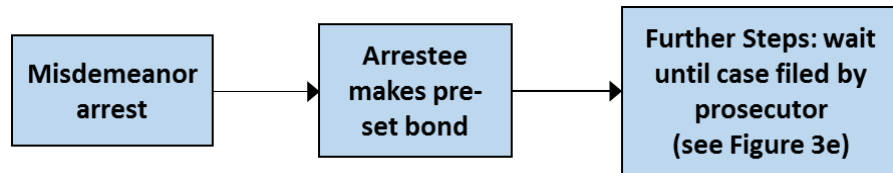
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<sup>12</sup> The afternoon Article 15.17 hearings at the El Paso Magistrate Court are referred to as DIMS hearings. At the DIMS Article 15.17 hearings, guilty pleas may be taken in misdemeanor cases.

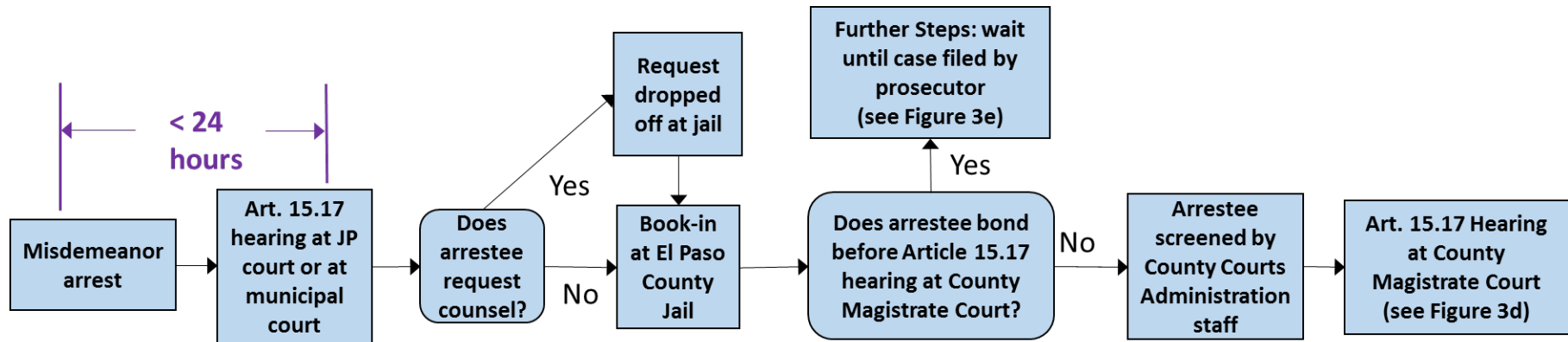
DIMS is an acronym for District Attorney Information Management System. DIMS includes many aspects of the El Paso County criminal justice system designed to speed case flow including early screening and filing of cases by the District Attorney. Several other parts of El Paso's criminal justice system also use the term DIMS.

## Figures 3a – 3e: Local Attorney Appointment Process for Misdemeanor Cases

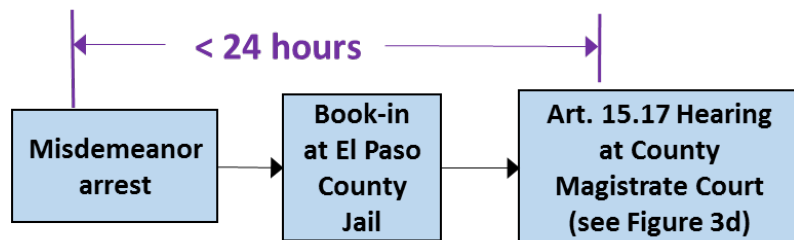
### Figure 3a: Arrestees Who Post Pre-set Bond



### Figure 3b: Arrestees Who Receive Art. 15.17 Hearing at Municipal Court or Justice Court



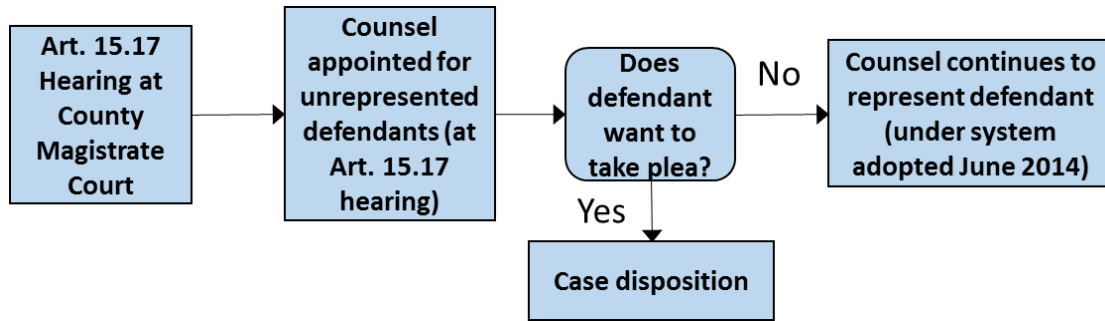
### Figure 3c: Arrestees Who Initially Receive Art. 15.17 Hearing at County Magistrate Court<sup>13, 14</sup>



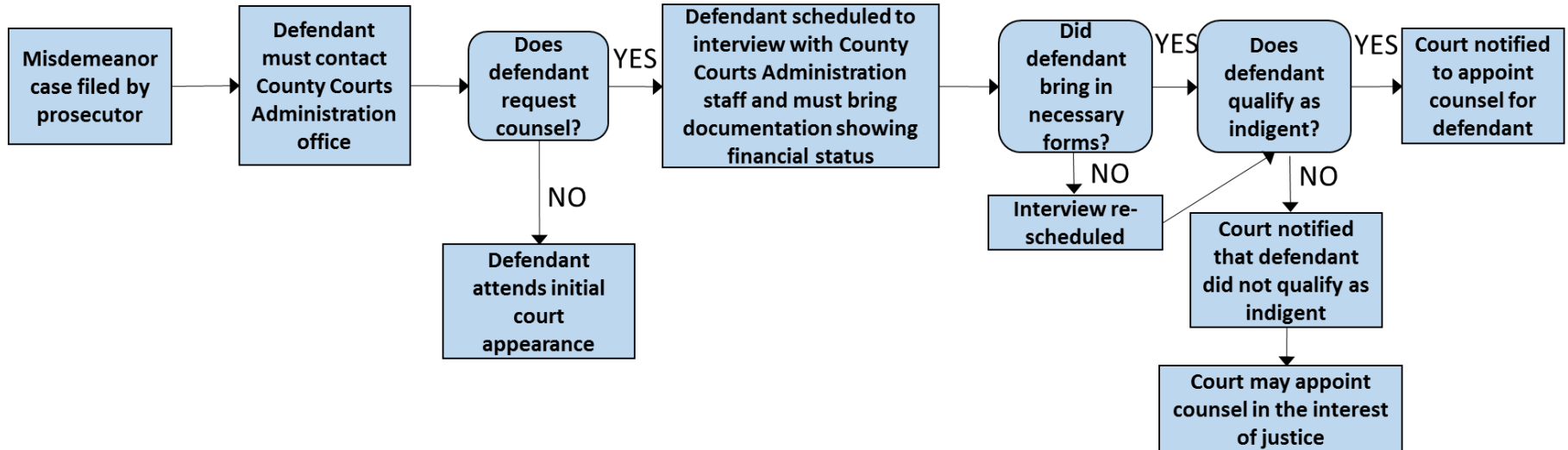
<sup>13</sup> Article 15.17 hearings at the El Paso County Magistrate Court include both DIMS hearings and non-DIMS hearings. At the time of this review, only requests for counsel made at DIMS hearings are ruled upon.

<sup>14</sup> In misdemeanor cases, arrestees are represented by counsel and may enter a guilty plea at the DIMS hearing. Prior to the review, the attorney representing the defendant at the DIMS hearing was not obligated to continue representation of the defendant. This changed in June 2014, and now attorneys appointed at the DIMS hearing continue representation through case disposition.

**Figure 3d: Art. 15.17 Hearing at County Magistrate Court**



**Figure 3e: Defendants Who Post Bond Prior to Art. 15.17 Hearing at County Magistrate Court (Case Filing through Appointment of Counsel)**



### Examination of Records Relating to Article 15.17 Hearings

The monitor reviewed the percent of arrestees who request counsel at Article 15.17 hearings in El Paso County. The monitor obtained this data through a subset of felony and misdemeanor case files examined in the review. Based on this subset, over 68% of felony arrestees and over 76% of misdemeanor arrestees requested counsel at the Article 15.17 hearing. While this sample was relatively small, it is an indication that arrestees generally understand their right to appointed counsel and avail themselves of the right to appointed counsel. See Table 1 for a summary of requests for counsel from the monitor’s case sample.

**Table 1: Percent of Arrestees Requesting Counsel at Article 15.17 Hearing**

	Felony Sample	Misdemeanor Sample
Number of records showing whether counsel requested at Article 15.17 hearing	50	53
Requested counsel	33	40
Did not request counsel	15	12
No mark as to counsel request	2	1
<b>Percent Requesting Counsel</b> <sup>15</sup>	<b>68.8%</b>	<b>76.9%</b>

### Timeliness of Warnings

The monitor analyzed the timeliness of Article 15.17 hearings with this same sample. Under Article 15.17(a), magistrate warnings must occur within 48 hours of arrest. In determining the timeliness of the warnings, the monitor looked at the number of days between arrest and the Article 15.17 hearing. If the Article 15.17 hearing occurred within two days of arrest, the monitor presumed the warnings were timely. All 103 Article 15.17 hearings occurred within two days of arrest, and so are presumed to have met the 48 hour threshold. The County clearly has procedures to promptly bring arrestees before a magistrate. See Table 2 which summarizes the timeliness of these warnings.

**Table 2: Timeliness of Article 15.17 Hearings**

	Sample Size	Percent
Number of records examined	103	
Article 15.17 hearing occurs x days after arrest:		
0 days	72	69.9%
1 day	31	30.1%
2 days	0	0%
<b>Timely Hearings</b>	<b>103</b>	<b>100%</b>

### Reasonable Assistance in Completing Forms for Requesting Counsel

Article 15.17(a) requires the magistrate to “ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel” at the time of the hearing. If the magistrate is not authorized to appoint counsel, the forms requesting counsel are to be transmitted to the appointing authority within 24 hours of the request being made. In El Paso County, the necessary paperwork is not completed for persons requesting counsel prior to the Article 15.17 hearing at the El Paso County Magistrate Court (i.e. requests made at justice courts and municipal courts). Magistrates must ensure that all arrestees who request counsel at an Article 15.17 hearing are provided assistance to complete and submit appropriate paperwork to obtain counsel, even if the arrestee posts bond shortly after the hearing.

<sup>15</sup> The percent requesting excludes those instances where no mark was made regarding a request.

## Use of Pre-Set Bonds

As previously mentioned, some arrestees may post bond prior to an Article 15.17 hearing. *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), considered the question of when adversarial judicial proceedings are initiated. The opinion stated:

*We merely reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.*<sup>16</sup>

*Rothgery* stated that adversarial judicial proceedings triggering the attachment of the Sixth Amendment right to counsel occur at proceedings before a magistrate (the Article 15.17 hearing). If an arrestee does not appear before a magistrate, the holding in *Rothgery* has not been triggered.

### **Recommendations for Requirement 1: Conduct prompt and accurate magistration proceedings.**

**Recommendation 1:** The County must ensure that reasonable assistance in completing affidavits of indigence is provided, so that all arrestees who request counsel can have the request ruled upon. Under Article 15.17(a), this duty falls on the magistrate presiding over the Article 15.17 hearing.

## Requirement 2: Determine indigence according to standards directed by the indigent defense plan.

### **Local Indigent Defense Plan Compared to Adult Statutory Provisions**

- Provide detailed procedures used to determine whether a defendant is indigent.<sup>17</sup>  
**Requirement met.**
- State the financial standard(s) to determine whether a defendant is indigent.<sup>18</sup>  
**Requirement met.**
- List factors the court will consider when determining whether a defendant is indigent.<sup>19</sup>  
**Requirement met, but local practices do not always follow the plan.**<sup>20</sup>

### **Adult Indigent Defense Plan**

According to the adult indigent defense plan:

*D. A defendant is presumed indigent if any of the following conditions or factors are present:*

*1. At the time of the application, the defendant or defendant's family is eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or Public Housing;*

<sup>16</sup> *Rothgery v. Gillespie County*, 554 U.S. 191 at 213 (2008).

<sup>17</sup> Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>18</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>19</sup> Tex. Code Crim. Proc. art. 26.04(m).

<sup>20</sup> This box is not checked because, in some instances, screeners examined factors other than those listed in the indigent defense plan.

2. *The defendant's net household income does not exceed 150% of the federal HHS poverty guidelines as revised annually by the United States Department Of Health and Human Services and published in the Federal Register; or*
3. *The defendant is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental facility is sought.*

The definition of household income is stated in the plan:

*"Net household income" means all income of the accused and spousal income actually available to the accused. Such income shall include: take-home wages and salary (gross income earned minus those deductions required by law or as a condition of employment); net self-employment income (gross income minus business expenses, and those deductions required by law or as a condition of operating the business); regular payments from a governmental income maintenance program, alimony, child support, public or private pensions, or annuities; and income from dividends, interest, rents, royalties, regular payments from Social Security, veteran's benefits, unemployment compensation, money or periodic receipts from estates or trusts. Seasonal or temporary income shall be considered on an annualized basis, averaged together with periods in which the accused has no income or lesser income.*

This standard of indigence meets statutory requirements, but the monitor's sample of case files revealed instances in which screeners appeared to examine factors outside those listed in the indigent defense plan, namely income of persons other than the defendant or the defendant's spouse. As one example, a defendant was disqualified based on his parent's income. In another example, the defendant's case file contained a note stating, "Defendant has no knowledge of grandmother's income." In practice, it appears that some screenings for indigence are going beyond the factors stated in the indigent defense plan (and statute) and are examining non-spousal income.

### **Local Indigent Defense Plan Compared to Juvenile Statutory Provisions**

- ☑ Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>21</sup>  
**Requirement met.**
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>22</sup>  
**Requirement met.**
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.<sup>23</sup>  
**Requirement met.**

### **Jurisdiction's Plan**

According to the County's juvenile indigent defense plan:

*A person is "indigent" and thus qualifies for appointed counsel in this County if the income of the family totals less than 150% of the federal poverty level for the family, or the family's dependents currently receive food stamps, public housing, Temporary Assistance for Needy Families (TANF), or*

<sup>21</sup> Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

<sup>22</sup> Tex. Code Crim. Proc. art. 26.04(l).

<sup>23</sup> Tex. Code Crim. Proc. art. 26.04(m).

*Medicaid, unless the family has net liquid assets worth over \$2,500, excluding the value of one vehicle [as under current Texas TANF law].*

This standard of indigence meets statutory requirements.

**Recommendations for Requirement 2: Determine indigence according to standards directed by the indigent defense plan.**

**Recommendation 2:** In making determinations of indigence, the screener must consider only factors provided in Article 26.04(m) and the local indigent defense plan. As to income, both Article 26.04(m) and the indigent defense plan allow only for income of the defendant and the defendant's spouse to be considered. In practice, some screenings were examining income of other individuals.

**Requirement 3: Establish minimum attorney qualifications.**

**Local Practices Compared to Adult Statutory Provisions**

- ☑ Establish objective qualification standards for attorneys to be on an appointment list.<sup>24</sup>
  - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.<sup>25</sup>

**Requirement met.**

- ☑ Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.<sup>26</sup>

**Requirement met.**<sup>27</sup>

**Jurisdiction's Process (Felony Courts and Misdemeanor Courts)**

Prior to our review, El Paso County required all attorneys to take appointments unless they paid an annual fee to avoid the appointments. This system was known as the "El Paso Plan" and was considered to be a part of a federal settlement in which indigent defendants had sued El Paso County in the 1980s. The Fair Defense Act (FDA) was enacted in 2001 and required that attorneys apply to take appointments. Attorneys could no longer be required to accept appointments in indigent criminal cases. The two methods for creating a list of attorneys to take appointments were in conflict.

El Paso County has recently reviewed this practice, and now (as required by the FDA) allows only those attorneys who apply and are qualified to be placed on the appointment list. Under the new system as described in the adult indigent defense plan, the County has created eight lists for appointing counsel in criminal cases. At the time of the monitor's review, El Paso had 183 attorneys on its felony and misdemeanor appointment lists. Attorneys on any list must be approved by a majority of judges trying criminal cases and must (1) obtain at least nine hours of continuing legal education (CLE) training in criminal law annually or (2) be board certified. This minimum CLE standard exceeds the six hour standard set by the Commission.

