



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

**May 2022**



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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 through policy reviews.<sup>1</sup> TIDC observed court, interviewed officials, and reviewed FY2019 data from Williamson County.<sup>2</sup> TIDC made two findings of noncompliance:

- 1) The local indigence standard allows for the consideration of non-spousal income; and
- 2) For juveniles who were not detained, the court sometimes failed to timely appoint counsel or order the retention of counsel.

TIDC thanks Williamson County officials and staff for their assistance in completing this review. TIDC staff stand ready to provide technical and financial assistance to remedy this issue. TIDC will conduct a follow-up review regarding its findings within two years.<sup>3</sup>

## Background

TIDC selected Williamson County for a review through its annual county selection process, which seeks to cycle through counties around the state. This review, the first for Williamson County, covered all six core requirements of the Fair Defense Act:<sup>4</sup>

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, Lindsay Bellinger, Claire Buetow, and Joel Lieurance conducted the review. TIDC examined FY2019 data, including misdemeanor and felony case files; summary records examined by juvenile probation; the local indigent defense plan; appointment lists; and records of attorney continuing

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

<sup>2</sup> TIDC began this review during FY2020, but due to covid-related issues, could not promptly complete the report.

<sup>3</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

<sup>4</sup> 1 TEX. ADMIN. CODE § 174.28.

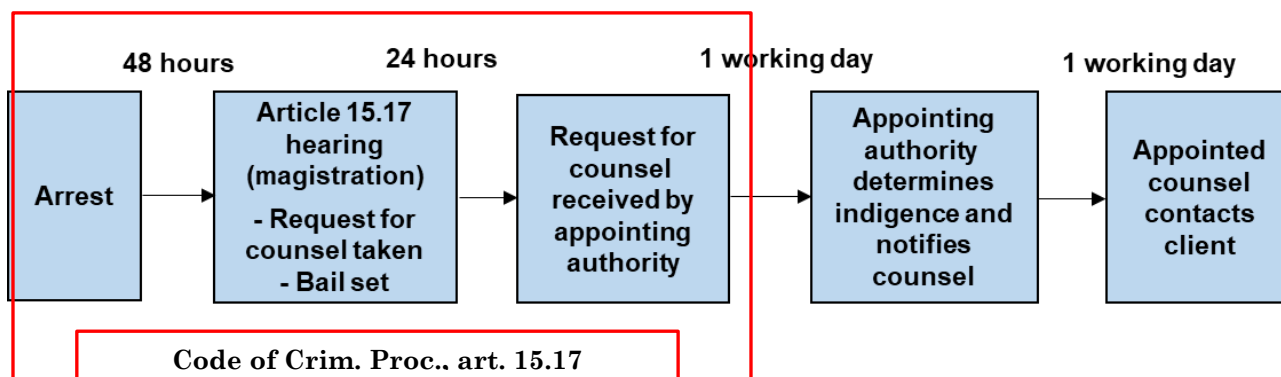
legal education (CLE) hours. TIDC interviewed judges and pretrial services staff and observed Article 15.17 hearings, felony dockets, and misdemeanor dockets.

## 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.<sup>5</sup> At this hearing, the magistrate must inform the person of his or her 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.<sup>6</sup> Magistrates must transmit requests for counsel to the appointing authority within 24 hours.<sup>7</sup> 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.<sup>8</sup>

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



#### *Local Practices for Conducting Magistrate Warnings*

In Williamson County, defendants who are in jail are promptly brought before a magistrate who makes probable cause determinations, sets bail,<sup>9</sup> and asks defendants if they want to request counsel. For the period of TIDC's file review, after the

<sup>5</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>6</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>7</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>8</sup> TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

<sup>9</sup> From TIDC's sample cases, 41% of felony defendants did not make bail, and 12% of misdemeanor defendants did not make bail.

magistrate warnings, screeners interviewed defendants in jail who requested counsel.<sup>10</sup> Some defendants made bail prior to the interview, and the County provided these defendants with directions to return and complete the interview later. Upon completion of the interview, the screener can appoint counsel or deny indigence.

