



**Policy Monitoring Review of
Kaufman County's Indigent Defense
Systems**

October 2023



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Mission: Protecting the right to counsel, improving public defense.

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Executive Summary

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act (FDA) through policy reviews.¹ TIDC observed court, interviewed officials, and reviewed FY2021 data from Kaufman County. TIDC made five findings of noncompliance.

- a. Some Article 15.17 hearings did not include a mark noting whether the defendant requested counsel.
- b. Inconsistent methods for assisting defendants in applying for counsel.
- c. Untimely transmission of counsel requests to the appointing court.
- d. Untimely rulings on requests for counsel in felony cases.
- e. Untimely rulings on requests for counsel in misdemeanor cases.

TIDC thanks Kaufman County officials and staff for their assistance in completing this review. TIDC stands ready to provide technical and financial assistance to remedy these issues. TIDC will conduct a follow-up review regarding its findings within two years.²

Background

TIDC selected Kaufman County for a review through its annual county selection process, which seeks to cycle through counties around the state. This review covers all six FDA core requirements listed below:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

TIDC staff members Wesley Shackelford, Kristin Meeks, and William R. “Bill” Cox made an on-site visit to the County from October 10–13, 2022. TIDC examined FY2021 data, including felony, misdemeanor, and juvenile case files; the local indigent defense plans; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, County staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings, and felony, misdemeanor, and juvenile dockets.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

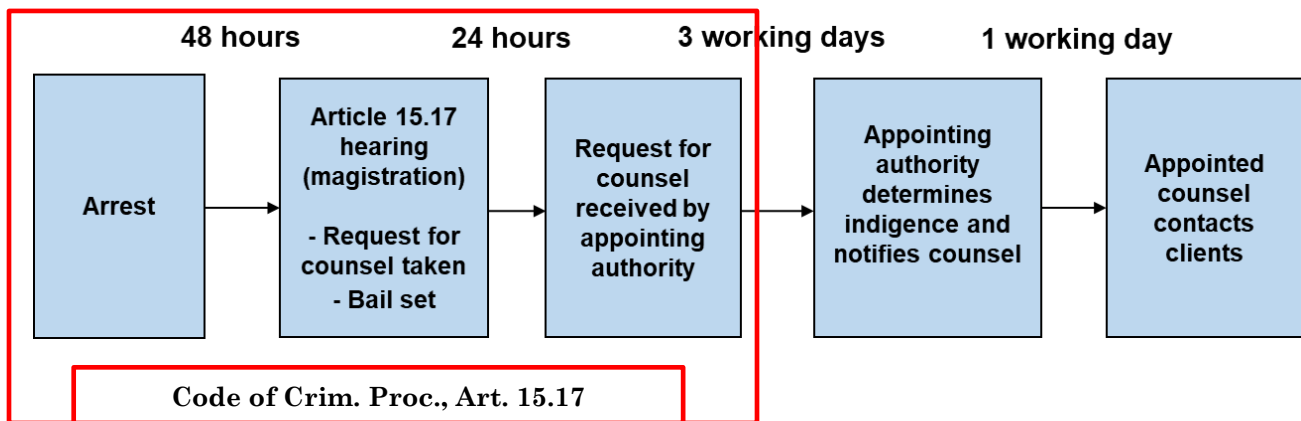
² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Program Assessment

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.³ At this hearing, the magistrate must inform the person of the right to counsel, inform the person of the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the necessary forms for requesting counsel.⁴ Magistrates must transmit requests for counsel to the appointing authority within 24 hours.⁵ If a person is arrested on an out-of-county warrant, the magistrate must perform the same duties as if the person were arrested on an in-county warrant.⁶

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



Local Practices for Conducting Magistrate Warnings

In Kaufman County, defendants who are in jail are promptly brought before a magistrate. The magistrate makes probable cause determinations, sets bail, and explains that defendants have a right to counsel. If a defendant requests counsel and has not completed an indigence affidavit before the 15.17 warnings, the magistrate provides the defendant with a copy of the affidavit of indigence and tells the person that jail staff can help with completing the affidavit.

³ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁶ TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tide.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

1.a. Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁷ TIDC presumes a county is in substantial compliance with the prompt magistration requirement if at least 98% of Article 15.17 hearings are conducted within 48 hours.⁸ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 145 sample case files in which staff could determine the time from arrest until the Article 15.17 hearing. The sample was 98% timely (Article 15.17 hearings occurred within two days of arrest), indicating the County is providing warnings in a timely manner (see Table 1).

Table 1: Timeliness of Article 15.17 Hearings

	Sample Size	Percent
Article 15.17 hearing occurs x days after arrest:	145	
0 days	128	
1 day	9	
2 days	5	
Timely Hearings	142	98%
More than 2 days	3	2%

1.b. Ability of Arrested Persons to Request Counsel

At the Article 15.17 hearing, the magistrate must inform an arrested person of the right to counsel, ask whether the person wants to request counsel, and record whether the person requests counsel.⁹ According to reports submitted by justice courts to the Office of Court Administration (OCA), over 25% of misdemeanor defendants requested counsel and 21% of felony defendants requested counsel in FY2021. This is an indication that arrested persons understand their right to counsel at the Article 15.17 hearing and regularly request counsel.

TIDC observed 55 magistration forms where the magistrate did not indicate if the defendant requested an attorney or declined to do so (see Table 2). Article 15.17(e) of the Code of Criminal Procedure requires magistrates to ask and record whether each defendant requests counsel. Kaufman County magistrates must ask and record whether each defendant requests counsel.

⁷ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁸ 1 TEX. ADMIN. CODE § 174.28(c)(1). Article 15.17(a) requires magistrate warnings occur within 48 hours of arrest. To simplify time measurement, TIDC assumes warnings are timely if they occur within 2 days of arrest. TIDC excluded cases in which it could not determine the timeliness of magistrate warnings

⁹ TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

Table 2: Magistration Forms Recording Defendant’s Request for Counsel

Sample Size	# Requested Counsel	# Not Requested	# Not Marked	Percent Not Marked
196	110	22	55	28.1%

1.c. Reasonable Assistance in Completing Forms for Requesting Counsel

At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel at the time of the hearing.¹⁰ TIDC observed magistrates provide detainees who requested appointed counsel a copy of the indigence affidavit, instructing them that jail staff could provide assistance in completing the form. From TIDC’s file review, requests made at the Article 15.17 hearing were not always ruled upon by the appointing authority. This is an indication that indigence affidavits are not always completed for defendants who request counsel at the Article 15.17 hearing.

Under the County’s process, magistrates give completed magistration forms to jail staff who forward the forms to the county’s indigent defense coordinator (IDC). Indigence applications are often forwarded to the IDC a day or more after magistration. An informal process is in place for jail staff to assist with affidavits of indigence and following-up on indigence applications. The County must provide a consistent method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing. A consistent method may include the IDC assisting defendants in filling out affidavits of indigence or instituting a spreadsheet or checklist noting (1) the date a person requested counsel at the 15.17 hearing; (2) whether the person completed the affidavit at that time; and (3) whether the forms were successfully sent to the courts.

1.d. Transmitting Forms to the Appointing Authority

Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the entity authorized to appoint counsel.¹¹ For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.¹² In Kaufman County, magistrates provide 15.17 hearing documents to the Sheriff’s department, which then forwards the information to the County’s indigent defense coordinator. Affidavits of indigence are subsequently forwarded by jail staff a day or more later, if completed.

There are no consistent methods to ensure all persons requesting counsel complete financial affidavits and have their requests and associated financial forms sent to the courts within 24 hours of the request being made. The County must provide a

¹⁰ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹¹ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹² TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

consistent method to ensure requests are sent to the appointing authority within 24 hours of the request being made, such as by the spreadsheet or checklist suggested above.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1: Article 15.17(e) of the Code of Criminal Procedure requires magistrates to ask and record whether each defendant requests counsel. Kaufman County magistrates must ask and record whether each defendant requests counsel.

FINDING 2: At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel. The County must provide a method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing.

FINDING 3: Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a method to ensure requests are sent to the appointing authority within 24 hours of the request.

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN

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

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

The local standards for determining indigence are set in each county's indigent defense plans.