The public defender office maintains criminal and juvenile CLE hour records for its attorneys. All attorneys taking criminal cases received at least 11.5 criminal CLE hours in FY13. All attorneys taking juvenile cases received at least 11.5 juvenile CLE hours in FY13. The office provides CLE

<sup>24</sup> Tex. Code Crim. Proc. art. 26.04(d).

<sup>25</sup> 1 Tex. Admin. Code §§174.1-174.4.

<sup>26</sup> Tex. Code Crim. Proc. art. 26.04(d).

<sup>27</sup> The monitor did not examine attorney applications, but saw that the courts had appointment lists.



training for the defense bar, and many of these trainings are mandatory for in-house attorneys. This method of tracking CLE hours within the office and providing in-house training helps ensure a level of competence among public defender attorneys.

### **Local Practices Compared to Juvenile Statutory Provisions**

- ☑ Establish objective qualification standards for attorneys for three levels of conduct.<sup>28</sup>
  - Conduct indicating a need for supervision or delinquent conduct (no TJJD commitment possible);
  - Delinquent conduct (TJJD commitment possible); and
  - Determinate sentence or discretionary transfer to criminal court proceedings have been initiated.

**Requirement met.**

- ☑ Standards must require attorneys to complete at least six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period or be currently certified in juvenile law by the Texas Board of Legal Specialization.<sup>29</sup>

**Requirement met.**

- ☑ Attorneys must be approved by a majority of the Juvenile Board or judges on the Juvenile Board to be placed on or removed from the appointment list.<sup>30</sup>

**Requirement met.**<sup>31</sup>

### **Jurisdiction's Process (Juvenile Courts)**

Assigned counsel attorneys who receive juvenile appointments must attend a mandatory juvenile CLE training every year. The training is sponsored by the county attorney's office and constitutes 6.25 CLE hours. Attorneys on the list must annually obtain six hours of CLE training in juvenile law or be board certified in juvenile law. At the time of the monitoring review, the assigned counsel list for juvenile attorneys contained 20 attorneys.

#### **Recommendations for Requirement 3: Establish Minimum Attorney Qualifications**

Requirement satisfied. No Recommendations.

<sup>28</sup> Tex. Fam. Code § 51.102(a),(b)(2).

<sup>29</sup> 1 Tex. Admin. Code §§174.1-174.4.

<sup>30</sup> Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d).

<sup>31</sup> The monitor did not examine attorney applications, but saw that the courts had appointment lists that they followed.

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

### **Local Practices Compared to Adult Statutory Provisions**

- Incarcerated persons: After receipt of a request for counsel, counsel must be appointed within one working day in counties with a population of 250,000 or more and within three working days in counties under 250,000.<sup>32</sup>  
**Requirement not satisfied.**<sup>33</sup>
- Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.<sup>34</sup>  
**Requirement not satisfied.**<sup>35</sup>
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>36</sup>  
**Requirement met.**<sup>37</sup>

In the following analysis, the monitor examines the timeliness of counsel appointments. In this analysis, the monitor often refers to the timeliness of indigence determinations rather than the timeliness of counsel appointments. Under the monitor's method of analysis, if a defendant requested counsel, the monitor examined whether counsel was appointed within the statutory time frame or whether indigence was denied within this same time frame.

### **Jurisdiction's Process**

#### **Felony Appointments**

In felony cases, persons can request counsel at Article 15.17 hearings conducted by a justice of the peace or a municipal judge or at a hearing conducted by an associate judge at the El Paso County Magistrate Court. The latter hearing may be either an initial Article 15.17 hearing or one held subsequent to an initial hearing before a justice of the peace or a municipal judge. Once a request for counsel has been made at *any* Article 15.17 hearing, the County has 24 hours to transmit the request to the appointing authority, and the appointing authority has one working day to rule on the request by either denying the request or appointing counsel.

If a felony arrestee remains in jail, the Council of Judges staff will conduct an indigent screening interview. The Council of Judges staff have authority to appoint counsel if no case has been filed against the arrestee. If a case has been filed with the El Paso District Clerk against the arrestee, the Council of Judges staff determine indigence, but individual courts select and appoint counsel.

If a felony arrestee posts bond, counsel can be appointed after a case has been filed with the El Paso District Clerk. In these instances, defendants are screened by Council of Judges staff after the case has been filed, and if the defendant is determined to be indigent, counsel is appointed by the initial

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<sup>32</sup> Tex. Code Crim. Proc. art. 1.051(c).

<sup>33</sup> This box is not checked because the percent of timely appointments did not meet the Commission's 90% threshold for presuming a jurisdiction's appointment system to be timely.

<sup>34</sup> Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

<sup>35</sup> This box is not checked because the percent of timely appointments did not meet the Commission's 90% threshold for presuming a jurisdiction's appointment system to be timely.

<sup>36</sup> Tex. Code Crim. Proc. art. 1.051(f-2).

<sup>37</sup> This box is checked because unrepresented defendants are advised of the right to counsel and the procedures for obtaining counsel. However, the monitor found instances that did not appear to conform to Tex. Code Crim. Proc. art. 1.051(f). In these instances, counsel had been requested, but no ruling was found as to the request, and the defendant later entered an uncounseled plea.

appearance. There is no process to make a determination of indigence for felony arrestees who post bond unless a case has been filed.

The monitor examined 226 felony cases filed in FY13 (October 2012 – September 2013) in order to determine the timeliness of counsel appointments. The monitor based this timeliness analysis on requests for counsel found through the case file / case management system. If a defendant requested counsel at a municipal court or a justice court, the request was not entered into the County’s case file and so was not examined by the monitor. For this analysis, the monitor found that counsel was appointed in a timely manner in just over 62% of felony cases. Eleven cases in the monitor’s sample did not contain a ruling on the request. Several cases received a ruling on the request, but at a much later date. In these cases, the ruling likely came after a second request for counsel. See Table 3 for a summary of times from request to appointment of counsel in felony cases.

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

<b>El Paso Felony Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of Case Files Examined	226		
Number of Case Files Containing a Request for Counsel <sup>38</sup>		153	67.6%
Appointment / Denial of Indigence Occurred in:	153		
0 work days <sup>39</sup>		35	22.9%
1 work day + 24 hour transfer <sup>40</sup>		61	39.9%
<b>Total Timely appointments</b>		<b>96</b>	<b>62.7%</b>
2 to 5 working days + 24 hour transfer		22	14.4%
More than 5 working days + 24 hour transfer		24	15.7%
No ruling on request		11	7.2%
Total Untimely appointments (including requests with no ruling)		57	37.3%

### **Misdemeanor Appointments**

The same statutory time frames that apply to felony cases also apply to misdemeanor cases. If a misdemeanor arrestee requests counsel at an Article 15.17 hearing conducted by a municipal judge or by a justice of the peace, those requests are not screened for indigence, and are not ruled upon. Indeed no affidavit of indigence is completed upon which a ruling could be made. However, if arrestees remain in jail until the DIMS Article 15.17 hearing at the El Paso County Magistrate Court (held each weekday at 1 p.m.), counsel is appointed to represent indigent defendants at the hearing. Under this methodology, misdemeanor defendants appearing at the DIMS Article 15.17 hearing receive timely appointment of counsel.

If a defendant requests counsel and then posts bond, the defendant is given paperwork requiring him/her to contact County Courts Administration within 21 days for an indigence screening.<sup>41</sup> When

<sup>38</sup> An additional seven cases were thrown out for various reasons.

<sup>39</sup> In 20 cases, the monitor found an appointment without a corresponding request for counsel. The monitor assumed these requests were made in court on the date of the appointment.

<sup>40</sup> Article 15.17(a) of the Code of Criminal Procedure allows for 24 hour period for transmitting requests to the appointing authority. Thus, the maximum time from request to a determination of indigence is one working day plus 24 hours for transferring the request.

<sup>41</sup> It is unclear to the monitor if arrestees who request counsel at an Article 15.17 hearing before a justice of the peace or a municipal judge are always given this paperwork.

the defendant contacts County Courts Administration, an interview appointment is set if the case has been filed. If no case has been filed, an interview is not set up as the department is unable to appoint counsel unless the case has been filed. The defendant is required to bring various forms and documentation to the interview (see Appendix C). If a defendant does not show up for the screening appointment or does not bring in adequate documentation, indigence is denied. If this process works as designed, those persons who request counsel and then post bond will not receive a timely determination of indigence.

Once a case is filed, an appointment of counsel can be made for bonded defendants. For misdemeanor appointments, the appointment of counsel requires two parts: an indigence determination and a selection of counsel. The indigence determination is conducted through a screening interview by the County Courts Administration Department. If a defendant is deemed indigent by the County Courts Administration Department, the selection of counsel is made by the court in which the case is filed. This two-step process sometimes requires more than the one working day time frame allowed by Article 1.051 of the Code of Criminal Procedure.

The monitor examined 250 misdemeanor cases filed in FY13 (October 2012 – September 2013) in order to determine the timeliness of counsel appointments. The monitor based this timeliness analysis on requests for counsel found through the case file / case management system. If a defendant requested counsel at a municipal court or a justice court, the request was not entered into the County's case file and so was not examined by the monitor. During the period of this review, counsel could be appointed to represent a defendant at an Article 15.17 DIMS hearing, but this representation would not continue if the defendant chose not to enter a guilty plea. Article 26.04(j)(2) of the Code of Criminal Procedure requires that once appointed, counsel continue to represent the defendant until "charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is permitted or ordered to withdraw as counsel for the defendant after a finding of good cause is entered on the record." For purposes of determining timely appointment of counsel, the monitor considered the appointment timely if the defendant received counsel at an Article 15.17 hearing because counsel represented the defendant at the hearing. In many of these cases, other counsel was appointed at a later time.

From this analysis, the monitor found that counsel was appointed in a timely manner in just over 66% of misdemeanor cases. When counsel was appointed in a timely manner, it typically occurred on the day of the request. When counsel was not appointed in a timely manner, it typically occurred more than five working days after the request. This means that timely counsel appointments occurred either when counsel was appointed at an Article 15.17 hearing or when counsel was requested in court after a case had been filed. To summarize, the practices in place (at the time of the review) required multiple steps to be completed in order to rule on out-of-court requests for counsel. The time needed to complete those steps was typically more than one working day.<sup>42</sup> See Table 4 for a summary of times to appointment of counsel in misdemeanor cases.

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<sup>42</sup> The required steps to rule on an out-of-court request for counsel include:

- 1) A case must be filed with the clerk's office.
- 2) The defendant must be screened in an interview. The defendant must bring multiple pieces of documentation to this interview.
- 3) If determined to be indigent at the screening interview, the request is sent to the court so the court can select counsel.

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

<b>El Paso Misdemeanor Appointment Sample Data</b>	Sample Size	Number from sample	Percent
Number of Case Files Examined	250		
Number of Case Files Containing a Request for Counsel		149	59.6%
Appointment / Denial of Indigence Occurred in:	149		
0 work days		83	55.7%
1 work day + 24 hour transfer		16	10.7%
<b>Total Timely appointments</b>		<b>99</b>	<b>66.4%</b>
2 to 5 working days + 24 hour transfer		11	7.4%
More than 5 working days + 24 hour transfer		33	22.1%
No ruling on request		6	4.0%
Total Untimely appointments (including requests with no ruling)		50	33.6%

**Other Findings from Misdemeanor Case Files**

Article 1.051(f) – (h) of the Code of Criminal Procedure covers issues involving waivers of counsel. Waivers of counsel not meeting the requirements of Article 1.051(f-1) or (f-2) are presumed invalid. Under (f-1), the prosecutor cannot communicate with an unrepresented defendant unless he/she signs a waiver of counsel. This waiver cannot be issued until all requests for counsel have been denied.

Since requests for counsel cannot be ruled upon until a case has been filed in the clerk’s office, a defendant who has requested counsel may come to court without counsel and decide to represent himself/herself. Under such a scenario, the court may not be aware of a prior request for counsel. The defendant may sign a waiver of counsel and enter a pro se plea. This waiver would be presumed to be invalid under Article 1.051(f).

In the monitor’s review of 250 misdemeanor case files, the monitor found two cases in which the following events occurred: (1) defendant requested counsel; (2) the request was not ruled upon; (3) the defendant signed a waiver of counsel; and (4) the defendant entered an uncounseled plea. It is possible that more cases contained these four events, but the monitor only examined requests obtained from the case file or Odyssey case management system. Requests for counsel made to magistrates prior to the defendant’s booking at the El Paso County Jail are not captured either by the case file or the case management system.

### **Local Practices Compared to Juvenile Statutory Provisions**

- ☑ Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.<sup>43</sup>

**Requirement met.**

- ☑ If the child was not represented by an attorney at the detention hearing and a determination was made to detain the child, the child shall be immediately entitled to representation by an attorney.<sup>44</sup>

**Requirement met.**

- ☑ If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.<sup>45</sup>

**Requirement met.**

### **Juvenile Appointment Process**

The FDA timeline listed in Figure 4 sets a statutory framework according to which jurisdictions must establish local procedures to appoint counsel in juvenile matters. Relevant sections of the Texas Family Code are listed in parenthesis.

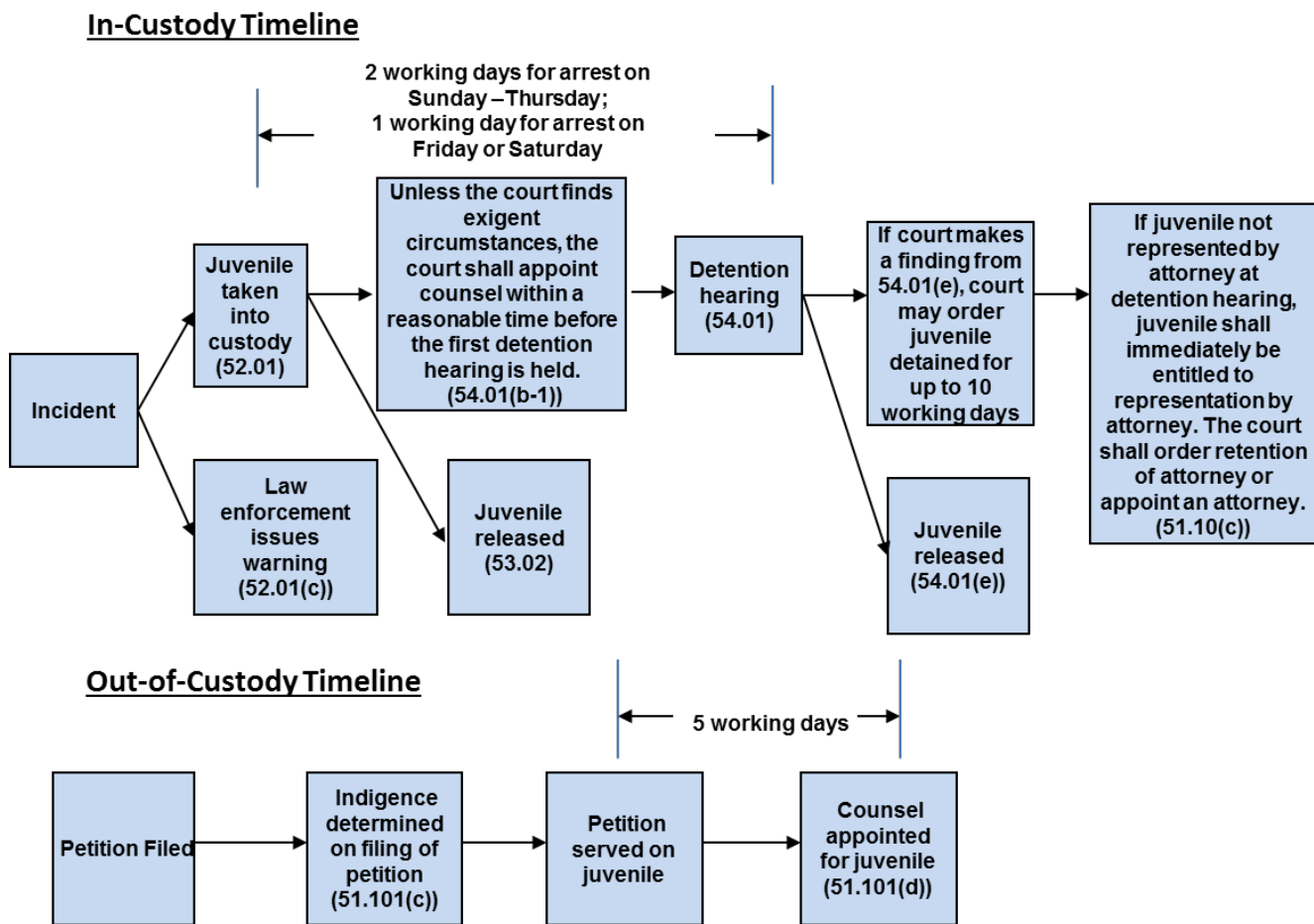
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<sup>43</sup> Tex. Fam. Code § 54.01(b-1). This sub-section was added this past 83<sup>rd</sup> Legislative Session.

