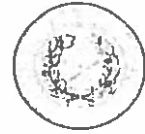


506th Judicial District Court

Albert M. McCaig, Jr., Judge



www.Court506.com

Court Coordinator
Susie Schubert

Court Reporter
Robyn S. Wiley

Grimes County
Waller County

October 28, 2016

836 Austin Street, Suite 307
Hempstead, Texas 77445
Fax: 979 826 9149
Ofc: 979 921 0921

Mr. Joel Lieurance
Senior Policy Analyst
Texas Indigent Defense Commission
209 West 14th Street, Room 202
Austin, Texas 78701

Re: Waller County Response to Texas Indigent Commission Policy Monitoring Review, dated August 29, 2016

Mr. Lieurance:

Enclosed is the Waller County Response to Texas Indigent Commission Policy Monitoring Review. The review is dated August 29, 2016. As you recall, the work of the review was conducted throughout the Spring and early Summer of 2016. Each of the major offices in the County dealing with indigent defense was examined during this process.

After receiving the report from the Commission, and after adequate time for review and internal comment, a meeting was held by the principal officials of Waller County to provide input and comments for the enclosed response. Attending the meeting were: District Judge, Judge of the County Court at Law, each of the four Justices of the Peace, representatives from the District Attorney's Office, the Sheriff and representative from the jail, the County Clerk, representatives from the District Clerk, and both of the trial court Coordinators. The County Judge has reviewed and approved the Response, as well.

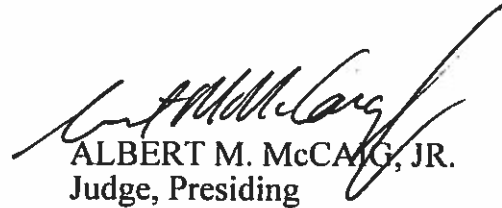
We believe we have adequately addressed, and taken corrective action, on each of the findings stated in the review.

It was determined that Section B., of the Waller County Indigent Defense Plan, needed to be adjusted in order to facilitate the changes adopted at the working group meeting. A copy of the revised Section B., is included for your review, and will be incorporated into the Waller County Indigent Defense Plan.

While deficiencies were noted, and are now corrected, I believe, as I said at the presentation before the Waller County Commissioners Court, that Waller County is and has been largely in compliance with not only the letter of the law, but the spirit of the laws and regulations dealing with indigent defense. All involved encourage comment from the Commission so that we will do better work in this vital area.

As the Commission's review was initiated by Senator Rodney Ellis, Representative Senfronia Thompson, Representative Ron Reynolds, and Waller County Commissioner Jeron Barnett, I have taken the liberty of providing copies of this letter and the Waller County Response, to each of them.

Thank you for your courtesies during the visit, and at all times. Please feel free to contact me with any future concerns or comments.



ALBERT M. McCAIG, JR.
Judge, Presiding

AMM/

c: Honorable Senator Rodney Ellis
Honorable Representative Senfronia Thompson
Honorable Representative Ron Reynolds
Honorable Elton Mathis, Criminal District Attorney
Judge Carbett J. "Trey" Duhon III, County Judge
Judge June Jackson, Judge, Waller County Court at Law
Judge Charles Karisch, JP, Precinct One
Judge Deloras Hargrave, JP, Precinct Two
Judge Marian Jackson, JP, Precinct Three
Judge Ted Krenek, JP, Precinct Four
Sheriff R. Glenn, Smith, Waller County Sheriff
Ms Debbie Hollan, Waller County Clerk
Ms Liz Pirkle, Waller County District Clerk
Mr. Jeron Barnett, Commissioner, Precinct Three

Honorable Rodney Ellis
Texas Senate District 13
440 Louisiana, Suite 575
Houston, TX 77002

Honorable Senfronia Thompson
Texas House District 141
10527 Homestead Road
Houston, TX 77016

Honorable Ron Reynolds
Texas House District 27
2440 Texas Parkway, Suite 102
Missouri City, TX 77489

**WALLER COUNTY RESPONSE TO
TEXAS INDIGENT DEFENSE COMMISSION
MONITORING REVIEW**

The following written response is made to each report finding regarding the Policy Monitoring Review of Waller County's Indigent Defense System, dated August 29, 2016. The Requirement is stated, the finding summarized, and recommended action stated.

