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County Eye Newsletter

Next year will be the 50th anniversary of a far-reaching Supreme Court decision in a case titled *Miranda vs. Arizona*. Supreme Court decisions often have far reaching impacts on national and state legislation but can impact local governments too.

Few of us have not heard the Miranda Warning read by law enforcement officers during an arrest...on television or other settings and, for some, at the time of their own arrest. "You have the right to remain silent. You have the right to have an attorney with you during questioning...if you cannot afford an attorney, one will be appointed for you...."

A clear method of determining whether a person can afford an attorney was never defined so state and local officials have been forced to set up rules to determine who actually is too poor to hire an attorney.

In Texas a state agency, the Texas Indigent Defense Commission, sets up state guidelines and monitors what goes on at the state and local level. TIDC guidelines state that to be determined indigent for a court-appointed attorney a person cannot have an income more than 125% of the federal poverty level. TIDC also provides other assistance to counties around the state related to indigent defense issues.

The federal government determines the federal poverty level annually and many agencies that provide assistance to needy persons use that as the marker in their determining benefits.

Kerr County follows all state guidelines for those persons who apply for court-appointed attorneys in criminal, juvenile, mental health, CPS and certain other civil cases.

A large portion of each year's county budget provides funds for these attorneys plus, in some cases, provides funds for investigators and other experts requested by the defense. The 2015-2016 Kerr County adopted budget provides \$668,000 for indigent defense and related costs.

The 2015 Texas Legislature added a new challenge to the court-appointed attorney process which could cost additional local funds to be allocated in future budgets.

Senate Bill 1517 clarifies the procedures for appointment of counsel for a person arrested and jailed in a county based on a warrant issued by a different county, a process that had been confusing under previous legislation.

SB 1517 requires the arresting county to accept a request for counsel from an arrestee and transfer the request to the warrant issuing county within a mandated time frame. The warrant issuing county must then appoint counsel to an indigent person within a prescribed time period.

If that doesn't happen then the arresting county must appoint counsel on the 11th day following the arrest if the defendant has not been released from custody or transferred to the county issuing the warrant to represent the defendant in habeas corpus or bail proceedings, regardless of whether formal criminal charges have been filed in the arresting county.

The bill also authorizes the arresting county to seek reimbursement for the actual costs paid by the arresting county from the county that issued the warrant but does not mandate payment.

In counties with more than 250,000 residents the window to appoint an attorney is 24 hours after receiving the application and in counties with less than 250,000 then the window increases to 72 hours.

At the time of magstration on an out of county warrant the defendant is asked whether he/she wants to apply for a court-appointed attorney. A positive response kicks an updated system into effect since Sept. 1.

Applications are forwarded with 24 hours to a designated person in the county that issued the arrest warrant and that person then is responsible to process the application and see to it the appointment is made within the time frame established by the new law. Each county was required to set up an internal process to handle the applications.

In Kerr County those applications are received in the Indigent Services office, investigated for accuracy, and then forwarded to one of the three judges (district and county court at law) who appoint attorneys. The completed appointment paperwork is then forwarded by the district or county clerk's office to the appropriate out of county designee.

The same process in reverse is used when a person is arrested in Kerr County on an out of county warrant. Applications are completed at the jail and forwarded to the Kerr County Indigent Services office. They are processed and forwarded to the designee in the county of origin of the arrest warrant within 24 hours of receipt.

During an average month the Indigent Services office processes about 70 applications received from the jail and another 25 or so from applications received on court days. In September the office processed an additional 30 plus applications for the out-of-county arrest warrants.

A procedure for implementation of the new law had to be developed in each county. So far, all applications on out-of-county arrests for Kerr County have been processed within the window of time established by Senate Bill 1517.

Luckily, Kerr County already had a central gathering point for the applications in place when the new law was implemented and the transition has been very easy for all involved.

Kudos go to Mary Lou Ayala, Kerr County Indigent Services Coordinator, who has stepped up to the additional task and made the implementation of the new law go smoothly in our county.