**1.a. Timeliness of Warnings**

An arrested person must be brought before a magistrate within 48 hours of arrest.<sup>11</sup> 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.<sup>12</sup> To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 478 sample case files in which staff could determine the time from arrest until the Article 15.17 hearing. All sample cases had Article 15.17 hearings occurring 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:	478	
0 days	182	38.1%
1 day	291	60.9%
2 days	5	1.0%
<b>Timely Hearings</b>	<b>478</b>	<b>100%</b>
More than 2 days	0	0%

**1.b. Ability of Arrested Persons to Request Counsel**

At the Article 15.17 hearing, the magistrate must inform arrested persons of the right to counsel, ask whether they want to request counsel, and record whether they request counsel.<sup>13</sup> Of the sample case files examined by TIDC, 56% of felony arrestees and 45% of misdemeanor arrestees requested counsel at the Article 15.17 hearing. This is an indication that arrested persons understand their right to counsel at the Article 15.17 hearing and regularly request counsel.

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<sup>10</sup> Currently, due to changes during the pandemic, defendants who request counsel at the Article 15.17 hearing are given an affidavit of indigence to complete. If the defendant needs any assistance with the affidavit, the magistrate clerk is available. Pretrial Services expects to interview defendants again, and to use the interview, both for purposes of determining indigence and for determining eligibility for a personal bond.

<sup>11</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>12</sup> 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.

<sup>13</sup> TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

In addition, TIDC observed Article 15.17 hearings and found that magistrates carefully explained the right to counsel to defendants and recommended they speak to a lawyer about legal and factual issues they mentioned.<sup>14</sup>

***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.<sup>15</sup> For the period of file review, the forms necessary for requesting counsel were completed through financial screening interviews. Currently, magistrate clerks provide defendants with affidavits of indigence and are available to assist them with completing the form.

***1.d. Transmitting Forms to the Appointing Authority***

Within 24 hours of request for counsel, the magistrate must transmit the request to the entity authorized to appoint counsel.<sup>16</sup> For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.<sup>17</sup> At the time of the file review, screeners were designated with authority to appoint counsel or deny indigence.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings**

Requirement satisfied. No findings.

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<sup>14</sup> Magistrates asked, however, if defendants were “undecided” about requesting counsel, and many answered that they were. Defendants may not understand that this is effectively a waiver of counsel.

<sup>15</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>16</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>17</sup> TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

## **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. The ultimate test is whether the defendant is financially able to employ counsel.<sup>18</sup> Some defendants may not meet the presumption under the local standard set in the plan, but still not have the financial ability to employ counsel.<sup>19</sup>

### ***2.a. Indigence Standard in Adult Criminal Cases***

For adult criminal cases in Williamson County, persons are presumed indigent if they have a household income at or below 125% of the Federal Poverty Guidelines and non-exempt assets less than \$2,500. Household income is defined in the plan as "the defendant's income and the income of all other persons related by birth, marriage or adoption who reside with the defendant." Article 26.04(m) lists only the defendant's income and their spouse's income that is available to them as factors to consider in determining indigence. Additionally, *Abdnor v. State*, 712 S.W.2d 136, 142 (Tex. Crim. App. 1986), restricts indigence determinations to considering the income of only the persons who are legally bound to pay for the defendant's legal expenses. When determining indigence, Williamson County must not consider the income of other people besides the defendant and their spouse.

A defendant whose household income exceeds 125% of the latest poverty guidelines may still qualify for a court appointed attorney if special circumstances exist. For those special circumstances, the court may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. The court may also consider the complexity of the case, the estimated

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<sup>18</sup> TEX. CODE CRIM. PROC. ART. 1.051(b).

<sup>19</sup> The Williamson County Adult Indigent Defense Plan (available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=380>) sets a local presumptive test but also defines indigence as a person who is not financially able to employ counsel.



cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases, whether the defendant has retained counsel in related legal matters (such as ALR or forfeitures), and any efforts the defendant has made to retain an attorney.

### ***2.b. Indigence Standard in Juvenile Cases***

In juvenile cases, if the income of the person responsible for the youth is less than 125% of the Federal Poverty Guidelines, the juvenile is presumed to be indigent.<sup>20</sup> The youth may also be determined to be indigent if the responsible person is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing. The youth may still be determined to be indigent if counsel cannot be retained without substantial hardship.