Requirement 1: Conduct Prompt and Accurate Article 15.17 Proceedings

Finding 1: Uniformity of procedures for handling requests for counsel.

Finding 2: Arrestees not receiving reasonable assistance in completing forms.

Finding 3: JPs not submitting Article 15.17 requests in Texas Judicial Counsel monthly court activity reports to OCA.

Reply to Finding 1:

At the Article 15.17 magistration, all magistrates will continue to inquire about requests for appointed counsel and mark the form accordingly. If an attorney is requested, the magistrate will immediately provide the Affidavit of Indigency form, and assist in having it filled out by the arrestee. Immediately upon completion the magistrate will ensure that the jail transmits via FAX or Email the completed forms to the appropriate trial court for consideration. The trial court judge, or the designated Clerk officer, will immediately rule on the indigency request and appoint counsel as appropriate. The magistration form will be transmitted to the trial court clerk by the magistrate immediately after the Article 15.17 magistration hearing.

The Local Administrative Judge, on behalf of the trial courts, will amend the Indigent Defense Plan to reflect the procedures. A copy of the revised section of the Indigent Defense Plan is provided with this response.

Reply to Finding 2:

The jail will immediately provide blank copies of the Affidavit of Indigency form, and the magistrate will assist in having it filled out by the arrestee. An interpreter will be provided as needed within 12-hours of the arrestee indicating a need for interpreter assistance. Immediately upon completion of

the form the magistrate will ensure that the jail transmit via FAX or Email the completed forms to the appropriate trial court for consideration.

The Local Administrative Judge, on behalf of the trial courts, will amend the Indigent Defense Plan to reflect the procedures.

Reply to Finding 3:

Justices of the Peace shall properly submit Article 15.17 requests for counsel in their TJCMCA Reports to OCA.

Requirement 4: Appoint Counsel Promptly

Finding 4: (Felony Cases) Rule on requests for counsel within three working days.

Finding 5: (Misdemeanor Cases) Rule on Requests for counsel within three working days.

Finding 6: (Misdemeanor Cases) Process to ensure misdemeanor requests for counsel are ruled on prior to a defendant's waiver of counsel

Finding 7: (Juvenile Cases) Implement practices to satisfy time frames for appointment of counsel.

Reply to Finding 4:

All magistrates will continue to inquire about requests for appointed counsel and mark the magistration form accordingly. The jail will immediately provide blank copies of the Affidavit of Indigency form, and the magistrate will assist in having it filled out by the arrestee. An interpreter will be provided as needed within 12-hours of the arrestee indicating a need for interpreter assistance. Immediately upon completion of the form the magistrate will ensure that the jail transmit via FAX or Email the completed forms to the appropriate trial court for consideration. The magistration form will be transmitted to the trial court clerk by the magistrate immediately after the Article 15.17 magistration hearing.

Reply to Finding 5:

All magistrates will continue to inquire about requests for appointed counsel and mark the magistration form accordingly. The jail will immediately provide blank copies of the Affidavit of Indigency form, and the magistrate

will assist in having it filled out by the arrestee. An interpreter will be provided as needed within 12-hours of the arrestee indicating a need for interpreter assistance. Immediately upon completion of the form the magistrate will ensure that the jail transmit via FAX or Email the completed forms to the appropriate trial court for consideration.

