



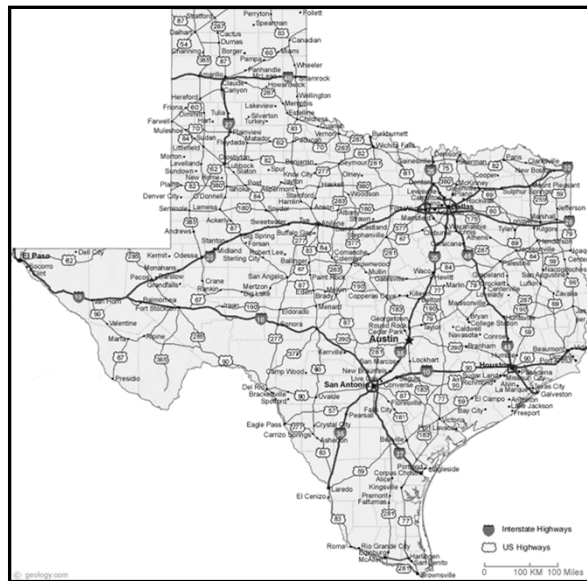
Appointment of counsel

Justice of the Peace Seminar-Denton
Texas Justice Courts Training Center

March 18, 2024

ROADMAP

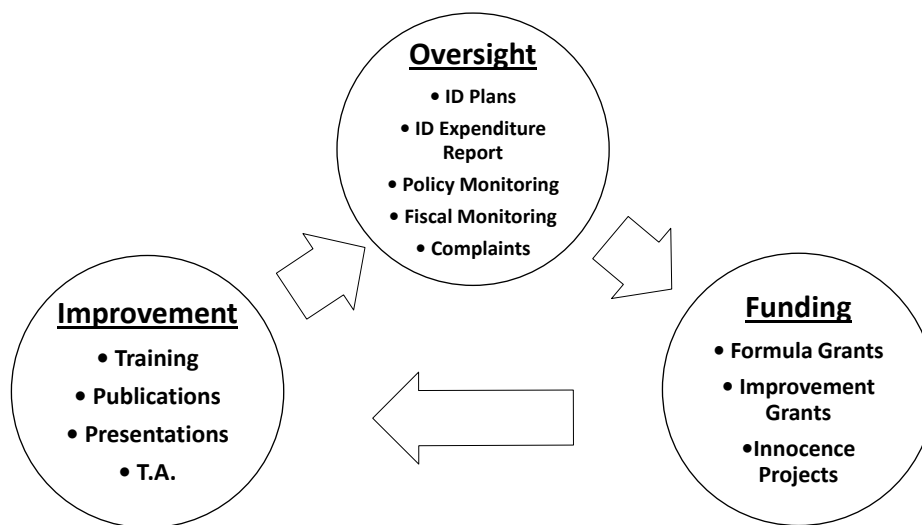
- About TIDC
- The Fair Defense Act
- Prompt and Accurate Magistration Proceedings
- Indigence Determinations
- Prompt Appointment of Counsel



ABOUT TIDC

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what tidc does



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79 of Texas' 254 counties are, or soon will be, served by a public defender and/or a managed assigned counsel office