<sup>44</sup> Tex. Fam. Code § 51.10(c).

<sup>45</sup> Tex. Fam. Code § 51.101(d).

**Figure 4: Statutory Attorney Appointment Timeline for Juveniles**

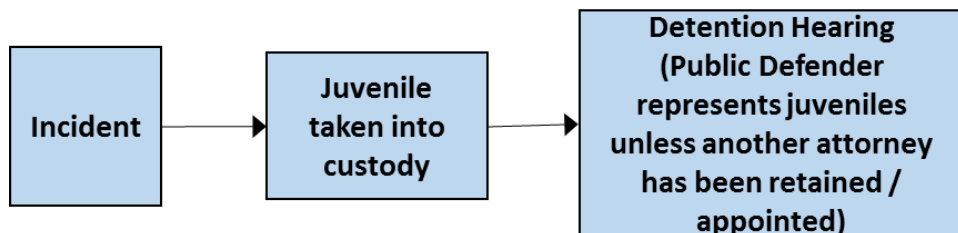


In juvenile cases, if a juvenile is taken into custody, and intake for the juvenile probation department determines that continued detention is needed, the juvenile is promptly brought to a detention hearing. Detention hearings are conducted daily. The public defender represents most juveniles at detention hearings unless the defendant has retained or been appointed other counsel. In El Paso County, only a small portion of cases involve detention hearings.

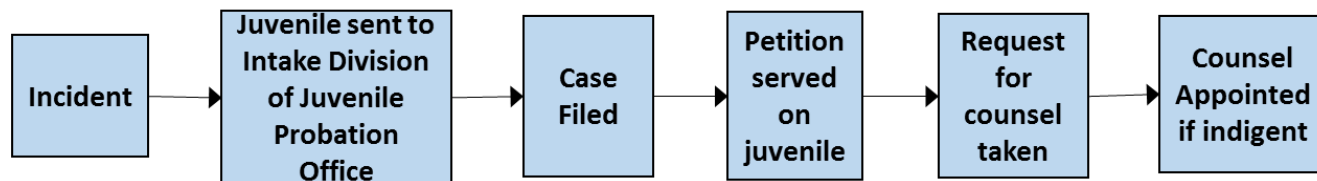
For juveniles released at intake, the attorney appointment process begins once a petition is filed and is served on a juvenile. At this time the parents of the juvenile may apply for court appointed counsel. If a parent meets the indigence threshold, counsel is appointed. If the parent does not meet the threshold and is able to afford counsel, the court issues an order to retain counsel. Assigned counsel rather than the public defender is typically appointed in these instances. See Figure 5 for a summary illustration of the appointment process for juvenile cases.

**Figure 5: Local Attorney Appointment Process in Juvenile Cases**

**Appointment of Counsel for In-Custody Juveniles**



**Appointment of Counsel for Out-of-Custody Juveniles**



For juvenile cases, the monitor examined the timeliness of indigence determinations in instances when the juvenile was detained and in instances when a petition was served on the juvenile. To ascertain the timeliness of local processes, the monitor examined 100 juvenile case files that were filed between October 2012 and September 2013.<sup>46</sup> Of these 100 sample cases, 81 cases initially received appointed counsel; 19 initially retained counsel. Five (5) of the juveniles who initially received appointed counsel later retained counsel.

**Juvenile Detention Hearings**

Under Section 54.01(b-1) of the Family Code, unless the court finds exigent circumstances are present, the court must appoint an attorney for a juvenile in detention within a reasonable time before the first detention hearing is held. If the court finds that exigent circumstances are present, Section 51.10(c) of the Family Code requires either the immediate appointment of counsel or an order to retain counsel for juveniles whom the court orders detained at the first detention hearing. If no attorney was present for the first detention hearing, the attorney who is subsequently appointed or retained may request a de novo hearing under Section 54.01(n).

Detention hearings are held daily in El Paso County. The public defender represents most juveniles at detention hearings unless the defendant has retained or been appointed other counsel. In El Paso County, only a small percentage of cases involve detention hearings. Of the 100 case files examined by the monitor, the monitor found 28 cases with detention hearings. In all 28 cases, the juveniles were represented by counsel at the initial detention hearing. In other words, all detention hearings from the sample had counsel appointed in a timely manner. The Commission’s administrative rules presume a jurisdiction has procedures for timely appointment of counsel if the monitor’s sample is at least 90% timely. See Table 5 for a summary of our review of juvenile data.

<sup>46</sup> Of the 100 sample case files, 99 involved the filing of a petition. One case did not contain a petition but only a detention hearing.



**Petitions Served on the Juvenile**

For juveniles released at intake, Section 51.101(c) of the Family Code requires a determination of indigence upon the filing of a petition. Section 51.101(d) requires the court to appoint counsel for juveniles determined to be indigent under 51.101(c) within five working days of the service of the petition on the juvenile. In El Paso County, counsel may be appointed after a juvenile’s parents request counsel. This typically happens after the petition is served on the juvenile. In 71 of the monitor’s sample cases, counsel was considered to have been secured for the juvenile in a timely manner. This means that one of the following three events occurred: (1) counsel appointed within five working days of serving the petition on the juvenile; (2) the juvenile retained counsel within the five working days; or (3) the court denied indigence and ordered the juvenile’s parents to retain counsel. This yields a sample that was 72% timely, which is below the Commission’s 90% threshold for presuming that the jurisdiction’s procedures ensure timely appointment of counsel. In the remaining 28 cases, one of these three events occurred more than five working days after the petition was served on the juvenile. See Table 5 for a summary of our sample data showing the timeliness of determinations of indigence in juvenile cases.

The primary cause for untimely counsel appointments appeared to be that in several instances parents did not request counsel until after the appointment was due (five working days after the juvenile was served with the petition). In our sample, attorneys were generally appointed on the same day the financial statement was received from the parents. Of the 81 cases that initially received appointed counsel, 60 received the appointment on the same day the financial affidavit was completed by the parents. If financial affidavits could be obtained from parents at intake prior to the filing of the petition, almost all appointments of counsel would likely be timely.

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

<b>El Paso County Juvenile Appointment Sample Data</b>	<b>Sample Size</b>	<b>Number from sample</b>	<b>Percent</b>
Number of Juvenile Case Files Examined	100		
<b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>			
Number of initial detention hearings in sample		28	
Number of initial detention hearing with an attorney present		<b>28</b>	<b>100.0%</b>
<b>TIMELINESS OF COUNSEL APPOINTMENTS WHEN THE JUVENILE IS SERVED WITH A PETITION</b>			
Petitions filed		99	
Petitions filed where juvenile received appointed counsel within 5 working days of being served:		57	57.6%
Petitions filed where juvenile's family retained counsel within 5 working days without a denial of indigence		3	3.0%
Petitions filed where juvenile’s family denied indigence and ordered to retain counsel within 5 working days of being served:		11	11.1%
<b>Total Petitions where Order to Appoint or Order to Retain was timely or Family retained within 5 working days of service</b>		<b>71</b>	<b>71.7%</b>
Petitions filed where juvenile received counsel / order to retain more than 5 working days after being served or no order and retention more than 5 working days:		28	28.3%

**Recommendations for Requirement 4: Appoint Counsel Promptly.**

**Recommendation 3 (felony appointments):** The monitor's sample of attorney appointments in felony cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The felony courts must implement methods 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.

**Recommendation 4 (misdemeanor appointments):** The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The misdemeanor courts must implement methods 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.

**Recommendation 5 (misdemeanor appointments):** All requests for counsel must be ruled upon. If a defendant makes a request for counsel that is never ruled upon and later enters an uncounseled plea, the waiver of counsel is presumed invalid under Article 1.051(f) of the Code of Criminal Procedure.

**Recommendation 6 (juvenile appointments):** The monitor's sample of attorney appointments to juveniles who were served with a petition fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The juvenile court must implement methods to ensure that all appointments to juveniles served with a petition occur within five working days of service on the juvenile. If financial affidavits could be obtained from parents at intake prior to the filing of the petition, almost all appointments of counsel would likely be timely.

## **Requirement 5: Institute a fair, neutral, and nondiscriminatory attorney selection process.**

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- Rotational method: The court must appoint an attorney from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.<sup>47</sup>  
**Requirement not satisfied.**<sup>48</sup>
- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.<sup>49</sup>  
**Requirement met.**
- Alternative appointment method:<sup>50</sup>
  - The local processes must be established by vote of two-thirds of the judges.
  - The plan must be approved by presiding judge of administrative judicial region.
  - The courts must allocate appointments reasonably and impartially among qualified attorneys.**Not applicable.**

### **Jurisdiction's Process**

#### **Appointment Distribution Analysis**

Article 26.04(b)(6) of the Code of Criminal Procedures requires courts to adopt procedures ensuring appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory. The Commission has adopted an administrative rule in which a jurisdiction is presumed to have a fair, neutral, and nondiscriminatory appointment system if the top 10% of recipient attorneys at a given level (felony, misdemeanor, and juvenile) receive no more than three times their representative share of appointments.<sup>51</sup> If each level meets this threshold, the Commission presumes

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<sup>47</sup> Tex. Code Crim. Proc. art. 26.04(a).

<sup>48</sup> El Paso County utilizes a combination of a rotational appointment system and a public defender system. This box is not checked because the assigned counsel distributions of felony appointments and misdemeanor appointments fell outside the Commission's thresholds for presuming a jurisdiction's appointment system to be fair, neutral, and nondiscriminatory (top 10% of recipient attorneys must receive less than three times their representative share of appointments).

<sup>49</sup> Tex. Code Crim. Proc. art. 26.044.

<sup>50</sup> Tex. Code Crim. Proc. art. 26.04(g)-(h).

<sup>51</sup> 1 Tex. Admin Code § 174.28(c)(5).

#### **(5) Attorney Selection Process.**

*(A) The policy monitor shall review the local indigent defense plans and determine if they:*

*(i) Include an attorney selection method; and*

*(ii) Specify who is authorized to make appointments, what appointment lists are used, and a description of when an attorney on the list may be skipped, if applicable.*

*(B) The policy monitor shall check for documentation indicating:*

*(i) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;*

*(ii) That attorney selection process actually used matches what is stated in the indigent defense plans; and*

*(iii) The number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review, the percentage share of appointments represented by the top 10% of attorneys accepting appointments.*

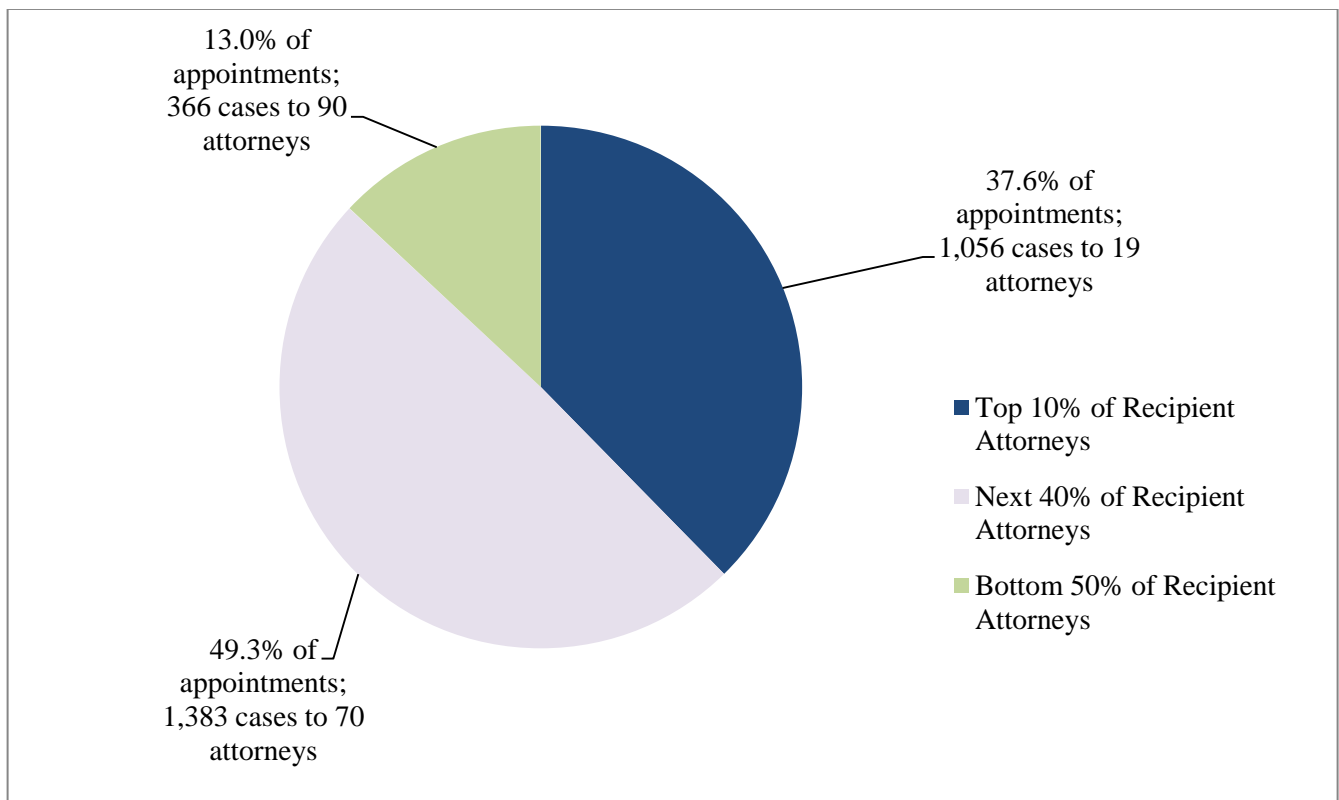
*(C) A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed three times their respective share. If the county can track attorney list changes, the monitor will only examine the distribution of cases for*

the system to be fair, neutral, and nondiscriminatory. However, if the percentage of appointments received by the top 10% of recipient attorneys exceeds three times their representative share, the County is not presumed to have a fair, neutral, and nondiscriminatory system. A county can overcome the presumption by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

### Assigned Counsel Non-Capital Felony Cases

The auditor's office reported that 189 attorneys received payments for assigned counsel felony cases in FY13. The top 19 attorneys (top 10.1% of recipient attorneys) received 37.3% of available cases or **3.7 times their representative share of appointments**. This distribution falls outside the Commission's threshold that presumes a jurisdiction's appointment methods are fair, neutral, and nondiscriminatory if the top ten percent of recipient attorneys receive no more than three times their representative share of appointments. See Figure 6 for more details.

**Figure 6: Distribution of Appointments to Non-Capital Felony Attorneys**  
(Based on FY13 non-capital felony cases paid)

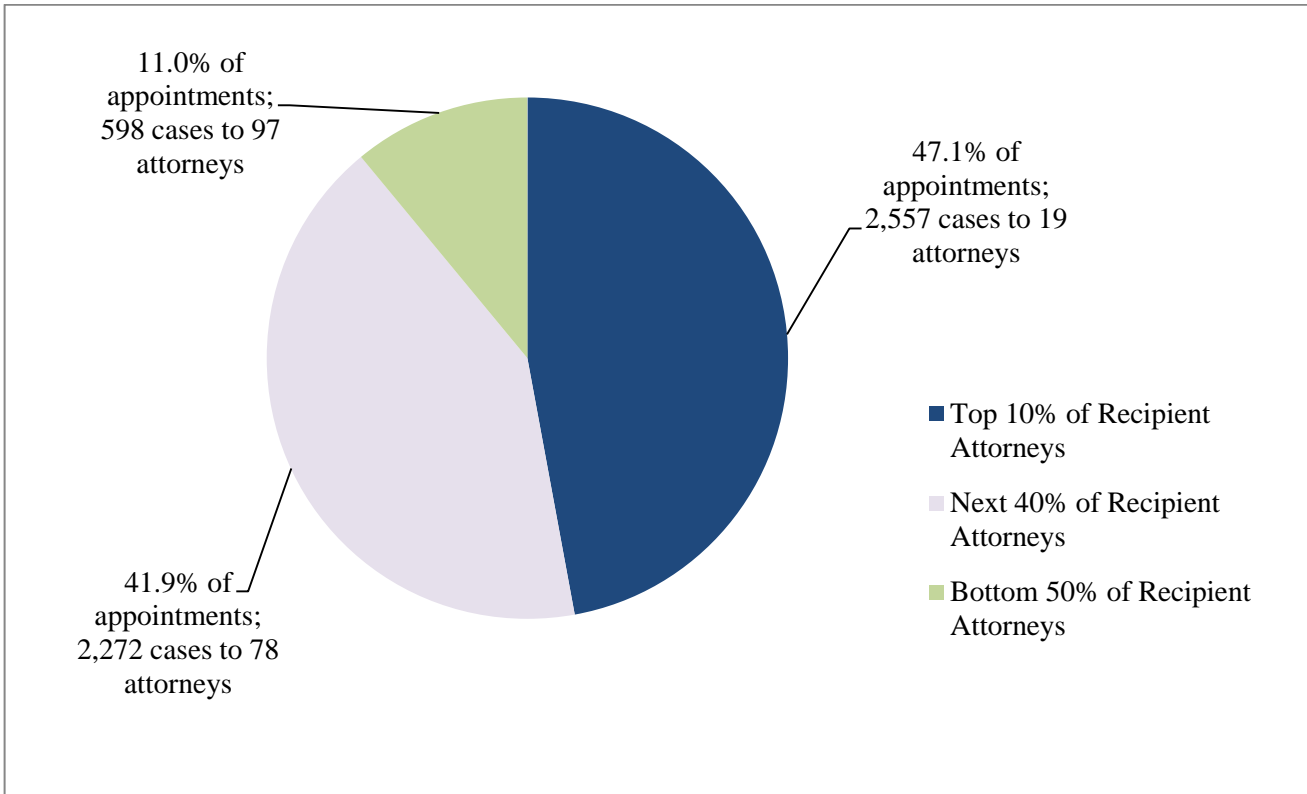


*attorneys that were on the appointment list for the entire year. The top 10% of recipient attorneys is the whole attorney portion of the appointment list that is closest to 10% of the total list.*

### Assigned Counsel Misdemeanor Cases

The auditor's office reported that 194 attorneys received payments for assigned counsel misdemeanor cases in FY13. The top 19 attorneys (top 9.8% of recipient attorneys) received 47.1% of available cases or **4.8 times their representative share of appointments**. This distribution falls outside the Commission's threshold that presumes a jurisdiction's appointment methods are fair, neutral, and nondiscriminatory if the top ten percent of recipient attorneys receive no more than three times their representative share of appointments. See Figure 7 for more details.