2.a. Indigence Standard in Adult Criminal Cases

For adult criminal cases in Kaufman County, a person is presumed indigent if:¹³

¹³ The Kaufman County District and County Court Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=231>.

1. At the time of requesting appointed counsel, the accused is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
2. The accused's net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register;
3. The accused 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 health facility is sought.
4. The accused is unable to retain private counsel without substantial hardship to the accused or the accused dependents.

The posting of bail or ability to post bail and the resources available to friends or relatives of the accused may not be considered in determining whether the person is indigent.

2.b. Indigence Standard in Juvenile Cases

The standard of indigence in juvenile cases is the same as in adult criminal cases, except assessment is based on the resources of child's parent(s) or other person(s) determined responsible for the support of the child.¹⁴

2.c. Local Practices

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds that Kaufman County is in substantial compliance with Requirement 2 for both adult and juvenile cases.

<p style="text-align: center;"><u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2</u></p>

<p style="text-align: center;">Determination of Indigence</p>
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<p>Requirement satisfied. No findings.</p>
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¹⁴ The Kaufman Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=308>.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

Under Article 26.04(d) of the Code of Criminal Procedure, private attorneys wishing to take court appointments must apply to be on an appointment list. The list must contain objective qualifications, including a minimum annual continuing legal education (CLE) requirement of at least six hours per year in criminal or juvenile law.¹⁵ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.¹⁶

3.a. Felony and Misdemeanor Cases

For both the felony and misdemeanor appointment lists, attorneys must obtain at least 6 criminal CLE hours annually.¹⁷

Table 3a: Qualifications for Kaufman County Adult Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
Misdemeanor	6 criminal	1	n/a
State Jail/ 3 rd Degree Felony	6 criminal	2	n/a
1 st and 2 nd Degree Felony	6 criminal	3	1 st or 2 nd chair in at least 1 felony case tried to a verdict before a jury
Capital Felony	n/a	n/a	1 st chair, 2 nd chair, or appellate must be approved by the Administrative Region's Selection Committee
Appeals	6 criminal	n/a	Board certified in criminal law; or personally authored and filed at least 3 briefs or post-conviction writs of habeas corpus; or submit writing sample for approval; or worked as appellate court briefing clerk for at least 1 year.

¹⁵ 1 TEX. ADMIN. CODE §§ 174.1–4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

¹⁶ TEX. CODE CRIM. PROC. ART. 26.04(d).

¹⁷ The indigent defense plans list a minimum of 6 criminal / 6 juvenile CLE hours per year, and each list permits up to 6 hours of CLE credit above the requirement to carry forward to the following year.

3.b. Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually.

Table 3b: Qualifications for Kaufman County Juvenile Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
CINS or Delinquent Conduct (commitment to TJJD not an option)	6 juvenile	1	Observed or participated in at least 3 stipulated juvenile adjudications, 3 contested juvenile adjudications, 3 juvenile dispositions, 3 juvenile detention hearings and at least 1 criminal or juvenile trials
Delinquent Conduct (commitment to TJJD authorized)	6 juvenile	2	Meet general requirements above and participated in 3 criminal or juvenile cases at least 1 of which was tried to a jury verdict.
Determinate Sentence or Proceedings for Discretionary Transfer to Criminal Court have been initiated	6 juvenile	3	Meet general requirements above, participated in 6 criminal or juvenile cases at least 2 of which were tried to a jury verdict, and tried at least 2 criminal or juvenile cases as lead counsel.

Assessment

TIDC reviewed appointment lists and CLE records and found that the County has procedures for managing appointment lists and ensuring that all attorneys on the lists meet their annual CLE requirement.