Reply to Finding 6:

All magistrates will continue to inquire about requests for appointed counsel and mark the form accordingly. The jail will immediately provide blank copies of the Affidavit of Indigency form, and the magistrate will assist in having it filled out by the arrestee. An interpreter will be provided as needed within 12-hours of the arrestee indicating a need for interpreter assistance. Immediately upon completion of the form the magistrate will ensure that the jail transmit via FAX or Email the completed forms to the appropriate trial court for consideration. The magistration form and the Affidavit of Indigency form will be filed in the Clerk's case file to ensure that the trial court is aware of the request for counsel prior to accepting a waiver of counsel.

Reply to Finding 7:

As noted in the Commission's report, the County was 100% timely in appointing attorneys for detention hearings but the report reflected 63% timely appointments when the juvenile was released without detention and was later served with a petition.

On review of the cases that the monitors reviewed, we discovered that in the majority of the cases, the juvenile already had an attorney appointed in a prior pending case. To assure that each file reflects who the attorney is, the Waller County Clerk will notify Juvenile Probation Department via email that a petition has been filed. If an appointment has been made in another case involving the same juvenile, a copy of that appointment will be forwarded to the Clerk for inclusion in the file. The County Clerk will forward the new case information to the attorney. If no attorney has been appointed for the juvenile, Juvenile Probation will forward the financial information gathered during the intake to the Juvenile Court immediately. The Court will make a determination within 48 hours and appoint an attorney if financial qualifications are met. The Court will notify Juvenile Probation of the decision and the appointment will be forwarded to the juvenile and attorney by the Juvenile Probation Department. If the juvenile does not qualify, Juvenile Probation will

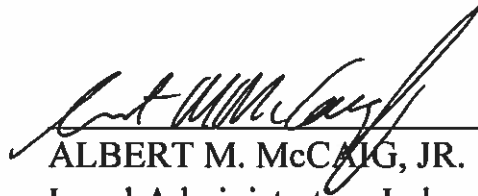
notify the juvenile of that decision and inform the parents or guardians that an attorney must be retained. If no attorney is retained, the Court will appoint an attorney and may include payment of fees as a part of the adjudication, if any. The Court will transmit all paperwork to the County Clerk for inclusion in the file.

Requirement 7: Statutory Data Reporting

Finding 8: County included some general court expenditures with indigent defense expenditures.

Reply to Finding 8:

The trial court has a legal responsibility to make reasonable inquiry of a defendant's competence to stand trial. Further, the defense attorney has a duty to the defendant to insure the defendant is competent to stand trial. In instances in which the defense attorney recommends to the trial court that a competency exam would be appropriate, such a unilateral recommendation without a court finding could place the attorney into a conflict with the client unless the trial court makes a finding of necessity. Therefore, it is necessary that the trial court join in the recommendation and make a finding of necessity. This will fulfil the trial court's duty, as well as insulate the defense attorney from grievances by the defendant. The trial courts do not recommend changing the forms for competency examination orders. It is recommended that the TIDJ accounting requirements be amended to reflect the legal responsibilities of the trial court and the potential liabilities of defense counsel.


ALBERT M. McCAIG, JR.
Local Administrative Judge

B. Magistrate Duties

- i. At the Magistrate's hearing, the magistrate shall determine if accused can speak and understand English, or if the defendant is deaf.
- ii. After making such determination, the magistrate shall, in an appropriate manner consistent with Texas Code of Criminal Procedure Articles 38.30 and 38.31, do the following:
 1. Advise the accused of the accusation against him/her and any affidavit filed therewith;
 2. Admonish the accused of:
 - a. The right to retain counsel;
 - b. The right to remain silent;
 - c. The right to have an attorney present during any interview with peace officers or attorneys representing the state;
 - d. The right to terminate an interview at any time;
 - e. The right not to make a statement and that any statement made by the accused may be used against him/her; and
 - f. The right to an examining trial.
 3. Inform the accused of the right to appointed counsel if the person cannot afford counsel and the procedures for requesting appointment of counsel.
 4. Inquire as to whether accused is requesting that counsel be appointed. Indicate on the magistration form the accused's request concerning the appointment of counsel.
 5. At the time of magistration, provide the accused person requesting appointed counsel with necessary forms, including a Financial Assessment Form (Affidavit of Indigence), for requesting appointment of counsel and ensure that reasonable assistance in completing required forms is provided to the accused at the time of the magistrate's hearing. Jail personnel shall be available to assist the magistrate in this process.