### ***2.c. Local Practices***

During FY2019, the period for this review, adult defendants who requested counsel at magistration were interviewed by indigent defense screeners. Screeners can determine someone is indigent and appoint counsel or determine someone is not indigent. Many defendants were marginally outside of the presumptive standard of indigence. They were initially denied indigence and were asked to bring additional documents to prove that they should qualify as indigent because of special circumstances.<sup>21</sup> From TIDC's case sample, 52 misdemeanor requests for counsel were initially denied (28% of misdemeanor requests), but 32 of those cases (62% of denials) later received appointed counsel. In felony cases, 22 cases were initially denied indigence (14% of felony requests), but 18 of those cases (82% of denials) later received appointed counsel.

Williamson County is currently modifying its screening procedures with the creation of an expanded Pretrial Services Office. The Office plans to interview defendants, both for appointment of counsel and for personal bonds. Expanding the office and screening defendants for both bonds and counsel before magistration (a best practice) will likely improve the speed and accuracy of indigency determinations and appointment of counsel.

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<sup>20</sup> The Williamson Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=192>.

<sup>21</sup> TIDC also saw examples of screeners considering non-spousal income in its case file sample. For example, a defendant who was father of three children and reported receiving under \$700 per month in disability income was denied counsel because he did not have proof of his fiancée's income, despite his fiancée not being under legal obligation to pay for his legal representation.

## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

### **Determination of Indigence**

**FINDING 1:** Indigence determinations must comply with Article 26.04(m) and *Abdnor v. State*. Indigence determinations may not consider the income of persons who are not legally bound to pay for the defendant's legal expenses.

### **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.<sup>22</sup> Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.

#### ***3.a. Felony and Misdemeanor Cases***

In Williamson County, all felony and misdemeanor attorneys who take court appointments must be board certified in criminal law or must obtain at least 10 criminal CLE hours annually, including one hour of ethics. The courts approve attorneys for each list. Higher offense levels require a greater number of trials and years of experience in criminal litigation than lower levels.

#### ***3.b. Juvenile Cases***

The juvenile courts require all attorneys to obtain at least 6 juvenile CLE hours annually or be board certified in juvenile law. The courts approve attorneys for each list. Attorneys taking appointments in juvenile cases must either reside in Williamson County or have an office in the County.

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<sup>22</sup> 1 TEX. ADMIN. CODE §§ 174.1 – 4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

**Table 2: Qualifications for Williamson County Appointment Lists**

<b>List</b>	<b>Years Experience</b>	<b># of Jury Trials or # of App. Briefs</b>	<b>Other Notes</b>
Capital Murder	n/a	n/a	Be on 3 <sup>rd</sup> Administrative Region's appointment list
Felony A (1 <sup>st</sup> Degree Felony / 2 <sup>nd</sup> Degree Felony)	5	7 crim. jury trials, 3 must have been for felonies	Jury trials can be 1 <sup>st</sup> or 2 <sup>nd</sup> chair
Felony B (3 <sup>rd</sup> Degree Felony / State Jail Felony)	3	4 crim. jury trials, 2 must have been for felonies	Jury trials can be 1 <sup>st</sup> or 2 <sup>nd</sup> chair
Misdemeanors	6 mos.	2 criminal jury trials	
Capital Murder Appeal	n/a	n/a	Be on 3 <sup>rd</sup> Administrative Region's appointment list
Adult Criminal Appeals	n/a	3 appellate or post-conviction briefs	Alternatively, can be approved if 1 year experience as briefing clerk for appellate court
Mental Health (MH) Misd.	n/a	n/a	Approved by majority of misdemeanor court judges
MH Felony and Appeals	n/a	n/a	Approved by majority of felony court judges
Juvenile A (delinquency cases with TJJD possibility; determinate sentence possibility; discretionary transfer to adult court)	5	3 cases involving determinative sentencing, adult certification, or contested disposition	Must have office in Williamson County or be resident
Juvenile B (CINS and delinquency without TJJD possibility)	3	Lead counsel in at least 20 juvenile cases	Must have office in Williamson County or be resident
Juvenile Appeals	5	3 cases involving determinative sentencing, adult certification, or contested disposition	Must meet Juvenile A list qualifications

***Assessment***

TIDC reviewed appointment lists and CLE records, and found that the County has procedures for managing appointment lists and for ensuring that all attorneys on the lists meet their annual CLE requirement. TIDC finds Williamson County is in substantial compliance with Requirement 3.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3**