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THE FAIR DEFENSE ACT

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How we got here

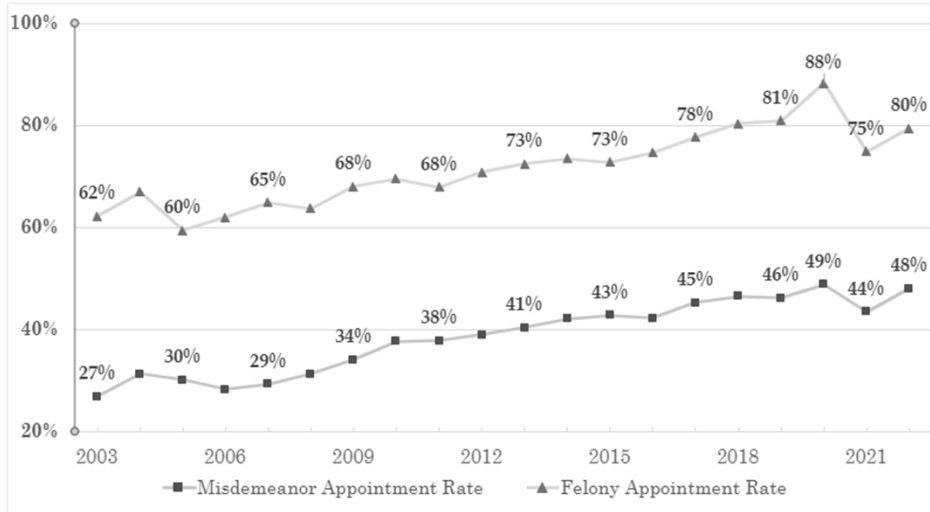
- 1791 – Bill of Rights + 6th Amendment
- 1876 – Art. 1, Sec. 10-Tx Constitution's Bill of Rights
- 1963 – *Gideon v. Wainwright*
- 1999 – Study of TX Indigent Defense
- **2001 – Fair Defense Act and Task Force**
- 2011 – Texas Indigent Defense Commission

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THE FAIR DEFENSE ACT: THE IMPACT

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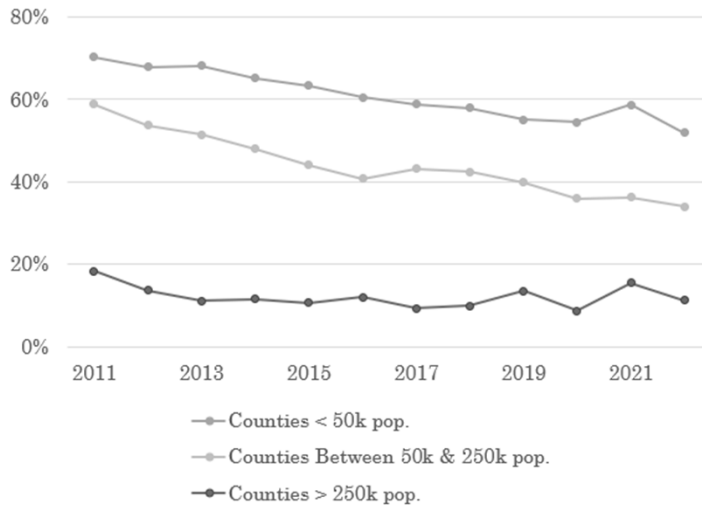
**Since Passage of the FDA, Appointment Rates Have Increased –
% of Cases Receiving Appointed Counsel
(Cases Paid / Cases Disposed)**



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Self-Represented Misdemeanor Cases

% Disposed Class A & B Misdemeanor Cases without an Attorney



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Seven core requirements of the fair defense act

1. Prompt and accurate magstration hearings
2. Develop a standard of indigence and process to determine eligibility
3. Timely appointment of counsel
4. Minimum attorney qualifications
5. Fair, neutral, and non-discriminatory attorney selection process
6. Standard attorney fee schedule and payment process
7. State reporting

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Today's focus

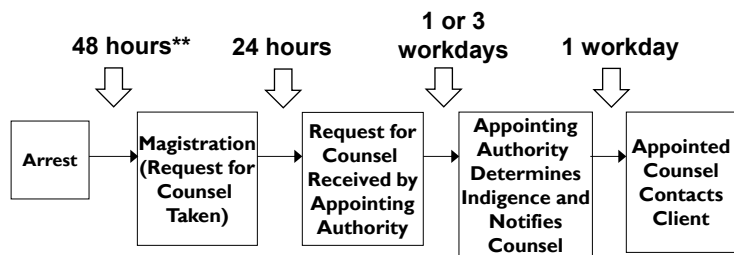


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REMINDER: TIMELINESS IS critical in magistration and appointment of counsel