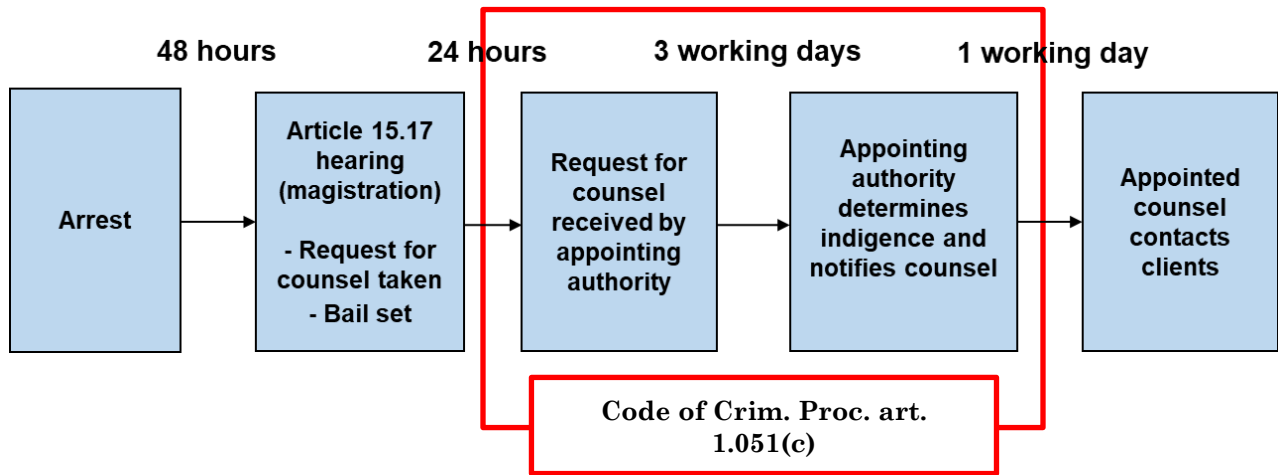
<p><u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3</u></p> <p>Establish Minimum Attorney Qualifications</p> <p>Requirement satisfied. No findings.</p>
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REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request.

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



The first opportunity for most defendants to request counsel is at the Article 15.17 hearing, when a defendant appears before a magistrate and is informed of the charges against him or her. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the defendant has the first opportunity to request counsel at the initial appearance in the trial court.

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request until appointment of counsel or denial of indigence. TIDC examined cases filed in FY2021 (October 2020 – September 2021).

4.a. Timeliness of Appointment in Felony Cases

TIDC examined 126 sample felony cases filed in FY2021.¹⁸ The courts made timely appointments of counsel in 49 of 78 cases in which counsel was requested (**62.8% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. During the review, staff indicated that when indigence affidavits are not received, the indigent defense coordinator works with jail staff and visits inmates to obtain the completed affidavits, however, the process appeared to exceed the Article 1.051 timeline. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in felony cases. If the courts received all

¹⁸ TIDC examined 160 felony case files but excluded cases in which it could not find magistrate warning forms.

counsel requests and supporting documents within 24 hours, the felony courts would likely be able to meet TIDC’s timeliness threshold.

Table 4: Times to Appointment in Felony Cases

	Sample Size	Number from sample	Percent
Number of case files examined in which TIDC could match magistrate warning forms	126		
Total cases with a counsel request		78	
Appointment / denial of indigence occurred in:			
0 work days		2	
1 – 3 work days + 24 hour transfer		47	
Total timely appointments / denials		49	62.8%
4 - 6 work days + 24 hour transfer		0	
More than 6 work days + 24 hour transfer		27	
No ruling on request		2	
Total untimely appointments / denials		29	37.2%

4.b. Timeliness of Appointments in Misdemeanor Cases

TIDC examined 68 sample misdemeanor cases filed in FY2021.¹⁹ The courts made timely appointments of counsel in 12 of 29 cases in which counsel was requested (**41.4% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. During the review, staff indicated that when indigence affidavits are not received, the indigent defense coordinator works with jail staff and visits inmates to obtain the completed affidavits, however the process appeared to exceed the Article 1.051 timeline. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in misdemeanor cases. If the courts received all counsel requests and supporting documents within 24 hours, the misdemeanor courts would likely be able to meet TIDC’s timeliness threshold.

¹⁹ TIDC examined 100 misdemeanor case files but excluded cases in which it could not find magistrate warning forms.