**Establish Minimum Attorney Qualifications**

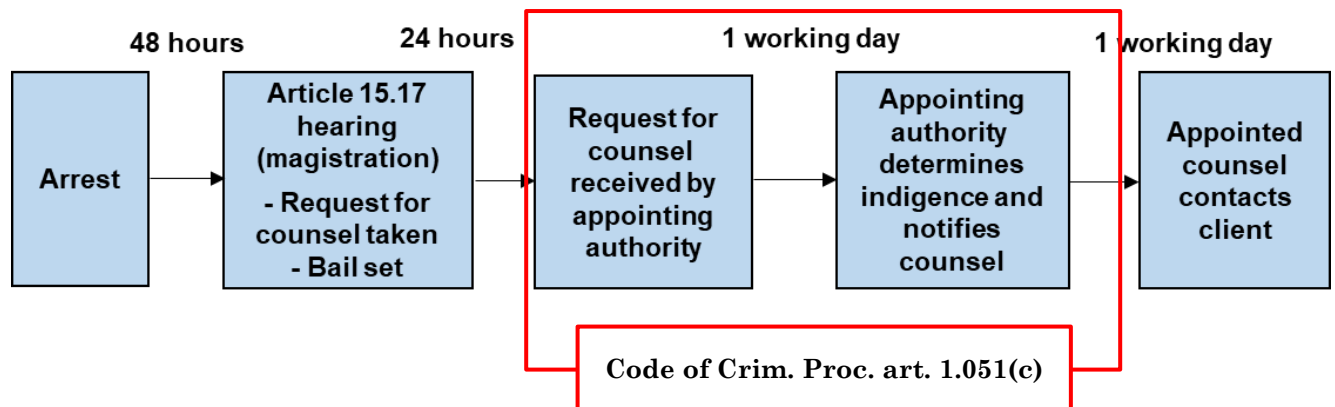
Requirement satisfied. No findings.

## REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

### *Adult Cases*

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

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



Under Article 15.17 and local procedures, 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 his or her 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 FY2019 (October 2018 to September 2019).

#### ***4.a. Timeliness of Appointment in Felony Cases***

TIDC examined 230 sample felony cases filed in FY2019. Counsel was timely appointed in 151 of 154 cases in which counsel was requested (**98% timely**). This exceeds TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel.

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

	Sample Size	Number from sample	Percent
Number of case files examined	230		
Total cases with a counsel request		154	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		124	
1 work day + 24 hour transfer		27	
<b>Total timely appointments / denials</b>		<b>151</b>	<b>98%</b>
2 - 4 work days + 24 hour transfer		1	
More than 4 work days + 24 hour transfer		2	
No ruling on request		0	
Total untimely appointments / denials		3	2%

**4.b. Timeliness of Appointments in Misdemeanor Cases**

TIDC examined 282 sample misdemeanor cases filed in FY2019. Counsel was timely appointed in 172 of 179 cases in which counsel was requested (**96% timely**).<sup>23</sup> This exceeds TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel.

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

	Sample Size	Number from sample	Percent
Number of case files examined	282		
Total cases with a counsel request		179	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		160	
1 work day + 24 hour transfer		12	
<b>Total timely appointments / denials</b>		<b>172</b>	<b>96%</b>
2 to 4 work days + 24 hour transfer		0	
More than 4 work days + 24 hour transfer		6	
No ruling on request		1	
Total untimely appointments / denials		7	4%

<sup>23</sup> The primary reason for late appointments was that some defendants made bail before completing their indigence screening. With the County's updated screening procedures and expanded Pretrial Services office (see Requirement 2), its rate of timeliness should improve even more.

### *Waivers of Counsel in Misdemeanor Cases*

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel and allows waivers that are voluntarily and intelligently made. Under Article 1.051(f-1), the prosecutor may not initiate a waiver and may not communicate with a defendant until any pending request for counsel is denied, and the defendant waives the opportunity to retain private counsel. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel to an unrepresented defendant and must give the defendant a reasonable opportunity to request counsel before encouraging the defendant to communicate with the attorney representing the state. If a defendant enters an uncounseled plea, the defendant must sign a written waiver, the language of which must substantially conform to the language of Article 1.051(g).

TIDC's samples did not contain any cases with uncounseled pleas.