6. If the magistrate has reason to believe the accused is not mentally competent, the magistrate shall enter a request for counsel on behalf of the accused. Such a request will alert the appointing authority that counsel competent to represent mentally ill persons should be appointed.
 7. The magistrate shall insure that jail personnel promptly transmit the request for appointment of counsel, as well as the Financial Assessment Form, to the trial court with jurisdiction for the alleged underlying offense.
- iii. In cases where the individual was arrested without an arrest warrant, bench warrant, *capias*, or other order of magistrate or judge, the magistrate shall determine if there is probable cause to believe the person committed the offense.
1. If probable cause has not been determined by a magistrate:
 - a. A person arrested for a misdemeanor must be released on bond, in an amount not to exceed \$5,000, not later than 24 hours after the person's arrest.
 - b. A person arrested for a felony must be released on bond, in an amount not to exceed \$10,000, not later than 48 hours after the person's arrest.
 - c. If requested by the state, the magistrate may postpone the release of the defendant for not more than 72 hours after the defendant's arrest, in compliance with the procedure set forth in Article 17.033, Texas Code of Criminal Procedure.
- iv. The magistrate shall set the amount of bail and any conditions of bond for the accused, if bail is allowed by law and has not been set by the court or magistrate issuing a warrant.
- v. The magistrate shall record the following:
1. The date and time the accused was arrested and the date and time when he/she was brought before the magistrate.
 2. Whether the magistrate informed the accused of the right to request appointment of counsel and asked the accused whether he/she wants to request counsel.
 3. Whether the accused requested appointment of counsel

vi. While the magistrate is authorized to appoint counsel, the preferred procedure is to forward the Financial Assessment Form along with the form requesting appointment of counsel to the trial court with jurisdiction of the alleged offense. In appropriate situations, the magistrate may make the determination of indigence and appoint counsel if the defendant is indigent, using the current attorneys appointment list. Any defendant requesting court-appointed counsel must complete a Financial Assessment Form. This form is to be promptly provided by the magistrate or jail personnel and must be sworn under oath or subject to penalties of perjury.

vii. If a request for counsel was made at magistration, the magistrate shall insure that the jail personnel forward the magistrate form and any other forms requesting appointment of counsel to the appropriate clerk to be put into the case file.

viii. Whether a a request for counsel was made or not made at magistration, the magistrate shall insure that the jail personnel forward the magistrate form to the appropriate trial court clerk to be put into the case file.

ix. **OUT OF COUNTY ARRESTS:** For persons arrested on out-of-county warrants, the magistrate will ask the defendant if he/she would like to request appointed counsel. The magistrate will record the response, and if counsel is requested, the magistrate will provide the arrestee with the appropriate forms for requesting counsel, as provided above. The magistrate will ensure assistance in completing the forms at the same time. The forms will be transmitted to the appointing authority in the county issuing the warrant within 24 hours of the request being made. Regarding the appointment of counsel, persons arrested in other counties on local warrants must be appointed counsel in the county that issued the warrant within 3-working days of receipt of the request. Persons arrested on out-of-county warrants must be appointed counsel in the county of arrest if the person has not been transferred or released to the custody of the county issuing the warrant before the 11th day after the date of the arrest.

a. If an indigent defendant is arrested in another county based on this county's warrant, counsel will be appointed within 3-working days of this county's receipt of the request for counsel.

b. If a defendant is arrested in this county based on another county's warrant, counsel will be appointed for the defendant if, on the eleventh day after the arrest, the defendant is still in this county's custody.