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PROCESS + TIMELINES



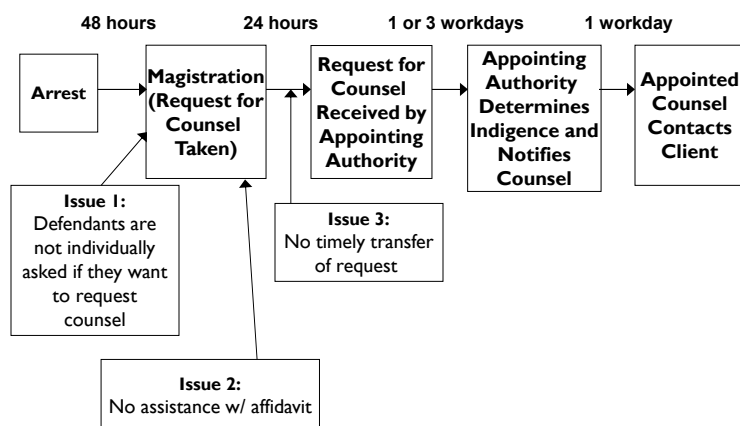
****But note CCP 17.033**-Requires detained person arrested on a misdemeanor w/o warrant to be released not later than 24 hrs. after arrest if probable cause not determined. Release on bond not exceeding \$5,000 or personal bond required.

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PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

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Common Pitfalls



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PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

Texas Code Crim. Proc. Article 15.17

- ✓ Hearing within 48 hours of arrest
- ✓ Must inform arrestee of right to appointed counsel
- ✓ Record of informing arrestee of right to counsel and whether arrestee requested counsel must be made
- ✓ Magistrate must ensure reasonable assistance
- ✓ Must transmit forms to appointing authority within 24 hours of request (unless authorized to appoint counsel)

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No. _____ SPN: _____
THE STATE OF TEXAS Date/Time Of Arrest: _____
COUNTY OF _____

MAGISTRATE WARNING

Before me, the undersigned, magistrate of the State of Texas on this day personally appeared _____, who was given the following warning:

- You are charged with the offense of _____ a felony a misdemeanor.
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel.

Would you like to request the appointment of counsel? Yes No

I explained the local procedures for requesting appointment of counsel in a manner the accused could understand. I provided reasonable assistance in completing necessary paperwork for the appointment of counsel and forwarded the paperwork to the appropriate authority within 24 hours.

Consular Notification

You have the right to speak with your lawyer before answering any questions.

If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States.

Do you want us to notify your country's consular officials? Yes No

What Country? _____

If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.

Mandatory Notification Clerk, notify: _____

The State Department's list of foreign consulates can be found at: <http://www.state.gov/cpr/16/0/>

1. Accused was arrested as a result of a warrant. County: _____
Proceed to bail section below.

2. Accused was arrested without a warrant.
Does the Court find probable cause exists for further detention? Yes No
If NO, accused shall be immediately released. If YES, proceed to bail section below.

Bail is set at \$ _____ Bond: Personal Cash/Surety

Bond Conditions _____
Time: _____ Date: _____ Magistrate: _____

I acknowledge that I was given the above warning and that I understand my rights as explained to me.
Person Warned: _____ Hearing Interpreted by: _____

MODEL MAGISTRATION FORM

INCLUDES RIGHT TO
COUNSEL WARNING

INCLUDES REQUEST
FOR APPOINTED
COUNSEL

Available at: <http://tidc.texas.gov/improvement/model-forms>

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No. _____ SPN: _____
 THE STATE OF TEXAS Date/Time Of Arrest: _____
 COUNTY OF _____

MAGISTRATE WARNING

Before me, the undersigned, magistrate of the State of Texas on this day personally appeared _____, who was given the following warning:

- You are charged with the offense of _____, a felony a misdemeanor.
- You have a right to hire an attorney to represent you.
- You have the right to have an attorney present prior to and during any interview and questioning by peace officers or attorneys representing the State.
- You have the right to remain silent.
- You are not required to make a statement, and any statement you make can and may be used against you in court.
- You have the right to stop any interview or questioning at any time.
- You have the right to have an examining trial (felonies only).
- You have the right to request appointment of counsel if you cannot afford counsel.