Table 5: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from sample	Percent
Number of case files examined in which TIDC could match magistrate warning forms	68		
Total cases with a counsel request		29	
Appointment / denial of indigence occurred in:			
0 work days		4	
1 – 3 work days + 24 hour transfer		8	
Total timely appointments / denials		12	41.4%
4 - 6 work days + 24 hour transfer		0	
More than 6 work days + 24 hour transfer		15	
No ruling on request		2	
Total untimely appointments / denials		17	58.6%

4.d. Juvenile Cases

Counsel must be appointed for youths alleged to have engaged in delinquent conduct when the youth is brought to a detention hearing and when the youth is served with a copy of the petition alleging misconduct.²⁰ Under Section 54.01(b-1) of the Family Code, unless the court finds 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. Under Subsections 51.101(c) and (d) of the Family Code, once a petition is served on the youth, the court has five working days to appoint counsel or order the retention of counsel for the youth.²¹

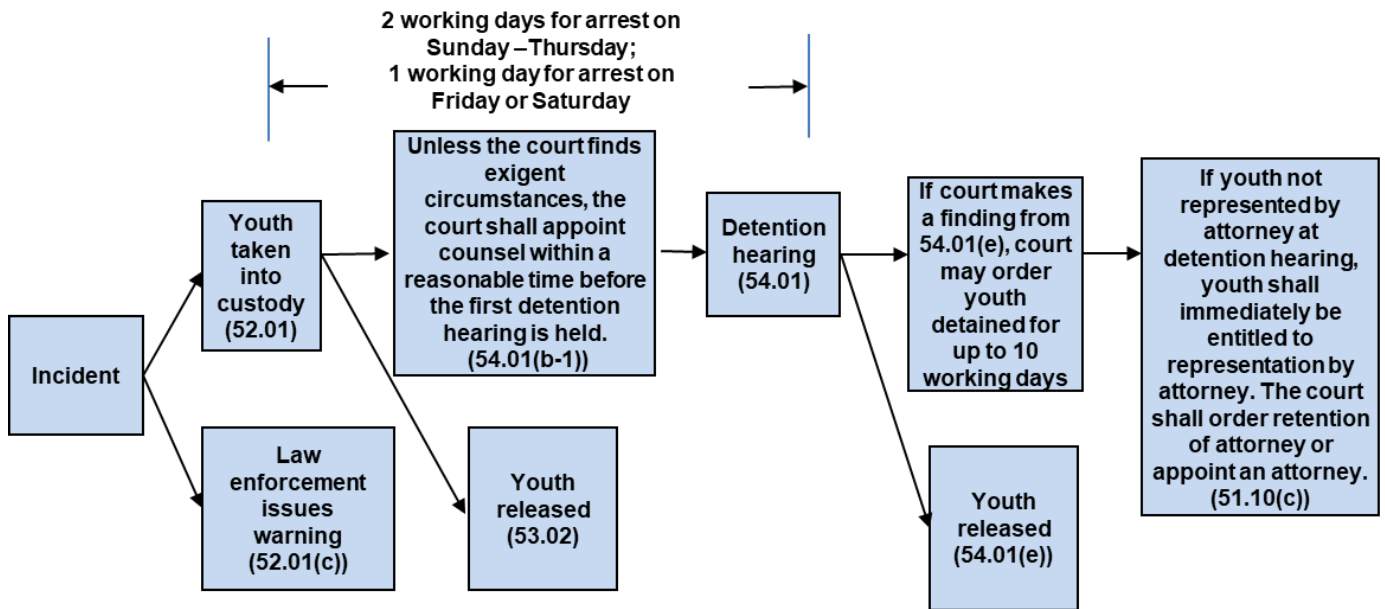
²⁰ TEX. FAM. CODE § 51.10(f).

²¹ If the person responsible for the youth fails to retain counsel, under Section 51.10(b) of the Family Code, the youth’s right to representation by an attorney shall not be waived in