**Figure 7: Distribution of Appointments to Misdemeanor Attorneys**  
(Based on FY13 misdemeanor cases paid)

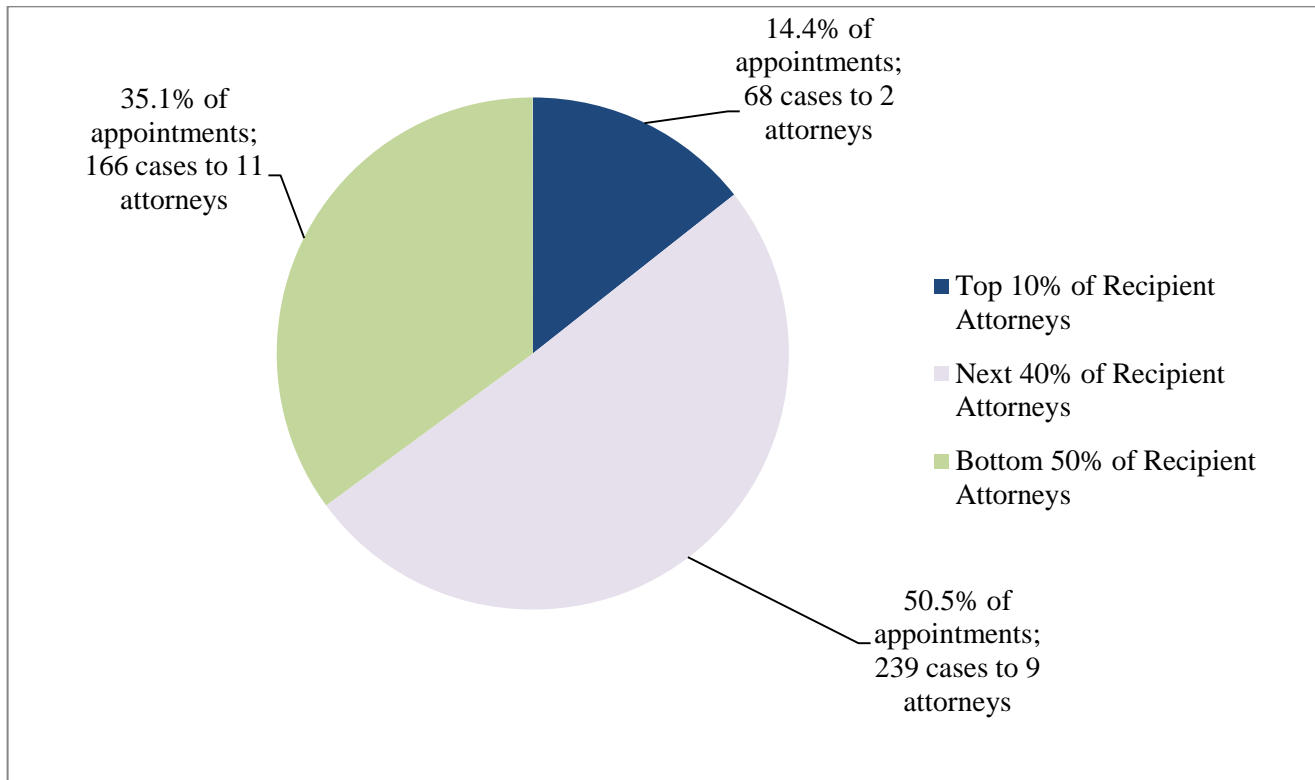


### Assigned Counsel Juvenile Cases

In juvenile cases, the public defender is assigned to all cases in which there is a detention hearing. The public defender also represents juveniles in probation review hearings. However, if a petition is filed, assigned counsel attorneys are appointed to represent all juveniles on a bi-weekly rotating basis and are to represent juveniles in all cases of non-detained juveniles through the disposition hearing in Title III proceedings of the Texas Family Code. If a conflict of interest exists, another assigned counsel attorney is appointed for the individual case.

The auditor's office reported that 22 attorneys received payments for assigned counsel juvenile cases in FY13. The top two attorneys (top 9.1% of recipient attorneys) received 14.4% of available cases or **1.6 times their representative share of appointments**. This distribution falls well within the Commission's threshold for presuming a jurisdiction's appointment methods to be fair, neutral, and nondiscriminatory. Appointment methods for juvenile cases appear to follow a fairly strict rotational system. See Figure 8 for more details.

**Figure 8: Distribution of Appointments to Attorneys in Juvenile Matters**  
(Based on FY13 juvenile cases paid)



## Methods for Making In-Court Appointments

Methods for making in-court appointments affect the distribution of attorney appointments. The monitor sent questionnaires to the court coordinators for all courts handling felony and misdemeanor cases about methods for making in-court appointments. All of the twelve felony courts and seven of the nine misdemeanor courts responded to the questionnaire. The monitor asked seven questions shown below.

1. When a defendant comes to court without counsel, what do you or the judge do?
2. For how many settings do you typically allow a defendant to appear without counsel before putting him/her on the trial docket pro se?
3. When County Court Administration or the Council of Judges has determined that a defendant with a case in your court is indigent, what do you do? (i.e. how do you assign an attorney to represent the person?)
4. When County Court Administration or the Council of Judges has determined that a defendant in your court is NOT indigent, what do you do?
5. In what instances does your court make in-court appointments from the wheel system (as opposed to appointments from the database of attorneys)?
6. Do attorneys come to your court to see if any in-court appointments are available?
7. About what percent of in-court appointments are made from the wheel system (as opposed to appointments from the database of attorneys)?

As to the questionnaire responses, all courts appeared to use the Council of Judges staff for determining indigence in felony cases and County Courts Administration staff for determining indigence in misdemeanor cases. The courts varied on their policies for what happens when defendants come to court without an attorney. In general, if a defendant chooses to retain counsel, he/she is given between one and four docket appearances to retain an attorney. If a defendant is determined to be indigent, the method for appointing counsel varies depending on the process used by each court. The percent of in-court appointments made from the rotational wheel was reported to range from 0% to 80%. All courts reported that attorneys at least periodically come to the court to see if any in-court appointments are available. For a complete summary of responses, see Appendix F.

### **Recommendations for Requirement 5: Institute a fair, neutral, and nondiscriminatory attorney selection process.**

**Recommendation 7 (felony appointments):** Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments in felony cases fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system. The felony courts must examine their appointment methods and implement a system that demonstrates appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

**Recommendation 8 (misdemeanor appointments):** Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments in misdemeanor cases fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system. The misdemeanor courts must examine their appointment methods and implement a system that demonstrates appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

## **Requirement 6: Promulgate standard attorney fee schedule and payment process.**

### **Local Practices Compared to Adult and Juvenile Statutory Provisions**

- Payments shall be in accordance with a schedule of fees adopted by the judges.<sup>52</sup>  
**Requirement met.**
- No payment shall be made until the judge approves payment after submission of the attorney fee voucher.<sup>53</sup>  
**Requirement not satisfied.**<sup>54</sup>
- If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.<sup>55</sup>  
**Requirement met.**
- Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.<sup>56</sup>  
**Requirement met.**

### **Jurisdiction's Process**

In order to understand local payment procedures, the monitor interviewed relevant persons in the auditor's office and reviewed records, including 145 felony fee vouchers, 146 misdemeanor fee vouchers, and 52 juvenile fee vouchers.

During FY13, the hourly rate for attorney time spent in court was changed from \$65 per hour to \$75 per hour. The out-of-court rate was changed from \$60 per hour to \$70 per hour. Several of the vouchers reviewed by the monitor contained a payment amount differing from the amount approved by the judge. This difference occurred as a result of fee vouchers requesting the old fee schedule rate. The vouchers had been approved by the judge at the old rate, but the auditor's office later caught the oversight. The auditor's office adjusted the payment according to the fee schedule but without the approval of the judge signing off on the voucher.

Article 26.05(c) of the Code of Criminal Procedure states:

*... No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. ...*

The payment of a different amount than authorized by the judge having authority to issue the payment is in contravention to Article 26.05(c). Any reconciliations between fee schedules must be brought to the judge having authority to authorize payment.

In examining the practices of the auditor's office, the monitor found that the office does not have a written procedures manual to identify steps to process invoices to pay indigent defense

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<sup>52</sup> Tex. Code Crim. Proc. art. 26.05(b).

<sup>53</sup> Tex. Code Crim. Proc. art. 26.05(c).

<sup>54</sup> This box is not checked because the monitor found sample vouchers in which the payment amount to attorneys differed from the amount approved by the judge.

<sup>55</sup> *Id.*

<sup>56</sup> Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).



expenditures. The auditor’s office only has one person who works on the invoices on a full-time basis, and if that person is unavailable, other persons in the office may not have the ability to perform the job function. Although not mandatory, the office could benefit from a written procedures manual to identify the steps needed to pay an indigent defense invoice. This manual could be useful in the event the person currently handling invoices is unavailable.

**Recommendations for Requirement 6: Promulgate standard attorney fee schedule and payment process.**

**Recommendation 9:** Under Article 26.05(c) all payments for indigent defense services must be approved by the judge presiding over the proceedings. El Paso County must implement procedures so that any differences between voucher totals and amounts paid to attorneys are approved by the judge presiding over the proceedings.

**Requirement 7: Statutory data reporting.**

**Local Practices Compared to Statutory Provisions**<sup>57</sup>

- The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:
  - In each district, statutory county, and appellant court;
  - In cases for which a private attorney is appointed for an indigent defendant;
  - In cases for which a public defender is appointed for an indigent defendant;
  - In cases for which counsel is appointed for an indigent juvenile; and
  - For investigation expenses, expert witness expenses, or other litigation expenses.

**Requirement not satisfied.**<sup>58</sup>

According to Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners’ court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. Beginning in November 2014, the financial data reports expand to include attorney-level information. Section 79.036(a-1) of the Texas Government Code states:

*(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure.*

**Jurisdiction’s Process**

The County Auditor’s office completed the FY13 annual indigent defense expense report (IDER) in a timely manner. However, the number of cases reported to the Commission as paid for the assigned counsel system in El Paso County did not align with records reviewed by the monitor. El Paso County reported 9,064 assigned counsel cases paid in FY13. However, based on supporting data

<sup>57</sup> The FY13 indigent defense expense report was submitted in a timely fashion, but the case counts differed from data provided to the monitor.

<sup>58</sup> This box is not checked because (1) case counts reported on the FY13 IDER did not match the monitor’s assessment of the total cases paid and (2) public defender expenses were incorrectly categorized on the IDER.

provided to the auditor, it appeared that there were 8,307 assigned counsel cases paid. Case counts seemed to be inaccurate because:

- (1) Payments for investigative and expert witness expenses were counted as separate cases from the corresponding cases in which attorneys were paid.
- (2) Some vouchers contained multiple cases. The number of cases on these vouchers were recorded, but there was no check against reporting duplicate cases reported on other vouchers.

The office's procedures for reporting the number of assigned counsel cases paid must be amended to accurately reflect the number of cases in which attorneys were paid. After the monitor's on-site visits, the auditor's office provided an amended total of FY13 cases paid.

The monitor's review revealed two other details related to statutory data reporting. First, the monitor found two invoices that were noted as general court expenditures but which were included in the IDER. The invoices totaled \$2,452, a small amount compared with the \$4,593,040 paid for all assigned counsel cases, but nevertheless, these two invoices should not have been included in the report.

The second detail involves data reported for the public defender office. The public defender office tracks its own case counts and forwards these totals to the auditor's office for reporting case counts in the IDER. However, the auditor's office has no method to monitor or to verify case counts reported by the public defender. As to reporting public defender expenses, social worker salaries were not reported as "Mental Health Professionals Salaries and Fringe" but as "Administrative Support Salaries and Fringe Benefits." Public defender personnel expenses must be properly categorized on the IDER.

**Recommendations for Requirement 7: Statutory Data Reporting.**

**Recommendation 10:** The auditor's procedures for reporting the number of assigned counsel cases paid must be amended to accurately reflect the number of cases in which attorneys were paid.

**Recommendation 11:** Public defender personnel expenses must be properly categorized on the IDER.

## Additional Observations

The monitor made additional observations comparing the assigned counsel system with the public defender system. The monitor examined caseloads, documentation of attorney-client meetings, the use of investigative and other support services, and also compared attorney fees per case.

## Review of Appointed Caseloads

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for public defenders, which are detailed in the Table 6.<sup>59</sup> The Commission has not adopted this standard or any standard related to maximum caseloads or workloads.

**Table 6: NAC Caseload Standards**

Type of Case	Maximum caseload
Felonies	150
Misdemeanors	400
Juvenile	200
Mental Health Act	200
Appeals	25

The NAC caseload standards represent the maximum number of cases for each category that the advisory committee recommended to be handled by a single attorney in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80 percent of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a starting point in assessing caseloads but should not be accepted as universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by the differences in work required by cases within a category. For example, a case involving felony homicide may require significantly more work than a burglary case.

This past year HB 1318 from the 83<sup>rd</sup> Legislative Session directed the Commission to conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney. The study must be based on relevant policies, performance guidelines, and best practices. In conducting the study, the Commission is to consult with criminal defense attorneys, criminal defense attorney associations, the judiciary, and any other organization engaged in the development of criminal indigent defense policy that the commission considers appropriate. The study is due to be published by January 15, 2015, and should provide more accurate guidance on appropriate caseloads in Texas than other studies have been able to provide.

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<sup>59</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

**Assigned Counsel Cases**

According to data submitted by the auditor’s office, a total of 225 attorneys in El Paso County received payment for criminal or juvenile indigent defense cases in FY13. (This does not include public defender cases.) Of these, three attorneys had appointed caseloads (not counting civil cases, retained cases, or appointments in federal cases) exceeding the NAC recommended maximum totals. The analysis does not differentiate capital murder felonies from other felony cases. See Table 7 for a summary of the top ten recipient attorneys, and see Appendix D for a complete summary. Most appointed caseloads for assigned counsel attorneys fell well below the attorneys shown in Table 7, and the median appointed caseload level was at 8% of the NAC guidelines. While these caseloads generally appear reasonable, the cases that were not reported (civil cases, retained cases, or appointments in federal cases) may bring actual caseloads above the NAC guidelines.