Would you like to request the appointment of counsel? Yes No

I explained the above rights for requesting appointment of counsel in a manner the accused could understand. I provided reasonable assistance in completing necessary paperwork for the appointment of counsel and forwarded the appropriate authority within 24 hours.

Consular Notification
You have the right to speak with your lawyer before answering any questions.
If you are not a United States citizen, you may be entitled to have us notify your country's consular representative here in the United States.
Do you want us to notify your country's consular officials? <input type="checkbox"/> Yes <input type="checkbox"/> No
What Country? _____
If you are a citizen of a country that requires us to notify your country's consular representative, we shall notify them as soon as possible.
<input type="checkbox"/> Mandatory Notification Clerk, notify: _____
The State Department's list of foreign consulates can be found at: http://www.state.gov/s/cpr/ckc/foa/
<input type="checkbox"/> 1. Accused was arrested as a result of a warrant. County: _____ Proceed to bail section below.
<input type="checkbox"/> 2. Accused was arrested without a warrant. Does the Court find probable cause exists for further detention? <input type="checkbox"/> Yes <input type="checkbox"/> No If NO , accused shall be immediately released. If YES , proceed to bail section below.
Bail is set at \$ _____ Bond: <input type="checkbox"/> Personal <input type="checkbox"/> Cash/Surety
Bond Conditions _____
Time: _____ Date: _____ Magistrate: _____
I acknowledge that I was given the above warning and that I understand my rights as explained to me.
Person Warned: _____ Hearing Interpreted by: _____

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Pop quiz

- You magistrate a defendant who already has an appointed attorney on another case pending in the county. Do you need to ask if they wish to request counsel on the new case?
 - A. Yes
 - B. No

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Reporting Magstration Data to OCA

Monthly Court Activity Report includes:

- ✓ Number of defendants magistrate (15.17 hearings) for:
 - ✓ Felonies
 - ✓ Class A & B Misdemeanors
 - ✓ Class C Misdemeanors
- ✓ Number of Requests for Counsel:
 - ✓ Felonies
 - ✓ Class A & B Misdemeanors

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COMPLETING THE AFFIDAVIT OF INDIGENCE

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Article 15.17 requires assistance in completing affidavit of indigence

“The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person....”

The affidavit of indigence is a necessary form to request appointment of counsel.

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MODEL AFFIDAVIT OF INDIGENCY FORM

page 1

INCLUDES INCOME, ASSETS, EXPENSES, BENEFITS

Magistrate must ensure form is completed and sent to appointing authority

Available at:
<http://www.tidc.texas.gov/improvement/model-forms>

MONTHLY INCOME AND ASSETS		MONTHLY EXPENSES	
My take home pay	\$	Rent/Mortgage	\$
Spouse's take home pay	\$	Utilities (Elec., Gas, Water)	\$
Child Support (Received)	\$	Total Child Expenses (Including Child Support Paid)	\$
SNAP (Food Stamps)	\$	Total Food Expenses	\$
Social Security/Disability	\$	Transportation Costs	\$
Other Government Check	\$	Cellular phone	\$
Other Income	\$	Religious fees	\$
Assets (see Assets, etc.)	\$	Medical Expenses / Health Insurance	\$
TOTAL MONTHLY INCOME AND ASSETS	\$	Minimum Monthly Credit Card Payment	\$
		TOTAL MONTHLY EXPENSES	\$

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MODEL AFFIDAVIT OF INDIGENCY FORM