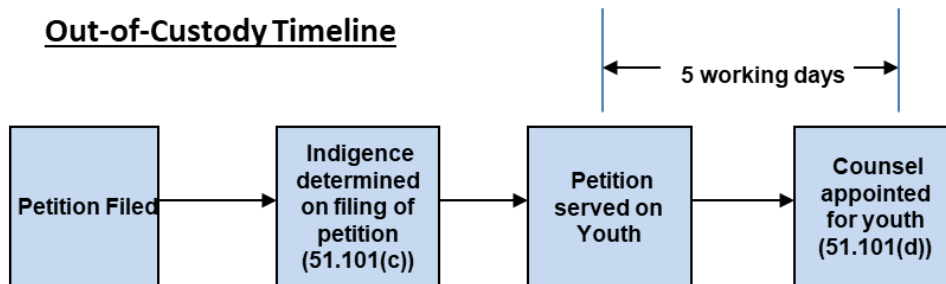
- (1) a hearing to consider transfer to criminal court as required by Section 54.02;
- (2) an adjudication hearing as required by Section 54.03;
- (3) a disposition hearing as required by Section 54.04;
- (4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section 54.05(f); or
- (5) hearings required by Chapter 55.

Under Section 51.10(e), the court may appoint counsel and order the person responsible for the youth to pay a reasonable attorney’s fee set by the court.

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases
In-Custody Timeline



Out-of-Custody Timeline



Juvenile Detention Hearings

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC examined 37 cases filed in FY2021 (October 2020 – September 2021). Section 54.01(b-1) of the Family Code requires counsel be appointed prior to the initial detention hearing, unless appointment is not feasible due to exigent circumstances.²² Of the 37 sample cases, 30 involved detention hearings. Counsel was present for the initial detention hearing in all 30 cases (**100% timely**), which exceeds TIDC’s 90% threshold.

Appointment After Service of the Petition

Under Subsections 51.101(c) and (d) of the Family Code, once a petition is served on the youth, the court has five working days to appoint counsel or order the retention of counsel for the youth. Of 37 sample cases, 20 involved service of the petition on the

²² TEX. FAM. CODE §54.01(b-1) states:

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.

youth. Counsel was timely appointed, or retained, in 19 of these cases (**95% timely**), which exceeds TIDC’s 90% threshold.

Table 6: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	37		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		30	
Cases with attorney present at initial hearing		30	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	20		
Counsel appointed within 5 working days of service		18	
Indigence denied or counsel retained within 5 working days of service ²³		1	
Total cases with timely presence of counsel		19	95%
Cases where counsel not present in a timely fashion		1	5%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 3 (FELONY CASES): Kaufman County’s felony appointment process did not meet TIDC’s threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), district courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline.

FINDING 4 (MISDEMEANOR CASES): Kaufman County’s misdemeanor appointment process did not meet TIDC’s threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), statutory county courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline.

²³ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS

Article 26.04(b)(6) of the Code of Criminal Procedure requires that local procedures for appointing counsel ensure appointments are allocated among qualified attorneys in a fair, neutral, and nondiscriminatory manner.

In assigned counsel systems, TIDC presumes a jurisdiction has a fair, neutral, and nondiscriminatory appointment system if the top 10% of attorneys receiving cases at a given level receive no more than three times their respective share of appointments.²⁴ If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome the presumption by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

Assessment

TIDC examined the distribution of FY2021 cases assigned to attorneys on the felony, misdemeanor, and juvenile appointment lists (see Table 6). The distributions for felony, misdemeanor, and juvenile cases fell within TIDC’s presumed threshold.

Table 6: Share of Cases Paid to Top 10% of Attorneys

Level	Attorneys on List ²⁵	Top 10% Attorneys ²⁶	Respective Share of Cases ²⁷ [Column A]	Actual Share of Cases [Column B]	Top 10% Received ‘x’ Times Their Respective Share [Col. B] / [Col. A]
Felony	30	3	10.0%	22.9%	2.29
Misdemeanor	27	3	11.1%	19.0%	1.73
Juvenile	6	1	16.7%	46.9%	2.81

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

²⁴ 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

²⁵ TIDC considered an attorney to be on the appointment list if the attorney was on any court lists for the offense level.

²⁶ The number Top 10% Attorneys is equal to the number of Attorneys on List for Entire Year multiplied by 0.10, rounded to the nearest whole number.

²⁷ The percent Respective Share of Cases is equal to the number of Top 10% Attorneys divided by the number of Attorneys on List for Entire Year.

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

Under 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 TIDC. This data must 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. Since FY2014, financial data reports must include attorney-level information.