**Table 7: Top Assigned Counsel Caseloads in El Paso County (based on FY13 cases paid)**

Attorney	Total Felony Cases (including capital murder)	Total Misdemeanor Cases	Total Juvenile Cases	Total Appeals	Number of NAC Attorneys Required
CESAR LOZANO	61	283	22		1.22
MATTHEW R. DEKOATZ	87	27		14	1.21
GARY B. WEISER	12	403			1.09
DANIELA MARIE CHISOLM	69	165			0.87
OMAR CARMONA	28	231	19		0.86
JOSHUA HERRERA	46	144	32		0.83
DANNY RAZO	71	38	36		0.75
HENRY L. CHISOLM, JR.	23	140	30		0.65
DANIEL AVELAR	54	75			0.55
RUBEN NUNEZ	61	8	22		0.54

**Public Defender Cases**

El Paso County’s public defender office also represented a large number of criminal and juvenile defendants. According to public defender office records, 38 attorneys disposed cases for the office in FY13. The median caseload was equal to 100% of the NAC guidelines. Fourteen attorneys had caseloads above the NAC guidelines. This analysis did not take into consideration several types of cases handled by the office, notably, representation of defendants at Article 15.17 hearings where defendants did not enter a guilty plea, juvenile detention hearings, juvenile review hearings, or child support cases. If these cases were factored, additional attorneys would have caseloads over the NAC guidelines, and some attorneys already over the guidelines would have been considered to have even higher caseloads. See Table 8 for the top ten caseloads of El Paso County public defenders, and see Appendix E for a complete listing.

**Table 8: Top Public Defender Caseloads in El Paso County (based on FY13 cases paid)<sup>60</sup>**

Public Defender Attorney	Felony Cases	Misdemeanor Cases	Jail Plea Cases <sup>61</sup>	Drug Court Cases	Juvenile Cases	Appeals / Writs	Number of NAC Attorneys Required	Total Cases not Considered in NAC Analysis <sup>62</sup>
GERALD GEORGES	298	73				1	2.21	0
JULIA MARTIN	251	40				1	1.81	0
JERRY F. McLAIN					348		1.74	1,080
RAFAEL C. MORALES	197	65				3	1.60	0
FELIX CASTANON	225	21					1.55	0
ERIC WILLARD	216	26					1.51	0
EDY PAYAN	196	23	25			1	1.47	2
DAVE CONTRERAS	200	50					1.46	0
NICOLE MAESSE	172	43	67				1.42	327
GREG VELASQUEZ	173	29	3				1.23	0

### Attorney-Client Meetings

Article 26.04(j)(1) of the Code of Criminal Procedure requires attorneys to:

*make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.*

In El Paso County, the order appointing an assigned counsel attorney to a case requires the attorney to provide proof of the initial visit by having the defendant sign and date an acknowledgment of the visit. The acknowledgment is to be returned to the Council of Judges office. While this procedure provides an assurance that attorneys are promptly meeting with their clients, the Council of Judges staff noted only about half of the forms are returned to them.

Public defender attorneys track their own attorney-client visits and submit monthly summaries to the Council of Judges office. Based on sample data submissions reported by the office, the public defender staff visit the vast majority of their clients within one working day of receiving notice of the appointment. In some instances, defendants post bond before the public defender can schedule a visit

<sup>60</sup> For this analysis, jail plea cases were all given a misdemeanor weight (maximum of 400 cases per year). Drug court cases were considered as mental health cases (maximum of 200 cases per year). Writs were given the same weight as appeals (maximum of 25 cases per year).

<sup>61</sup> These are DIMS cases in which misdemeanor defendants enter a plea at the Article 15.17 hearing.

<sup>62</sup> Cases not included in the NAC analysis included representation of defendants at Article 15.17 hearings where defendants did not enter a guilty plea, juvenile detention hearings, juvenile review hearings, SHOWCAP cases, BES cases, and child support cases. These cases are either civil cases or are cases that generally do not require a great deal of time.

at the jail. In these instances, the public defender office sends a letter to bonded clients asking the client to schedule a visit at the public defender office. The documentation of prompt attorney-client visits is an indication of strong quality control procedures.

## Use of Investigators

In order to provide effective representation to defendants, attorneys may need to use investigative services. The monitor examined the use of investigative services in two contexts: a comparison of spending with the rest of Texas and a comparison with nationally recognized guidelines. El Paso County’s portion of indigent defense spending on investigative services is greater than the portion spent statewide, but the total amount spent appears less than is recommended by national guidelines. The Commission has not adopted a standard relating to an expected use of investigative services.

The public defender office uses investigators in a much greater percentage of its cases than are used by assigned counsel. As an example, in misdemeanor cases investigators were used in just over 15% of public defender cases but in just over 1% of assigned counsel cases. As to the percent of indigent defense spending devoted to investigators, the public defender exceeded state averages for felony, misdemeanor, and juvenile cases, while assigned counsel exceeded state averages in felony and misdemeanor cases. See Table 9 for a comparison of the use of investigative services and spending on investigative services.<sup>63</sup>

**Table 9: Use and Spending on Investigators**

FY13 Investigators	Non-Capital Felony Cases		Misdemeanor Cases		Juvenile Cases	
	Percent of Cases Used	Percent of Indigent Defense Spending	Percent of Cases Used	Percent of Indigent Defense Spending	Percent of Cases Used	Percent of Spending
El Paso Public Defender	25.9%	5.3%	15.2%	4.4%	8.4%	17.6%
El Paso Assigned Counsel	9.4%	7.0%	1.2%	1.1%	1.2%	0.6%
State of Texas <sup>64</sup>	n/a	3.5%	n/a	0.2%	n/a	0.6%

The National Study Commission on Defense Services (NSC) developed a standard for investigative expenses<sup>65</sup> calling for: one full-time investigator for every 450 felony cases; one full-time investigator for every 1200 misdemeanor cases; and one full-time investigator for every 600 juvenile cases. This level of use would have required a total of 12.0 full-time investigators for assigned counsel cases (6.5 full-time investigators for non-capital felony cases, 4.6 investigators for misdemeanor cases, and 0.9 investigators for juvenile cases). Assuming an average salary of \$50,000 per investigator, one could have expected to spend \$600,000 on assigned counsel investigators. Assigned counsel actually

<sup>63</sup> Public defender data was provided by Bill Cox of the public defender’s office and excludes DIMS cases. Assigned counsel data was provided by the auditor.

<sup>64</sup> The statewide percentages include assigned counsel and contract counsel systems but exclude public defender and managed assigned counsel systems.

<sup>65</sup> National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976). These caseloads are based on caseload standards for attorneys set out in the National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973). According to the NSC standard, there should be one full-time investigator for every three attorneys.

spent approximately \$190,000.<sup>66</sup> Similarly, under the NSC standard the public defender would have been required to use 15.8 full-time investigators (8.4 investigators for felony cases, 3.2 investigators for misdemeanor cases, and 4.2 investigators for juvenile cases). The public defender has six investigators on staff. In short, while the usage of investigators for indigent cases in El Paso appears greater than is used across Texas, the usage appears less than is recommended by the NSC standard.

### **Use of Other Support Services<sup>67</sup>**

Indigent defendants may require support services other than investigators. For instance, mentally ill defendants may need to be diagnosed for competence to stand trial. Defendants may be admitted to a mental health docket in which they must interact with social workers and adhere to counseling and medication schedules. Various experts may also be required to testify for the defendant at trial.

#### **Public Defender Social Workers and Mitigation Specialist**

The public defender office has two masters-level and one bachelors-level social workers who are assigned to provide assistance to attorneys in criminal and juvenile cases. They work closely with the public defender's pre-indictment unit where defendants have been identified as having mental health and/or intellectual disability issues. Social workers obtain available mental health/intellectual disability records and work with defendants and their families to assess their needs and to prepare arguments in bond reduction hearings. The social work team provides advocacy for defendants, before and after formal charges are filed. The team interacts with the local mental health authority and other service providers, referring defendants for services, assisting defendants in obtaining appointments, and assisting defendants in complying with treatment plans. In addition, the social work team acts in a crisis intervention capacity so defendants can continue to receive outpatient services, instead of being incarcerated for violating bond conditions.

The public defender utilizes a mitigation specialist who is a licensed masters-level social worker. The mitigation specialist works primarily on capital murder and other serious cases. The specialist meets extensively with defendants, their friends, and their family members and coordinates contact between family members and the attorneys handling the case. The specialist reviews medical, mental health, and intellectual disability records. Much of the information she discovers is of an uncomfortable nature, which the family may prefer not to acknowledge. As a result, the goal of the mitigation specialist is to develop a high level of trust with defendants and family members in order to create a defendant's developmental history and to document life experiences of the defendant.

#### **Utilization of Other Support Services**

The public defender social workers and mitigation specialist provide assistance in approximately 13.3% of the felony, misdemeanor, and juvenile cases represented by the public defender. For assigned counsel, these types of expenses are considered expert witness expenses and were provided through auditor's records. Details of how experts are used were not present in these records. However, the total number of assigned counsel cases incurring expert witness expenses was 434 cases (or 4.8% of trial-level cases). See Appendix G for a summary of vendors providing investigative and expert witness services to assigned counsel attorneys.

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<sup>66</sup> These estimates do not count appeals cases or capital murder felony cases.

<sup>67</sup> The Commission has not adopted a standard relating to an expected use of support services.

## Attorney Fees per Case

The monitor compared the FY13 attorney fees per case between the public defender office and assigned counsel.<sup>68</sup> The comparison can be seen in Table 10. Those comparisons should not be taken as absolute. The roles of assigned counsel and the public defender appear to be quite different for various cases. For instance, in juvenile cases the public defender handles juvenile detention hearing cases and cases in which a juvenile's probation is reviewed. Assigned counsel tends to take adjudication hearings. These roles are quite different. Reviews of probation may require attendance at many dockets but very little preparation time. An adjudication hearing will likely involve only one docket but will require significant preparation time. Similarly, in misdemeanor cases the public defender represents many of its clients at the Article 15.17 hearing, while assigned counsel attorneys are more often appointed after a case is filed.

**Table 10: Attorney Fees per Case**

FY13 Attorney Fees per Case	Assigned Counsel	Public Defender
Attorney Fees in Non-Capital Felony Cases	\$2,055,844	\$2,227,684
Non-Capital Felony Cases	2,916	3,764
Attorney Fees per Case	\$705	\$592
Attorney Fees in Misdemeanor Cases	\$1,280,113	\$1,340,863
Misdemeanor Cases	5,579	3,794
Attorney Fees per Case	\$229	\$353
Attorney Fees in Juvenile Cases	\$208,526	\$274,092
Juvenile Cases	520	2,508
Attorney Fees per Case	\$401	\$109

<sup>68</sup> Data for this comparison came from the IDER as reported by the auditor's office.



## **Summary of Recommendations**

The County must respond in writing as to how it will address each of these recommendations:

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

**Recommendation 1:** The County must ensure that reasonable assistance in completing affidavits of indigence is provided, so that all arrestees who request counsel can have the request ruled upon. Under Article 15.17(a), this duty falls on the magistrate presiding over the Article 15.17 hearing.

### **Requirement 2: Determine indigence according to standards directed by the indigent defense plan.**

**Recommendation 2:** In making determinations of indigence, the screener must consider only factors provided in Article 26.04(m) and the local indigent defense plan. As to income, both Article 26.04(m) and the indigent defense plan allow only for income of the defendant and the defendant's spouse to be considered. In practice, some screenings were examining income of other individuals.

### **Requirement 3: Establish minimum attorney qualifications.**

No recommendations. County practices and procedures comport with statutory requirements.

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

**Recommendation 3 (felony appointments):** The monitor's sample of attorney appointments in felony cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The felony courts must implement methods 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.

**Recommendation 4 (misdemeanor appointments):** The monitor's sample of attorney appointments in misdemeanor cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The misdemeanor courts must implement methods 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.

**Recommendation 5 (misdemeanor appointments):** All requests for counsel must be ruled upon. If a defendant makes a request for counsel that is never ruled upon and later enters an uncounseled plea, the waiver of counsel is presumed invalid under Article 1.051(f) of the Code of Criminal Procedure.

**Recommendation 6 (juvenile appointments):** The monitor's sample of attorney appointments to juveniles who were served with a petition fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). The juvenile court must implement methods to ensure that all appointments to juveniles served with a petition occur within five working days of service on the juvenile. If financial affidavits could be obtained from parents at intake prior to the filing of the petition, almost all appointments of counsel would likely be timely.

### **Requirement 5: Institute a fair, neutral, and non-discriminatory attorney selection process.**

**Recommendation 7 (felony appointments): Recommendation:** Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system in felony cases. The felony courts must examine their appointment methods and implement a system that demonstrates that appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

**Recommendation 8 (misdemeanor appointments): Recommendation:** Based on data provided by the El Paso County Auditor's Office, the distribution of attorney appointments fell outside of the Commission's thresholds for presuming a fair, neutral, and nondiscriminatory appointment system in misdemeanor cases. The misdemeanor courts must examine their appointment methods and implement a system that demonstrates that appointments of counsel are made in a fair, neutral, and nondiscriminatory manner.

**Requirement 6: Promulgate standard attorney fee schedule and payment process.**

**Recommendation 9:** Under Article 26.05(c) all payments for indigent defense services must be approved by the judge presiding over the proceedings. El Paso County must implement procedures so that any differences between voucher totals and amounts paid to attorneys are approved by the judge presiding over the proceedings.

**Requirement 7: Statutory data reporting.**

**Recommendation 10:** The auditor's procedures for reporting the number of assigned counsel cases paid must be amended to accurately reflect the number of cases in which attorneys were paid.

**Recommendation 11:** Public defender personnel expenses must be properly categorized on the IDER.

**Conclusion**

The monitor appreciated the professionalism and assistance provided by El Paso County officials and staff. El Paso County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, we will monitor the County's transition and adjustments to the Commission's findings.

## Appendix A - Summary of Indigent Defense Statistics

A summary of indigent defense statistics, which were submitted by the County to the Commission and to the Office of Court Administration (OCA), is shown below. The table shows appointment rates for the court systems as well as respective expenditure data.

**Table 1: Indigent Defense Statistics for El Paso County**

El Paso County	2001 Baseline	2010	2011	2012	2013	Texas 2013
Population Estimate	688,263	800,647	800,647	829,889	841,525	26,251,278
Felony Cases Paid		5,999	6,626	5,653	6,699	192,045
Felony Cases Added		5,754	9,890	10,137	9,723	272,990
Felony Appointment Rate		104.3%	67.0%	55.8%	68.9%	70.4%
Felony Attorney Fees		\$1,609,065	\$1,784,312	\$1,503,148	\$2,268,487	\$96,567,898
Total Felony Expenditures		\$1,913,876	\$2,203,796	\$1,800,704	\$2,727,007	\$109,898,236
Misdemeanor Cases Paid		7,979	8,528	8,587	9,373	228,357
Misdemeanor Cases Added		14,174	14,290	15,265	14,570	549,030
Misdemeanor Appointment Rate		56.3%	59.7%	56.3%	64.3%	41.6%
Misdemeanor Attorney Fees		\$960,016	\$1,000,083	\$1,079,415	\$1,280,113	\$36,880,978
Total Misdemeanor Expenditures		\$1,005,818	\$1,048,122	\$1,138,626	\$1,372,194	\$37,705,538
Juvenile Cases Paid		2,610	3,333	3,140	3,028	48,114
Juvenile Cases Added		1,079	1,704	1,524	1,449	33,504
Juvenile Attorney Fees		\$192,620	\$211,219	\$190,905	\$208,526	\$10,468,296
Total Juvenile Expenditures		\$231,390	\$235,879	\$210,710	\$228,050	\$11,196,726
Total Attorney Fees	\$1,519,873	\$2,876,435	\$3,126,614	\$2,950,366	\$3,909,173	\$149,496,691
Total ID Expenditures	\$4,152,669	\$8,696,254	\$9,223,890	\$9,110,426	\$10,957,190	\$217,068,685
Total ID Expenditures per Population	\$6.03	\$10.86	\$11.52	\$10.98	\$13.02	\$8.27
Formula-Based Grant Disbursements		\$1,188,439	\$1,081,414	\$832,614	\$737,851	\$19,883,998
Recoupment of Fees from Defendants		\$199,898	\$201,228	\$164,895	\$163,892	\$12,321,042

\*In 2013 El Paso County also received a discretionary grant in the amount of \$45,296 for a problem-solving attorney in the public defender's office.

**Appendix B – Letter from Commissioner Vincent Perez**



## COUNTY OF EL PASO

VINCENT PEREZ  
County Commissioner, Pct. 3  
County of El Paso, Texas

March 24, 2014

Jim Bethke  
Executive Director  
Texas Indigent Defense Commission  
209 West 14th Street, Room 202  
Austin, Texas 78701

Dear Mr. Bethke:

For the past six months, my office has examined various aspects of El Paso County's indigent defense system, including (1) the process for appointing private attorneys to represent indigent defendants, (2) the distribution of indigent defense funding among all private bar appointees in the county during fiscal years 2011 – 2013, (3) caseload distribution of indigent defense appointments to private attorneys, (4) the timing of counsel appointments for adults, and other issues. Based on my office's review of these and other matters, I am concerned that the appointment of private attorneys, and the allocation of taxpayer funds for compensation of indigent defense services, is not reflective of a process that is fair, neutral, and non-discriminatory.