page 2

INCLUDES defendant's oath

includes option of using notary or unsworn declaration

includes eligibility determination

COUNTY _____ Case No. _____	
Defendant's Oath	
On this _____ day of _____, 20____, I have been advised of my right to representation by counsel in connection with the charge pending against me. I certify that I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me.	
Defendant's Signature _____	Date _____
ONLY ONE SECTION BELOW TO BE COMPLETED.	
Administered Oath (Clerk/Notary ONLY)	
SUBSCRIBED and SWORN to before me, the undersigned authority, this _____ day of _____, 20____.	
Clerk/Notary Public Signature _____	Date _____
Unsworn Declaration by Defendant (Defendant ONLY)	
My name is _____ my date of birth is _____ <small>(First Name) (Middle Name) (Last Name)</small>	
My address is _____ <small>(Street Number and Name) (City) (State) (Zip Code) (Country)</small>	
I declare under penalty of perjury that the foregoing is true and correct.	
Executed in _____ County, State of Texas, on the _____ day of _____, 20____. <small>(Month) (Year)</small>	
Defendant Currently Meets Eligibility Requirements?	
<input type="checkbox"/> YES <input type="checkbox"/> NO	
Date _____	

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Pop quiz

- How long does a magistrate have to transmit the forms requesting appointment of counsel?
 - A. Until the next business day
 - B. Three business days
 - C. 24 hours
 - D. As soon as reasonably practical

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Timely Transmittal of Requests for Counsel

- **This is one of the biggest problems TIDC still sees in policy monitoring visits!**
- Magistrate has 24 hours to transmit a request for counsel to the appointing authority (see CCP art. 15.17(a))

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What is your process for transmitting forms to the appointing authority?

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Out-of-County Requests for Counsel

- If a person is arrested in your county for another county's warrant:
 - The person must be asked if he/she would like to request counsel.
 - Requests for counsel must be sent to the county issuing the warrant.
- Where is the contact list to send these requests?
<http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>
- Art. 15.18(a-1): Magistrate has up to 24 hours to transmit the request for counsel form to the appointing authority in the county issuing the warrant.

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Out-of-County Appointments of Counsel Tex. Code Crim. Proc. art. 1.051(c-1)

- **If a person is arrested in another county for your county's warrant, appointing authority in your county must rule on:**
 - The request for counsel within the same 1 or 3 working day timeframe as in-county requests
- **If a person is in your jail on another county's warrant, your county's appointing authority must appoint counsel:**
 - On the 11th day after arrest if the person has not been transferred to the other county; and
 - If counsel has not been appointed by the county issuing the warrant.
 - Appointment limited to Article 11 or 17 matters (writs or bail bond issues).
 - Arresting county may seek reimbursement from the warrant issuing county.

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Pop Quiz

You magistrate a defendant who has been arrested on a felony warrant issued from Dallas County. (You are from a county other than Dallas County.)

What admonishments do you have to give the defendant and how long do you have to transmit a request for appointment of counsel?

- A. You give the defendant the usual admonishments and you have three working days to transmit the request to appoint counsel.
- B. You give the defendant the usual admonishments and you have 24 hours to transmit the request to appoint counsel.
- C. No admonishments are required (just tell the defendant he's been arrested on a Dallas County warrant) and you have three working days to transmit the request to appoint counsel.
- D. No admonishments are required (just tell the defendant he's been arrested on a Dallas County warrant) and you have eleven days to transmit the request to appoint counsel.

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INDIGENCE DETERMINATIONS & APPOINTMENT OF COUNSEL

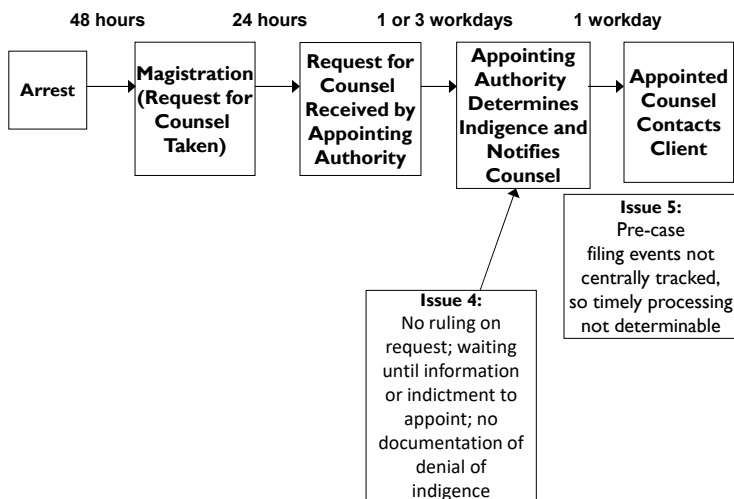
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Survey

do You make indigence determinations and appoint counsel?