Data reported by the Kaufman County Auditor is consistent with summary case file data examined by TIDC.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

Requirement satisfied. No findings.

Conclusion

TIDC thanks Kaufman County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance finding within two years.²⁸ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²⁸ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

Kaufman County must respond in writing how it will address the report's findings.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

FINDING 1: Article 15.17(e) of the Code of Criminal Procedure requires magistrates to ask and record whether each defendant requests counsel. Kaufman County magistrates must ask and record whether each defendant requests counsel.

FINDING 2: At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel. The County must provide a method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing.

FINDING 3: Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a method to ensure requests are sent to the appointing authority within 24 hours of the request.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

FINDING 4 (FELONY CASES): Kaufman County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), district courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 5 (MISDEMEANOR CASES): Kaufman County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), statutory county courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

Appendix: Monitoring Review Checklist

The monitoring review of the FDA's core requirements consisted of an examination of the items from the following checklist. If a box is marked, the specific requirement was met. If a box is not marked, the requirement either was not satisfied or is not applicable.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

- The accused must be brought before a magistrate within 48 hours of arrest.²⁹
 - 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.³⁰
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³¹
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³²
- 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.³³
- 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 250,000.³⁴
- 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.³⁵

²⁹ TEX. CODE CRIM. PROC. ART. 14.06(a).

³⁰ TEX. CODE CRIM. PROC. ART. 17.033.

³¹ TEX. CODE CRIM. PROC. ART. 15.17(a).

³² *Id.* This box is not checked because magistrates do not ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel.

³³ TEX. CODE CRIM. PROC. ART. 15.17(e). This box is not checked because magistrates did not always mark whether defendants requested appointed counsel.

³⁴ *See, e.g.*, TEX. CODE CRIM. PROC. ART. 15.17(a) (requiring magistrate to appoint counsel according to the timeframes set in TEX. CODE CRIM. PROC. ART. 1.051); TEX. CODE CRIM. PROC. ART. 1.051(c) (spelling out timeframe for appointment of counsel by county population size).

³⁵ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because consistent methods are not in place to always transmit requests to courts within 24 hours of the request being made.

REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN.

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³⁶
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁷
- ☒ List factors the court will consider when determining whether a defendant is indigent.³⁸

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.³⁹
 - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal / juvenile law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.⁴⁰
 - Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30.⁴¹

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY (JUVENILES).

- ☒ 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.⁴²
- ☒ 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.⁴³

³⁶ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³⁷ TEX. CODE CRIM. PROC. ART. 26.04(l).

³⁸ TEX. CODE CRIM. PROC. ART. 26.04(m).

³⁹ TEX. CODE CRIM. PROC. ART. 26.04(d).

⁴⁰ 1 TEX. ADMIN. CODE § 174.1–.4.

⁴¹ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

⁴² TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

⁴³ TEX. FAM. CODE § 51.101(d).

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY (ADULTS).

- 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 250,000.⁴⁴
- 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.⁴⁵
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁴⁶

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS.

- 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.⁴⁷
- 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.⁴⁸
- Alternative appointment method:⁴⁹
 - The local processes must be established by a vote of two-thirds of the judges.
 - The plan must be approved by the presiding judge of the administrative judicial region.
 - The courts must allocate appointments reasonably and impartially among qualified attorneys.

NOT APPLICABLE: The County does not operate an alternative appointment program.

⁴⁴ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because several detained defendants did not receive timely appointments.

⁴⁵ TEX. CODE CRIM. PROC. ART. 1.051(j); *see also Rothgery v. Gillespie Cnty.*, 554 U.S. 191, 212 – 13 (2008) (holding that “a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, [the Article 15.17 hearing] marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”). This box is not checked because several defendants who made bail did not receive timely appointments.

⁴⁶ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because one sample misdemeanor defendants requested counsel but entered an uncounseled plea before the request was ruled upon.

⁴⁷ TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴⁸ TEX. CODE CRIM. PROC. ART. 26.044.

⁴⁹ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

REQUIREMENT 6: STATUTORY DATA REPORTING

- ☒ 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:⁵⁰
- In each district, statutory county, and appellate 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.

⁵⁰ TEX. GOV'T CODE § 79.036(a-1).