I am respectfully requesting Texas Indigent Defense Commission's assistance and ask that you conduct a thorough policy monitor review of El Paso County's indigent defense system to ensure our county's full compliance with the Texas Fair Defense Act. I hope that TIDC can conduct an assessment similar in scope to the review conducted in Bexar County in 2010.

Based on my office's review of financial and caseload data for indigent defense, there appears to be significant disparities in the distribution of cases and legal fee payments, where a small minority of attorneys received 40 – 50 percent indigent defense appointments and funding. According to financial data collected by my office based on fiscal years 2011 – 2013, 33 out of 326 (10 percent) attorneys earned more than \$7 million (or 50 percent) out of \$14 million in attorney's fees paid during this period. This figure includes all case types including child welfare, civil, mental health, in addition to criminal cases.

Based on criminal cases only, the distribution of appointments appears to exceed TIDC rules. For misdemeanor case appointments in fiscal year 2013, out of 203 attorneys appointed, 20 (10 percent) received approximately 49 percent of cases. For felony case appointments, out of 202 attorneys appointed, 20 (10 percent) received approximately 41 percent of cases. From my review of your 2010 Bexar County report, the top 10 percent of misdemeanor and felony attorneys appointed in 2009 received 32 percent of cases respectively, more than three times their representative share.

*Page 1 of 3*

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COUNTY COURTHOUSE • 500 E. SAN ANTONIO SUITE 301 • EL PASO, TX 79901 • (915) 546-2144 • FAX (915) 543-3809



It is my understanding that TIDC presumes a county to be in "substantial compliance" with established TIDC rules if "in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10 percent of recipient attorneys does *not exceed three times their respective share.*"

Based on financial data provided to my office by the County Auditor's Office, out of the 300 private attorneys appointed to misdemeanor and felony cases in fiscal years 2011 – 2013, the top 30 attorneys received \$5,113,135 out of the \$9,824,771 spent during this period. *This equates to 52% of indigent defense funding that was allocated to the top 10 percent of attorneys and an average of \$170,437 for the 30 attorneys in this group.*

It is important to note that my office encountered significant difficulties in obtaining data regarding the number of case appointments currently pending and ongoing. I also encountered difficulty obtaining accurate and reliable information pertaining to the list of attorneys on El Paso County's felony and misdemeanor wheels because of various issues regarding their maintenance and inconsistent use by many courts. Thus, our research is based on financial records available through the County Auditor's Office, analyzing attorney vouchers, unique case identification numbers, and approximate totals of case assignments per attorney provided by their office at my request.

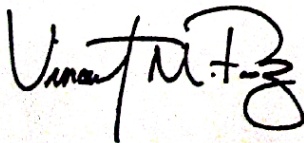
In addition to these issues, I also have many concerns regarding the timely appointment of counsel for indigent defendants. Based on my initial review of local practices and procedures, I believe there is little oversight to ensure that appointed attorneys are meeting with clients within the statutorily required timeframes for misdemeanor and felony cases. My office has encountered significant difficulty in obtaining information and data that demonstrates accountability measures are in place to ensure timely appointment of counsel. My office is continuing to work on this and many other aspects of our county's indigent defense system.

In the time my office began our examination of El Paso County's indigent defense practices, the judiciary has since initiated some efforts to examine their policies, practices, and procedures to determine whether additional reforms are necessary to fully comply with the Fair Defense Act. While I am encouraged by these initial steps toward reform, I believe your commission's review will greatly help the judiciary and the El Paso County Commissioners Court to implement best practices in indigent defense.

Your assistance and attention to these critical matters are greatly appreciated. With your commission's impressive record for providing invaluable compliance analysis, guidance, and recommendations to Texas counties, I look forward to your input to help strengthen our county's indigent defense practices. I appreciate your commission's efforts to assist Texas counties in providing the best indigent defense practices and services possible with the greatest degree of transparency and accountability.

My office is readily available to assist in any manner possible. If you have any questions, please feel free to contact me at 915-546-2144 or [perezv@epcounty.com](mailto:perezv@epcounty.com).

Respectfully,



Vincent M. Perez  
County Commissioner, Precinct 3  
County of El Paso

Page 2 of 3

**Attachments:**

- A: FY13 misdemeanor caseload estimates by attorney, based on voucher data*
- A: FY13 felony caseload estimates by attorney, based on voucher data*
- B: Analysis of FY 13 caseload distribution*
- C: FY11 – FY13 attorney earnings for criminal cases only (ranked by highest to lowest)*
- D: Analysis of FY11 – FY13 allocation of legal fees for criminal cases only*
- E: FY11 – FY13 attorney earnings for all case types (ranked highest to lowest)*
- F: Analysis FY11 – FY13 attorney earnings for all case types (ranked highest to lowest)*
- G: FY13 attorney, investigator, and expert earnings (listed and ranked by court)*

## Appendix C - Notification for Arrestees to Meet with Screening Departments

Council of Judges Administration  
Felony Indigent Defense Certification Program  
601 E. Overland  
**FIRST FLOOR OF THE JAIL**  
El Paso, TX 79901  
(915) 543-3839  
(Carmen , ~~Jazmin~~, Liz or Maribel)

In order to process your application and qualify you for legal representation, you must obtain the following documentation and bring it with you on your verification date with the caseworker.

1. Copy of court order
2. Tax return (last year).
3. Rent receipt/ mortgage coupon/appraisal certificate (El Paso Central Appraisal District). If you live in the home of a relative or another person, bring a handwritten, notarized letter from that person indicating that you live at that address, and stating how much you contribute to the household; it must also indicate whether or not they can hire an attorney for you.
4. Your valid driver's license, picture school ID, passport/residence card.
5. Award letter for food stamps, AFDC/TANF.
6. If EMPLOYED: Your last two check stubs and spouses check stubs. If recently employed: Bring a letter from your employer on company letterhead or a notarized letter verifying place of employment, address and phone number, how long you have been employed, your hourly rate of pay, and the average number of hours worked weekly.
7. Proof of that you are paying/receiving child support.
8. Proof of car payment.
9. Proof of payment for daycare/childcare.
10. Proof of extensive medical bills (receipts)
11. If you have a checking or savings account, bring your prior monthly statement showing your account number and actual balance.

Your verification date is scheduled for \_\_\_\_\_,  
20\_\_ at \_\_\_\_\_ AM/PM. Failure to keep your appointment will subject you to a mandatory appearance before the court to explain your failure to comply with these requirements.

NOTE: No children allowed on your verification date.  
Appropriate dress is required at all court hearings.





CASEWORKER \_\_\_\_\_

**COUNTY COURT ADMINISTRATOR  
EL PASO COUNTY COURTHOUSE  
500 E. SAN ANTONIO, ROOM 302  
EL PASO, TEXAS 79901  
(915) 546-2093 / (915) 546-2192 FAX**

IN ORDER TO PROCESS YOUR APPLICATION AND QUALIFY YOU FOR LEGAL REPRESENTATION, YOU MUST OBTAIN THE FOLLOWING DOCUMENTATION AND BRING IT WITH YOU ON YOUR VERIFICATION DATE WITH THE COURT ADMINISTRATOR.

1. RETURN WITH YOUR COURT ORDER
2. LAST YEARS TAX RETURN (ALL TAX FORMS AND W-2'S)
3. **PROOF OF RESIDENCY:**
  - A. PROOF OF RENT PAYMENT / MORTGAGE PAYMENT / PROPERTY TAXES
  - B. UTILITY BILL (WATER, GAS, ETC.) UNDER YOUR NAME
  - C. IF YOU LIVE IN THE HOME OF A RELATIVE OR ANOTHER PERSON, BRING A **NOTARIZED LETTER FROM THAT PERSON** INDICATING YOU LIVE AT THAT ADDRESS, THE LENGTH OF TIME LIVING AT THAT ADDRESS, AND STATING HOW MUCH MONEY YOU CONTRIBUTE TO THE HOUSEHOLD.
4. YOUR VALID DRIVERS LICENSE OR PICTURE SCHOOL ID OR PASSPORT/RESIDENCE CARD
5. AWARD LETTER FOR FOOD STAMPS, AFDC / TANF AND MEDICAID
6. **IF UNEMPLOYED:**  
PROOF OF REGISTRATION WITH THE TEXAS WORKFORCE COMMISSION AND IF RECEIVING UNEMPLOYMENT BENEFITS, BRING **TWO (2)** RECENT PAY STUBS
7. **IF EMPLOYED:**
  - A. YOUR RECENT **TWO (2)** CHECK STUBS & SPOUSES CHECK STUBS
  - B. RECENT L.E.S. PAY STUBS (MILITARY SERVICE)
  - C. IF RECENTLY EMPLOYED:  
BRING A LETTER FROM YOUR EMPLOYER ON COMPANY LETTERHEAD, OR A **NOTARIZED LETTER** VERIFYING PLACE OF EMPLOYMENT, ADDRESS AND PHONE NUMBER. HOW LONG YOU HAVE BEEN EMPLOYED, AND GIVE YOUR HOURLY RATE AND THE HOURS WORKED WEEKLY WITH YOUR AVERAGE NET PAY.
8. PROOF OF RECEIVING OR PAYING CHILD SUPPORT
9. PROOF OF RECENT CAR PAYMENT RECEIPT
10. PROOF OF PAYMENT FOR CHILDCARE / DAYCARE
11. PROOF OF EXTENSIVE MEDICAL BILLS (RECEIPTS)
12. IF YOU HAVE A CHECKING OR SAVINGS ACCOUNT, BRING YOUR PRIOR MONTHLY STATEMENT SHOWING YOUR ACCOUNT NUMBER AND ACTUAL BALANCE

YOUR VERIFICATION DATE IS SCHEDULED FOR \_\_\_\_\_, 20\_\_\_\_.  
AT \_\_\_\_\_ AM/PM. IT IS VERY IMPORTANT THAT YOU KEEP YOUR APPOINTMENT SO THAT THE COURT WILL KNOW PRIOR TO YOUR COURT DATE IF YOU QUALIFY FOR COURT APPOINTED COUNSEL. FAILURE TO KEEP YOUR APPOINTMENT WILL SUBJECT YOU TO A MANDATORY APPEARANCE BEFORE THE COURT TO EXPLAIN YOUR FAILURE TO COMPLY WITH THESE REQUIREMENTS.

**IF YOU QUALIFY FOR COURT APPOINTED COUNSEL, YOU MAY BE REQUIRED TO REIMBURSE THE COUNTY FOR ATTORNEY FEES AND OTHER COSTS.**

\_\_\_\_\_  
DEFENDANT'S SIGNATURE / DATE

**NOTE: NO CHILDREN ALLOWED ON YOUR VERIFICATION DATE OR ON YOUR COURT DATE.**

**NO TANK TOPS, T-SHIRTS, SPORT JERSEYS, SLEEVELESS TOPS, MID-RIF BLOUSES, SHORTS, SWEATPANTS, JEANS WITH HOLES OR PATCHES OR SANDALS.**

**APPROPRIATE DRESS IS REQUIRED AT ALL COURT HEARINGS.**

## Appendix D – Appointed Caseloads for Assigned Counsel Attorneys in El Paso County

(based on cases paid in FY13)

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
CESAR LOZANO	61	283	22		1.22	\$88,400
MATTHEW R. DEKOATZ	87	27		14	1.21	\$104,101
GARY B. WEISER	12	403			1.09	\$67,313
DANIELA MARIE CHISOLM	69	165			0.87	\$47,966
OMAR CARMONA	28	231	19		0.86	\$71,988
JOSHUA HERRERA	46	144	32		0.83	\$59,671
DANNY RAZO	71	38	36		0.75	\$70,370
HENRY L. CHISOLM, JR.	23	140	30		0.65	\$39,038
DANIEL AVELAR	54	75			0.55	\$51,426
RUBEN NUNEZ-	61	8	22		0.54	\$77,945
JAMES WALKER	50	76			0.52	\$89,104
JOSHUA C. SPENCER	42	34	30		0.52	\$97,531
CHRISTOPHER MILLER	55	56			0.51	\$27,909
JORGE HERRERA	68	22			0.51	\$87,333
DANIEL ROBLEDO	46	77			0.50	\$61,530
MANUEL PARRA	42	88			0.50	\$92,036
PHILIP E KENRICK	61	38			0.50	\$45,730
FRANK S. TRIANA	47	69			0.49	\$79,275
GEORGE AL-HANNA SALAH	54	46			0.48	\$66,081
ROLAND MONTEROS	45	18	18	1	0.48	\$81,639
STUART LEEDS	44	76			0.48	\$32,179
FRANCISCO F MACIAS	40	37		2	0.44	\$173,301
JORGE L. RIVAS, JR	42	22	19		0.43	\$39,047
WILLIAM W. NAVIDOMSKIS	31	88			0.43	\$29,778
LUZ SANDOVAL WALKER	11	125			0.39	\$29,288
FRANK J GUZMAN	46	29			0.38	\$26,697
THOMAS S HUGHES	54	9			0.38	\$85,321
GABRIEL BOMBARA		148			0.37	\$21,209
RYAN KERR	28	74			0.37	\$26,397
THOMAS W. BRADY	46	27			0.37	\$38,685

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
JOHN GRANBERG	12	42	32		0.35	\$27,706
LINDA NOELLE ESTRADA	24	76			0.35	\$22,889
JEFF ALLDER	18	88			0.34	\$22,708
M. ENRIQUE MARTIN	9	111			0.34	\$29,167
YVONNE ROSALES	26	64			0.33	\$22,585
FERNANDO CHACON	34	21		1	0.32	\$44,785
JAIME A. VILLALOBOS-	42	14			0.32	\$39,389
IGNACIO ESTRADA	32	38			0.31	\$22,132
RUTH REYES	10	36	31		0.31	\$27,682
VICTOR R. PARRA	42	9			0.30	\$57,478
ALFREDO CHAVEZ	38	13			0.29	\$16,438
PATRICK A. LARA	31	2		2	0.29	\$56,599
LEONARD MORALES	35	18			0.28	\$78,307
CHRISTOPHER ANCHONDO	33	15			0.26	\$43,093
DERECK WYATT	31	20			0.26	\$19,135
BILL D HICKS	27	23			0.24	\$19,570
RAY GUTIERREZ	10	21	24		0.24	\$16,009
VERONICA TERESA LERMA	18	19	14		0.24	\$53,279
ALYSSA G. PEREZ	1	89			0.23	\$13,815
BRANDON LETTUNICH	22	35			0.23	\$17,137
CAREY ANTWINE	15	52			0.23	\$18,180
J. SCOTT STEINBERGER	9	66			0.23	\$12,383
RUBEN MORALES	9	8	22	1	0.23	\$34,558
ANTONIO REYES	17	41			0.22	\$14,145
JEEP DARNELL	24	23			0.22	\$22,495
ARACELI SOLIS	13	2	24		0.21	\$17,970
CORI ANN HARBOUR-VALDEZ	15	22		1	0.20	\$10,765
LOUIS E LOPEZ-	9	7		3	0.20	\$45,435
ORLANDO JAVIER TORRES	21	25			0.20	\$16,888
THERESA CABALLERO	21	24			0.20	\$14,482
AMOS J. HALL	8	55			0.19	\$28,307
DANIEL ANCHONDO	25	11			0.19	\$31,508

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
GLEN SUTHERLAND	21	21			0.19	\$12,224
HECTOR BELTRAN	20	24			0.19	\$23,438
JOSE JUAN SALAYANDIA	8	56			0.19	\$11,550
BROCK BENJAMIN	12	38			0.18	\$23,018
TERESA R. BELTRAN	19	21			0.18	\$10,050
JOSEPH D VASQUEZ	21	13			0.17	\$95,646
LUIS YANEZ	19	19			0.17	\$24,556
MONIQUE VELARDE REYES	8	27	10		0.17	\$21,084
WILLIAM MCGLASHAN	18	18			0.17	\$6,552
ARTHUR V. WERGE	9	41			0.16	\$11,258
MARCO A. ARANDA	3	54			0.16	\$8,902
MAX MUNOZ	16	21			0.16	\$11,540
SHELDON A. MYERS	20	9			0.16	\$14,278
ANTONIO ERNESTO CASTILLO	4	51			0.15	\$10,806
JOHN L. WILLIAMS	10	18		1	0.15	\$28,691
LUIS E ISLAS	22	3			0.15	\$22,877
PAUL GAY	8	1	18		0.15	\$11,296
DANIEL S. GONZALEZ	16	13			0.14	\$10,534
DAVID A. BONILLA	8	33			0.14	\$10,431
DAVID RUTLEDGE	16	14			0.14	\$9,306
JOHN NEEDHAM	8	33			0.14	\$10,170
RICHARD A. OLIVO	12	24			0.14	\$12,103
ANGELINA LUGO	8	31			0.13	\$8,428
BEN IVEY	12	21			0.13	\$10,053
EDWARD HERNANDEZ	15	12			0.13	\$15,828
JESUS M. OLIVAS	12	21			0.13	\$14,440
MICHELLE PINON MORALES	1	19	16		0.13	\$12,283
NEIL SIEGEL	9	27			0.13	\$16,640
PAUL R. PINON	18	5			0.13	\$13,497
PEDRO MARTIN	8	32			0.13	\$9,407
ROBIN R. NORRIS, JR.	1			3	0.13	\$61,275
DOLPH QUIJANO	4	2	17		0.12	\$25,150
JOSE E. TROCHE	12	17			0.12	\$10,033