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COMMON MISTAKES



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unTimely appointment
is the number one issue
in tidc policy monitoring
visits

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Timely Appointment of Counsel or Denial of Indigence

Texas Code Crim. Proc. Article 1.051

- Must appoint counsel /deny indigence within 1 or 3 working days of receiving the request for counsel (counties under 250k pop. = 3 days)
- If defendant released before appointed counsel, then appointment not required until first court appearance "or when adversarial judicial proceedings are initiated, whichever comes first." CCP 1.051(j)

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When is the Initiation of Adversarial Judicial Proceedings? Supreme Court Says...

Gillespie Co. refused to appoint
Walter Rothgery an attorney until
after indictment.

He sued the county for violating
his 6th Amendment right to
counsel.

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Magistration = Initiation of Adversarial Judicial Proceedings

Rothgery v. Gillespie County, 554 US 191 (2008).

A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

Supreme Court did not address whether counsel had to be present at magistration.

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Rule on Request for Counsel Even if Defendant Makes Bond

Rothgery and Art. 1.051 mean:

- If a defendant is released from custody after requesting counsel but prior to appointment, the appointing authority must still rule on the request by appointing counsel or denying indigence.
- **You cannot simply wait to make the determination at the first court appearance**

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How can prompt appointment of counsel help defendants and counties?