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
JUSTIN B. UNDERWOOD	10	22			0.12	\$9,286
PETER R. ESCOBAR	11	20			0.12	\$11,268
RAFAEL SALAS	10	21			0.12	\$19,583
ROSENDO TORRES	16	4			0.12	\$10,330
VICTOR FALVEY			24		0.12	\$10,500
RUBEN P. HERNANDEZ	8	21			0.11	\$11,004
THOMAS "RANDY" REY	4	32			0.11	\$6,870
VICTOR SALAS	9	19			0.11	\$12,753
VIVEK GROVER	7	24			0.11	\$5,273
JUSTO FERNANDEZ- GONZALEZ	8	3		1	0.10	\$12,243
LUIS C. LABRADO	3	31			0.10	\$9,593
ROBERT A. DURAN	10	15			0.10	\$9,926
CHRISTA B. BRADLEY	8	13			0.09	\$5,961
ISRAEL PARRA	3	27			0.09	\$6,553
MIGUEL J. CERVANTES	8	16			0.09	\$13,057
CARLOS GERARD MADRID	5	10	4		0.08	\$7,489
CHRISTOPHER C. SHANE	4	22			0.08	\$14,421
EDUARDO SOLIS	1	13		1	0.08	\$7,624
FELIX SALDIVAR	4	23			0.08	\$6,085
JAMES R. REY	9	6			0.08	\$9,712
LUIS GUTIERREZ	4	2	9		0.08	\$8,268
MICHAEL PAUL MOFFEIT		30			0.08	\$5,538
ORLANDO MONDRAGON	3	22			0.08	\$4,555
RODRIGO V. RAMOS	4	22			0.08	\$5,957
SERGIO A SALDIVAR	7	13			0.08	\$6,288
HENRY AGUIRRE	2	22			0.07	\$5,248
JOE A SPENCER	10				0.07	\$67,114
ROGER A. MONTOYA	2	21			0.07	\$6,538
SCOTT FOSTER	4	16			0.07	\$3,994
VICTOR SERRANO	4	17			0.07	\$4,773
ANTHONY I GONZALES	8	2			0.06	\$5,035

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
BOBBIE MARIE GUERRA	4	15			0.06	\$6,724
CARLOS M. QUINONEZ	3	15			0.06	\$4,347
CARLOS SPECTOR	3	16			0.06	\$3,163
ENRIQUE LOPEZ	3	15			0.06	\$3,580
GABRIEL PEREZ	6	8			0.06	\$7,217
RANDOLPH ORTEGA	4	14			0.06	\$5,228
RICARDO D. GONZALEZ	4	12			0.06	\$17,248
RICHARD D. ESPER	9				0.06	\$7,038
ABELARDO PEREZ BERNAL JR	6	5			0.05	\$8,077
ALEX A. MELENDEZ	6	2			0.05	\$4,975
DELIA V. LONGORIA	6	3			0.05	\$4,880
FREDRICK MANDELL	1	19			0.05	\$4,264
GREGORY C ANDERSON	8				0.05	\$27,278
JAMES LUCAS	2			1	0.05	\$2,734
JOSE A GUERRA	1	17			0.05	\$4,155
RUBEN ORTIZ	2	15			0.05	\$4,216
SERGIO CORONADO	2	16			0.05	\$3,858
CHARLES WESLEY SKINNER		14			0.04	\$3,510
DAVID HILLES	6				0.04	\$1,678
JIM DARNELL	5	3			0.04	\$6,245
JOSEPH PERRY PINON	3	8			0.04	\$5,129
LISA ACEVES HAYES	2	9			0.04	\$3,023
MARIO GONZALEZ				1	0.04	\$4,205
PAUL F. GRAJEDA	6				0.04	\$30,547
PAUL JOSEPH ESCOBAR	5	1			0.04	\$6,066
RICHARD JEWKES	6				0.04	\$1,857
ROBERT HARRIS	6	1			0.04	\$2,969
SERGIO GONZALEZ	3	8			0.04	\$3,886
STEPHEN G. PETERS	5	1			0.04	\$4,527
TRISTAN NICOLAS BOUILLY		17			0.04	\$2,255
WILLIAM ELLIS	6				0.04	\$2,040
ADAN VALDEZ		11			0.03	\$2,495

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
CAROL V. CORNWALL	3	5			0.03	\$2,551
CLAUDIO FLORES	4	2			0.03	\$1,204
DANNY MENA	5				0.03	\$4,386
DAVID ESCOBAR	2	5			0.03	\$2,283
DAVID H. CAVAZOS,IV	3	5			0.03	\$1,416
DAVIDSON H SMITH	4				0.03	\$1,890
ERICA P. RIOS	2	5			0.03	\$3,078
GINA M. PALAFOX	1	8			0.03	\$3,428
ISMAEL PEASE		13			0.03	\$1,785
JENARO F. WELSH	2	5			0.03	\$2,328
JOE ROSALES	3	4			0.03	\$2,399
JOSE MONTES, JR.	4				0.03	\$8,532
LYDA NESS-GARCIA	2	6			0.03	\$2,995
MARC ROSALES	4	2			0.03	\$2,020
MARCELO A RIVERA	1	10			0.03	\$2,742
MARIO ORTIZ		13			0.03	\$2,475
THOMAS D. CARTER IV	4				0.03	\$1,343
ANGELICA B. CAREEON-BELTRAN		7			0.02	\$2,717
EVELYN ESPINOZA		6			0.02	\$855
JASON J. LEMPKE	3	1			0.02	\$911
JENNIFER CABALLERO		8			0.02	\$820
NORA M. ARTALEJO	3				0.02	\$4,553
REBECCA R. REYES	2	4			0.02	\$827
ROBERTO L. SANCHEZ	2	1			0.02	\$1,326
SANTIAGO HERNANDEZ	2	2			0.02	\$1,329
SAUL ANAYA		8			0.02	\$2,524
A. MARCELO RIVERA		2			0.01	\$420
AL WEISENBERGER-		4			0.01	\$560
BLAKE W. BARROW	2				0.01	\$2,627
CELIA A. VILLASENOR		5			0.01	\$725
DAVID BIAGAS		2			0.01	\$255
DAVID NEVAREZ		2			0.01	\$578
DON W MINTON	2				0.01	\$1,408

Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
EDUARDO VASQUEZ	1	1			0.01	\$469
ENRIQUE RAMIREZ	1				0.01	\$1,848
FRANK HART		4			0.01	\$610
JAIME OLIVAS	1				0.01	\$27,144
JEFF D. RAGO	2				0.01	\$2,080
JEFFREY WAREN		2			0.01	\$330
JOE BLANCO	1				0.01	\$686
JONATHAN H. HUERTA		2			0.01	\$330
MARCO A. SANDOVAL	1				0.01	\$497
MARIA I. HERNANDEZ	1				0.01	\$1,500
MICHAEL BLAKE	1				0.01	\$686
MIGUEL A. VILLALBA	1				0.01	\$1,564
NANCY CASAS	1	3			0.01	\$270
NORBERTO FLORES	0	2			0.01	\$1,310
RAY VELARDE		2			0.01	\$230
REGINA ARDITTI, JUDGE		2			0.01	\$1,310
RENE LUJAN, DEAN L. DAVIDSON	1				0.01	\$977
RICHARD E. MATTERDORFF	2				0.01	\$1,080
ROBERT J. PEREZ	2				0.01	\$1,820
ROBERT J. POISSANT-	1				0.01	\$499
ROBERT RIOJAS	1	1			0.01	\$1,298
SALVADOR RAMIREZ		2			0.01	\$330
WILLIAM R COPELAND	1				0.01	\$327
WOODROW BEAN III		2			0.01	\$320
YVONNE RODRIGUEZ		4			0.01	\$1,894
BRUCE J PONDER		1			0.00	\$115
HUMBERTO S. ENRIQUEZ		1			0.00	\$165
JAMES K. JOPLING		1			0.00	\$165
JOSE JUAREZ		1			0.00	\$1,558
JOSEPH MOODY		1			0.00	\$165
FRED O. HAIMAN		1			0.00	\$668



Attorney	Felony Cases (including capital murder)	Misdemeanor Cases	Juvenile Cases	Appeals	Number of NAC Attorneys Required	Total Payments
OSCAR ARNULFO LARA		1			0.00	\$165
RICHARD CONTRERAS		1			0.00	\$115
ROBERTO SANDOVAL		1			0.00	\$165

## Appendix E – Appointed Caseloads for Public Defender Attorneys in El Paso County<sup>69</sup>

Public Defender Attorney	Felony Cases	Misdemeanor Cases	Jail Plea Cases <sup>70</sup>	Drug Court Cases	Juvenile Cases	Appeals / Writs	Number of NAC Attorneys Required	Total Cases not Considered in NAC Analysis
GERALD GEORGES	298	73				1	2.21	0
JULIA MARTIN	251	40				1	1.81	0
JERRY F. McLAIN					348		1.74	1080
RAFAEL C. MORALES	197	65				3	1.60	0
FELIX CASTANON	225	21					1.55	0
ERIC WILLARD	216	26					1.51	0
EDY PAYAN	196	23	25			1	1.47	2
DAVE CONTRERAS	200	50					1.46	0
NICOLE MAESSE	172	43	67				1.42	327
GREG VELASQUEZ	173	29	3				1.23	0
REBECCA TAVITAS	165	11	28				1.20	137
ELIZABETH SANCHEZ					235		1.18	711
KATHLEEN SULLIVAN	149	16		30			1.18	0
JO ANN JACINTO	164	7					1.11	0
DANIEL MARQUEZ	141	13				3	1.09	0
JAY L. NYE	8	80		163			1.07	87
DEBORAH MCCLEOD	153	13					1.05	0
JOHN T. GARCIA	148	7					1.00	0
RALPH GARCIA	24	271	60	2			1.00	137
ROBERT STORCH	69	157	40	10			1.00	92

<sup>69</sup> This is based on FY13 cases reported by the public defender. For this analysis, jail plea cases were all given a misdemeanor weight (maximum of 400 cases per year). Drug court cases were considered as mental health cases (maximum of 200 cases per year). Writs were given the same weight as appeals (maximum of 25 cases per year). Cases not included in the NAC analysis included representation of defendants at Article 15.17 hearings where defendants did not enter a guilty plea, juvenile detention hearings, juvenile review hearings, SHOWCAP cases, BES cases, and child support cases.

<sup>70</sup> These are DIMS cases in which misdemeanor defendants enter a plea at the Article 15.17 hearing.

Public Defender Attorney	Felony Cases	Misdemeanor Cases	Jail Plea Cases	Drug Court Cases	Juvenile Cases	Appeals / Writs	Number of NAC Attorneys Required	Total Cases not Considered in NAC Analysis
EVI M. LIVONA	121	36	25				0.96	79
ROBERT L. RILEY	127	28					0.92	0
CLAUDIA OCHOA	115	21	26				0.88	216
RICK F. HUFFMAN	27	252				1	0.85	0
BRUCE J. PONDER	19	186	38			1	0.73	3
JEANNETTE JIMENEZ				107			0.64	24
NICOLE BOMBARA	37	5	34				0.34	167
JAIME E. GANDARA	37	11	4				0.28	19
PENNY ANDERSEN	1					6	0.25	0
WES W. NAVIDOMSKIS	19	28				1	0.24	0
ALISSA PEREZ	29	1			1		0.20	4
WILLIAM R. COX	1				24		0.13	84
JANET BURNET	2		1			1	0.06	0
MAYA QUEVEDO			16				0.04	3
CAROLE J. POWELL	1						0.01	0
PHILLIP E. KENDRICK	1						0.01	0
GUADALUPE LOPEZ							0	570
YAJAIRA HALM							0	2

## Appendix F – Responses from Questionnaires to Felony and Misdemeanor Court Coordinators

### 1. When a defendant comes to court without counsel, what do you or the judge do?

<p>1<sup>st</sup>, make sure indigency interviews them and if they qualify we appoint an attorney that is next on our list</p>
<p>The judge will bring the defendant up to the bench and ask if he/she has an attorney. At that point, the Defendant will state that he does or does not. If the defendant claims he cannot afford one, then we have him interviewed by the court administration officers or the judge interviews the defendant from the bench to see if he qualifies for a court appointed attorney. If the defendant does not qualify, then s/he is given a week or two to hire an attorney and the hearing is rescheduled. If the defendant does qualify, an attorney is appointed immediately.</p>
<p>An application for indigency is requested. We also ask Defendant if he/she intends to hire counsel.</p>
<p>We see if he qualifies for counsel and if he does, we appoint a lawyer. If he doesn't qualify, which is rare for defendants from this community arriving in court for the first setting without a lawyer, the defendant gets a "defendant to hire attorney" setting.</p>
<p>The Court asks the Defendant if they have retained Counsel. If the Defendant's answer is "NO", then the Staff will call the clerks from Indigency to come and interview that person to see if they qualify for a Court-Appointed attorney.</p>
<p>Call on the girls to see if the defendant qualifies. If qualifies the Judge will appoint an attorney. If not, then the defendant is given a week or two to hire an attorney.</p>
<p>Have him interviewed by indigent case workers to see if he qualifies for court appointed counsel.</p>
<p>It depends on the circumstances.</p>
<p>IF DEFENDANT WANTS TO APPLY FOR COURT APPOINTED ATTORNEY, DEFENDANT IS REFERRED TO COURT ADMINISTRATION CASEWORKER (ON SITE) TO APPLY FOR COURT APPOINTED ATTORNEY. ONCE THE APPLICATION IS TAKEN, JUDGE ANGIE JUAREZ BARILL WILL APPOINT IF DEFENDANT QUALIFIES. IF THE DEFENDANT DOES NOT QUALIFY, JUDGE BARILL WILL NOTIFY DEFENDANT THAT HE/SHE NEEDS TO HIRE AN ATTORNEY AND EITHER GIVE THEM MORE TIME TO HIRE AN ATTORNEY OR SCHEDULE THEM TO APPLY AGAIN ON NEXT COURT SETTING.</p>
<p>Indigent defense personnel take the applicant. If they qualify, we appoint from our list of attorneys that have asked to do work in our court. If they don't qualify, they are given one week to come back with a retained attorney.</p>
<p>I first ask if they have an appointed attorney or if they wish to apply for a court appointed attorney. If they choose a court appointed attorney, I call indigent so the defendant could be interviewed.</p>

I call indigent defense to take the application
The defendant is sent to speak to an indigent defense caseworker to see if he qualifies for appointed counsel.
At arraignment, we ask if they are going to hire an attorney or wish to apply for a court appointed attorney. If they wish to apply for an attorney, they can do so at that time. If they wish to hire an attorney, they are re-scheduled to allow them time to retain an attorney.
Defendant is asked if he/she will hire attorney, wants to apply for court appointed attorney or may proceed on their own pro se. If hiring an attorney, the defendant is reset to return with counsel at next hearing. If defendant wants to apply for attorney, an application is taken immediately by Court Administration case worker, defendant is required to complete application on same day if possible. If cannot bring in required documents, then the defendant is reset to return.
Judge admonishes the defendant about their right to an attorney and the dangers of self representation then she will ask the defendant if they are going to apply for a court appointed attorney or do they plan to hire an attorney.
THE DEFENDANT WILL GO BEFORE THE JUDGE TO BE ADMONISHED AND DEPENDING WHAT THE DEFENDANT WISHES TO DO, EITHER APPLY FOR COURT APPOINTED ATTORNEY OR GIVE THE DEFENDANT SOME TIME TO HIRE HIS/HER OWN ATTORNEY.
Judge will admonish the defendant. Defendant will be reset either to bring in paperwork to court administration or hire counsel.
IF DEFENDANT WANTS TO APPLY FOR COURT APPOINTED ATTORNEY, DEFENDANT IS REFERRED TO COURT ADMINISTRATION CASEWORKER (ON SITE) TO APPLY FOR COURT APPOINTED ATTORNEY. ONCE THE APPLICATION IS TAKEN, JUDGE JESUS HERRERA WILL TALK TO THEM AND EITHER GIVE THEM MORE TIME TO COMPLETE THE APPLICATION OR MORE TIME TO HIRE AN ATTORNEY. IF JUDGE HERRERA FEELS THAT THEY QUALIFY BASED ON THE CONVERSATION WITH DEFENDANT, THEN HE WILL APPOINT AT THAT TIME.