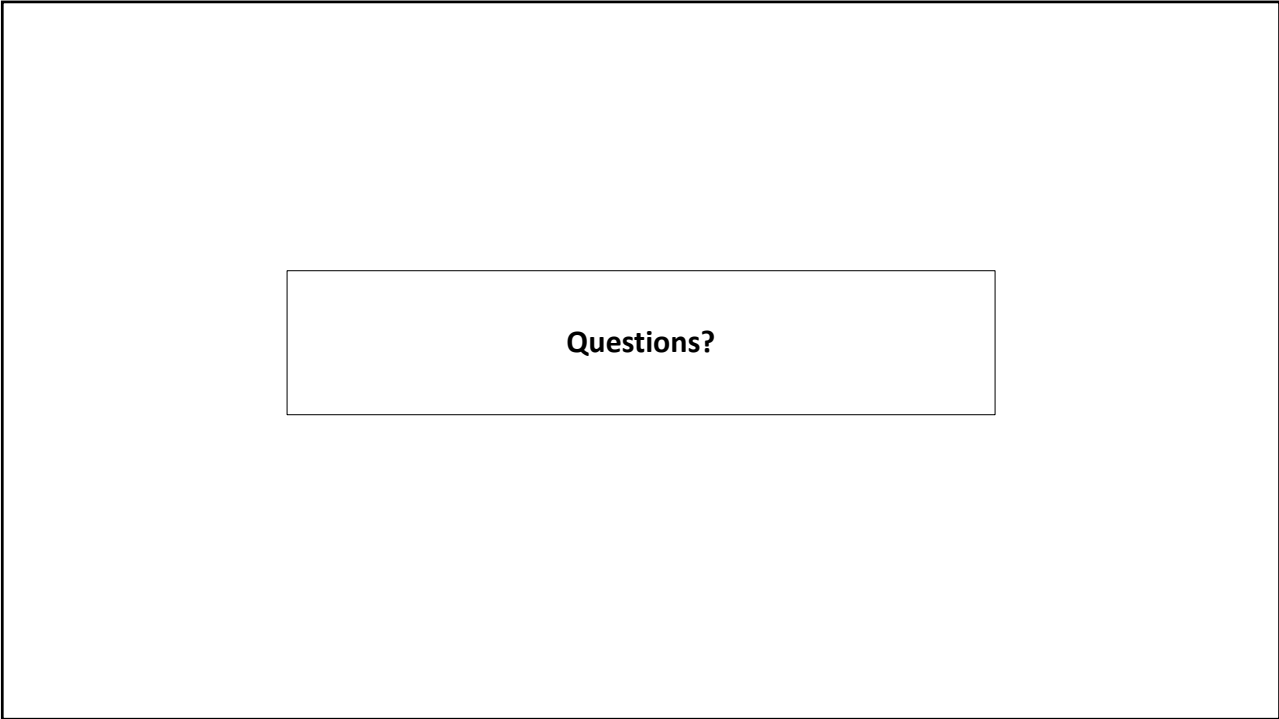
Benefits to Defendants

- Reduce bail or get a personal bond and get out of jail
- Out of jail = keep job, pay rent, avoid homelessness
- Early investigation, client interview, witness interviews, evidence preservation
- Early access to treatment, services
- Better case outcomes
- Prevent wrongful convictions and collateral consequences of a conviction

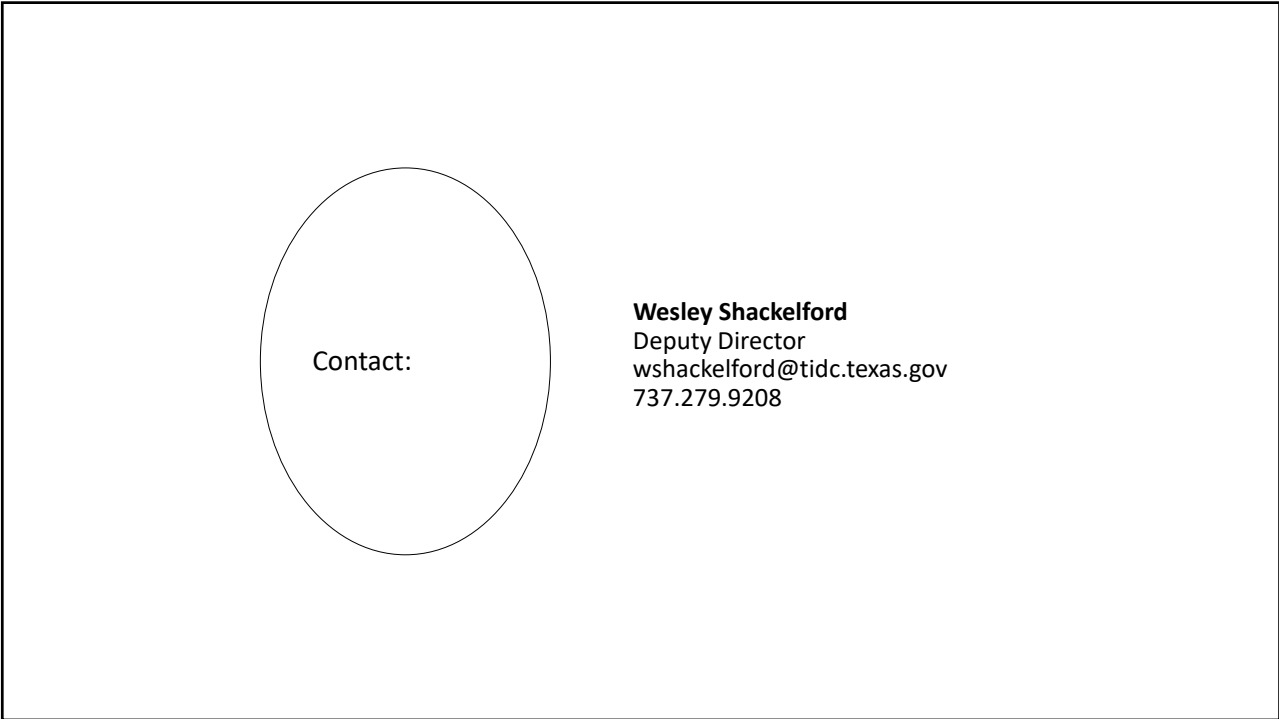
Benefits to Counties

- Reduced jail costs
- Fewer failures to appear
- Better case outcomes for defendants = reduced costs to society at large

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