**2. For how many settings do you typically allow a defendant to appear without counsel before putting him/her on the trial docket pro se?**

3 for pro se, but I give trial settings for all cases at arraignment
1-2 settings and only in situation where the individual did not qualify for court appointed counsel
Twice for arraignment; no Defendant is set for trial without counsel
Usually no more than two. We have had one extreme based on a defendant's continued insistence and representations that he was about to come into some money to hire a particular attorney of his choice. In the end, he was appointed an attorney with an admonishment that he could bring in his own lawyer into the case if he came into funds to pay for one, and that if his case did not result in a dismissal or acquittal, he would be required to reimburse the county for his court appointed lawyer.
N/A
None. At the first hearing, he or she is placed on the trial docket and again has to have either qualified for an attorney or has to hire one.
Defendants are NEVER allowed to proceed pro se. They are given at least one reset in attempt to obtain counsel. Otherwise, Judge will appoint depending on severity of case to an attorney of his choosing.
It depends on the circumstances.
<b>TYPICALLY, WE WILL ALLOW A DEFENDANT TO APPEAR WITHOUT COUNSEL TWICE.</b>
They get one week to come back with a retained attorney. They are never put on a pro se docket. We are a felony court.
If the defendant does not qualify for a court appointed attorney, I set it for a judge's conference two weeks after the arraignment. At the judge's conference I will ask them again if they have hired an attorney and if they say "no, I am working it out," I set it on the trial track which gives them three dates: a 28.01, Final Judge's Conference, and Trial setting all being about 4-6 weeks out of each other.
Possibly only one
3-4 settings
Two or three settings but still offered the opportunity to have a Public Defender sit as second chair at trial.
If the defendant is appearing pro se by choice and have had a pretrial and does not accept the recommendation for a plea or does not qualify for court appointed counsel that would be typically 2 appearances before a trial setting is given.
The defendants are given two setting to apply for a court appointed attorney or to hire an attorney.
<b>TWO COURT SETTINGS.</b>
One to two
<b>TYPICALLY, WE WILL RESET AN ARRAIGNMENT ONCE OR TWICE. IF DEFENDANT WANTS TO GO FORWARD AS PRO SE, HE SETS UP A FARETTA HEARING AND ADMONISHES THE DEFENDANT AT THAT TIME.</b>

**3. When County Court Administration or the Council of Judges have determined that a defendant with a case in your court is indigent, what do you do? (i.e. how do you assign an attorney to represent the person?)**

pull the next attorney on our appointment list
The judge will appoint an attorney. If the circumstance is occurring in the courtroom, an attorney believed to be qualified to handle the type of case who may be in the courtroom at that time will be appointed. When an application of court appointed counsel is forwarded by the Court Admin officers (outside of a court proceeding), the judge will appoint in her discretion an attorney qualified with the appropriate experience.
An application is sent to court notifying the Defendant has qualified. The Judge will appoint counsel from her active attorney list provided by COJ. Judge will appoint in court if scheduled for arraignment.
We follow the new rules that just went into effect and use the wheels. Before that, we would appoint off a list that was represented to us as being a “wheel” when the judge took office, or off a list of attorneys checking in the day of the hearing to announce their immediate availability. It was our impression that the “wheel” was used when defendants arrived in court with indigent-counsel and I had no clearly defined “wheel” to implement for defendants arriving to court for the first time, without representation.
A first come, first appointed attorney’s list is utilized for each arraignment day for indigent defendants.
Once qualified, the judge will appoint an attorney (whoever is in the courtroom)
All appointments are made by the Judge.
Once a defendant is determined to be indigent, the Council of Judges assigns an attorney.
THE COURT HAS TWO METHODS: IF THE COUNTY COURT ADMINISTRATION OR THE COUNCIL OF JUDGES LETS THE COURT KNOW AHEAD OF TIME, WE APPOINT FROM THE WHEEL. IF THE DEFENDANT QUALIFIES FOR APPOINTMENT THE DAY OF HIS/HER HEARING, WE WILL APPOINT ON THAT DAY BASED ON THE APPROPRIATE ATTORNEY FOR THE CASE.
Many defendants come with an attorney already assigned from court administration or the jail magistrate.
I wait until Council of Judges to bring the application to the court to determine if indeed the defendant is on probation or with a case pending. If so, then I give the application to the Judge so he can assign an attorney.
I give the application to the judge and she appoints.
Appoint counsel using the wheel or in court
An attorney is appointed from the wheel or at the judge’s discretion if time is of the essence.
If Court Administration or the Council of Judges have determined that a defendant is indigent, the court typically appoints the Public Defender Office.
We appoint through the attorney wheel unless the defendant has a court appointed attorney on other cases then we appoint the same attorney to avoid appointing two different attorneys.
WHEN A DEFENDANT IS INDIGENT, WE APPOINT AN ATTORNEY THROUGH THE WHEEL SYSTEM OR THE JUDGE WILL APPOINT AN ATTORNEY AT HIS DISCRETION.
Appoint counsel by the wheel or Judge’s discretion

IF THE DEFENDANT IS IN CUSTODY, WE APPOINT AN ATTORNEY AND SET IT FOR A HEARING AS SOON AS POSSIBLE AND NOTIFY THE ATTORNEY OF THE APPOINTMENT AND HEARING. IF IT'S A CASE THAT'S ON THE REGULAR DOCKET AND THEY ARE NOT IN CUSTODY, THE COURT WAITS UNTIL THE DATE OF THE HEARING TO APPOINT ATTORNEYS BASED ON WHO IS IN COURT ASKING FOR APPOINTMENTS. IF THERE ARE NONE AVAILABLE THE DAY OF THE HEARING, THEN THE JUDGE WILL APPOINT.



**4. When County Court Administration or the Council of Judges have determined that a defendant in your court is NOT indigent, what do you do?**

try to make sure they retain an attorney
The Judge will discuss with the defendant how long they need to hire an attorney. Typically the judge will give the defendant 1-2 weeks to seek counsel.
Defendant is given at least 2 weeks for another hearing and Defendant is notified that counsel must be present at next court hearing. Must hire private attorney.
See 1, 2 and 3, above. On borderline qualification cases, I was told it was up to the judge. My judge errs on the side of providing representation, particularly in cases where the defendant is in peril of probation incarceration or revocation.
The Court resets the hearing 2 or 3 times to allow the defendant to retain counsel.
Give the defendant a week or two to hire and is also placed on a trial docket. With our without attorney
They are given at least one reset to attempt to obtain counsel. Otherwise, Judge will appoint depending on severity of case to an attorney of his choosing.
It depends on the circumstances.
WE ATTEMPT TO WORK WITH THE DEFENDANT AS BEST AS POSSIBLE TO GIVE THEM TIME TO HIRE AN ATTORNEY OR GATHER MORE FINANCIAL INFORMATION TO EVALUATE THE DEFENDANT'S INDIGENT STATUS. THE COURT WILL RESCHEDULE THE HEARING FOR APPROXIMATELY 2 WEEKS. AT THAT POINT, THE DEFENDANT WILL BE REQUIRED TO REPORT TO THE COURT WHAT EFFORTS THEY HAVE MADE TO RETAIN AN ATTORNEY. IF THEY HAVE NOT DONE SO, THE COURT WILL GIVE THEM ANOTHER OPPORTUNITY TO HIRE AN ATTORNEY.
We set them for an arraignment. Then they are given one week to bring in a retained attorney.
After Council of Judges notifies them that they do not qualify, the court resets the hearing to allow them to hire an attorney.
The judge brings the defendant before the bench and orally asks who he is going to hire.
Defendant is asked what when he will be hiring, if so, the case is continued. If defendant wishes to represent himself, he is admonished by the court.
They are advised by the Judge of their ineligibility and given an opportunity to retain an attorney.
If it is determined that a defendant is Not indigent, then he/she asked if intends to hire counsel or proceed without one. If defendant intends to hire counsel, then a reset is allowed to return with counsel. If defendant wants to proceed without counsel, then they are arraigned and proceed to pretrial on same day.
Judge admonishes the defendant of the dangers of self representation and will reset the case one month to hire an attorney.
THE DEFENDANT WILL GO BEFORE THE JUDGE TO BE ADMONISHED AND WILL BE GIVEN AN OPPORTUNITY TO GO HIRE HIS/HER OWN ATTORNEY.
Judge will admonish the defendant. Defendant will be reset to hire counsel.
WE TRY OUR BEST TO GIVEM THEM TIME TO HIRE AN ATTORNEY. WE RESET CASES FOR ABOUT A MONTH OUT.

**5. In what instances does your court make in-court appointments from the wheel system (as opposed to appointments from the database of attorneys)?**

n/a – The court appoints.
In-court appointments occur immediately if a qualified attorney is present and available to accept a case on a court appointed basis. If a qualified attorney is not readily available, the judge will appoint from an attorney list as soon as practical after the hearing. The “wheel system” is not utilized.
For arraignments on Thursday afternoons. On substitution of counsel or withdrawals in court.
New rules just went into effect and so far, I am using the wheels.
The Court does not utilize the wheel. Please refer to Question No. 3 for the Court’s procedure
The Judge selects the attorney
All appointments are made by Judge.
It depends on the circumstances.
IF THERE ARE NO ATTORNEYS PRESENT OR AVAILABLE TO ASSIST AT THE TIME OF THE HEARING, THE COURT WILL MAKE IN-COURT APPOINTMENTS FROM THE WHEEL SYSTEM. IN ADDITION, AS MENTIONED ABOVE, IF THE COURT IS NOTIFIED IN ADVANCE THAT A DEFENDANT IS QUALIFIED FOR COURT APPOINTED ATTORNEY, THE COURT WILL SO APPOINT FROM THE WHEEL SYSTEM.
Never. The judge appoints.
I don’t use it.
To move the docket, most of the time
Not sure what the database of attorneys is.
Depending if the Defendant is incarcerated, resides out of El Paso County, if time is of the essence, or at the Judge’s discretion
Appointments from the wheel are done if defendant wishes to accept plea offer.
If the defendant qualified at least one day prior to his/her hearing date.
AS SOON AS THE COURT RECEIVES THE COURT APPOINTMENT-APPLICATIONS FROM THE CASE WORKER, HOWEVER, IF AT THE TIME OF THE COURT HEARING DAY, AN ATTORNEY IS UNAVAILABLE FROM THE WHEEL SYSTEM AND THE DEFENDANT IS REQUESTING THAT AN ATTORNEY BE APPOINTED IN COURT THAT DAY FOR SEVERAL REASONS: DEFENDANT INCARCERATED; DEFENDANT RESIDES OUT OF STATE OR JUDGE’S DISCRETION), THEN THE COURT WILL APPOINT FROM THE DATABASE.
In-court appointments are made if the defendant is incarcerated, resides in El Paso County and/or Judge’s discretion.
IF THERE ARE NO ATTORNEYS HERE LOOKING FOR WORK OR THERE AREN’T ANY ATTORNEYS AVAILABLE.

**6. Do attorneys come to your court to see if any in-court appointments are available?**

yes, on Friday mornings
Yes. Attorneys “sign up;” on the regularly scheduled Wednesday mornings when arraignments are held. Attorneys also provide contact information to the court coordinator when they are actively seeking court appointed cases.
Yes, on a weekly basis
Yes, all the time.
Please refer to Question No. 3 for the Court’s procedure.
Yes, they are given a date and time
Yes.
Sometimes.
YES, SOMETIMES WE HAVE ATTORNEY HERE ON OUR THURSDAYS WHO ASK IF THERE ARE ANY APPOINTMENTS AVAILABLE.
Yes, Every Thursday.
Yes.
Yes, all the time
At times
Yes
New attorneys come to our court and introduce themselves.
Yes
YES
Yes
YES. EVERY WEEK WE HAVE ATTORNEYS HERE ON OUR THURSDAY ARRAIGNMENT MORNING LOOKING FOR WORK.

**7. About what percent of in-court appointments are made from the wheel system (as opposed to appointments from the database of attorneys)?**

None. The court appoints.
None.
not certain
Right now, 100%. Before, see answer "3".
0
None from this court
Only appointments made off the wheel by Council of Judge's prior to indictment are accepted as such. All others are strictly referred to Judge for consideration and appointment.
I don't know.
APPROXIMATELY 50 PERCENT OF IN-COURT APPOINTMENTS ARE MADE FROM THE WHEEL SYSTEM.
Since our new system, Odyssey, I don't use the wheel.
The thing is here, the case flow is so massive that we need to move the cases, and on the stop appointing goes a lot faster than the wheel
Not sure what the database of attorneys is.
About 80% of appointments are made from the wheel.
10% of appointments are made from wheel system or database of attorneys as opposed to 90% of appointments given to Public Defender.
80 percent of appointment are from the attorney wheel, the other percentage of appointments are based on interest of justice such as language, appointed attorney no-show to court or the need of an attorney that is present in the courtroom.
APPROXIMATELY 75% APPOINTMENTS FROM THE WHEEL SYSTEM AND ABOUT APPROXIMATELY 25% FROM THE DATABASE OF ATTORNEYS.
Approximately 80%
THE COURT MAKES ABOUT 20% OF APPOINTMENTS FROM THE WHEEL.

## Appendix G – Payments and Caseloads to Indigent Defense Service Vendors

Vendor	Type of Expense	Number of Cases	Total Payments
ANN TRAN	EXPERT	1	\$1,054
ARTHUR RAMIREZ, M.D.	EXPERT	3	\$8,169
BETSY NACIM, LMSW-ACP	EXPERT	5	\$5,575
CHOICE INVESTIGATIONS &	INVESTIGATOR	1	\$400
CORI ANN HARBOUR-VALDEZ	OTHER EXPENSE	1	\$107
CYNTHIA D. RIVERA, M.D.	EXPERT	84	\$61,100
DEPARTMENT OF PSYCHIATRY	EXPERT	1	\$500
DESIGN RESEARCH ENGINEERING, LLC	EXPERT	1	\$10,000
EDWARD ESTRADA JR., INV.	INVESTIGATOR	11	\$4,898
FLYNN & ASSOCIATES, INC.	INVESTIGATOR	4	\$6,025
IGNACIO R. SANCHEZ, INV	INVESTIGATOR	12	\$4,253
JAMES W. SCHUTTE, PH.D	EXPERT	8	\$19,200
JASON DALE DUNHAM	EXPERT	278	\$216,060
JESUS DIAZ DE LEON	INVESTIGATOR	30	\$23,127
JOE A SPENCER	OTHER EXPENSE	1	\$614
KAREN GRIEST	EXPERT	1	\$3,500
KIMBERLY ANN BASINGER	EXPERT	1	\$500
LJ & ASSOCIATES	INVESTIGATOR	188	\$125,557
MARTIN GUERRERO, M.D.	EXPERT	1	\$1,750
MBI & ASSOCIATES LLC	INVESTIGATOR	3	\$3,069
MCCARTER& ASSOCIATES	INVESTIGATOR	1	\$281
MICHAEL J. SPENCE	EXPERT	2	\$1,080
MONICA OCHOA	EXPERT	1	\$630
NOAH K. KAUFMAN, PH.D	EXPERT	2	\$5,000
ORION SECURITY AND INVESTIGATIONS INC	INVESTIGATOR	1	\$4,030
PHILIP E KENRICK	INVESTIGATOR	1	\$250
PHILLIP JOSE MARIN	INVESTIGATOR	13	\$6,020
R L RUSS & ASSOCIATES, INC	EXPERT	1	\$4,125
RAMON ORTEGA	INVESTIGATOR	5	\$1,697
RICARDO ARGUELLES	EXPERT	1	\$375
ROGER M. ENOKA	EXPERT	1	\$4,750
ROSENDA SEPULVEDA CALDWELL	OTHER EXPENSE	1	\$1,398
ROY L. DAVIS	INVESTIGATOR	5	\$2,420
S.S. INVESTIGATIONS INC	INVESTIGATOR	7	\$2,550
TENET HOSPITALS LIMITED	EXPERT	1	\$252
TEXAS TECH UNIVERSITY	EXPERT	18	\$11,501
TNM ENGINEERING & ACCIDENT REC	EXPERT	1	\$3,748

<b>Vendor</b>	<b>Type of Expense</b>	<b>Number of Cases</b>	<b>Total Payments</b>
VINCENT GONZALES	EXPERT	3	\$11,575
WALTER R. ALLBERG, PH. D.	EXPERT	18	\$9,360
WILLIAM RUSSELL OLIVER	EXPERT	1	\$1,400
XAVIER LUCERO	INVESTIGATOR	81	\$21,843