#### ***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.<sup>24</sup> 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.<sup>25</sup>

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<sup>24</sup> TEX. FAM. CODE § 51.10(f).

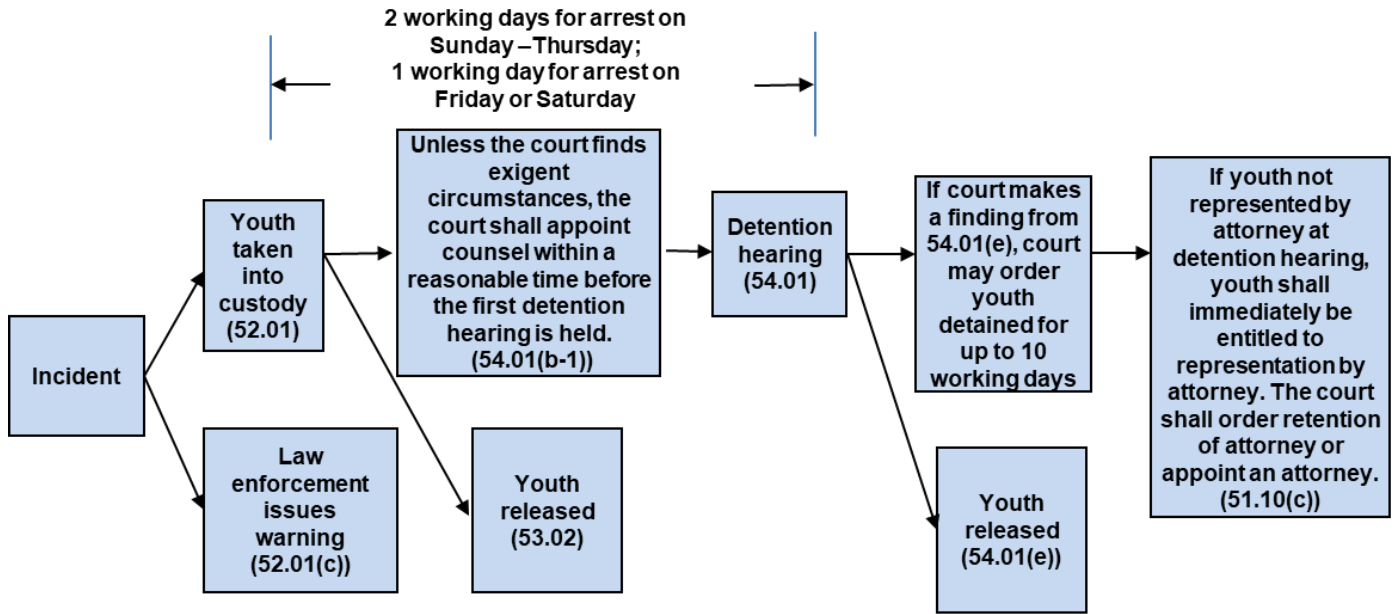
<sup>25</sup> If the person responsible for the youth fails to retain counsel, under Section 51.10(b) of the Family Code, the youth's right to representation by an attorney shall not be waived in

- (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.

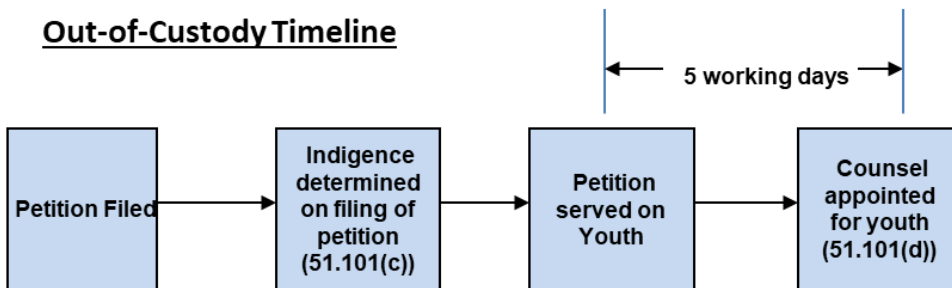
Under Section 51.10(e), the court may appoint counsel and order the person responsible for the youth to pay a reasonable attorney's fee set by the court.

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, Williamson County staff examined 35 cases filed in FY2019 (October 2018 – September 2019). 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.<sup>26</sup> Of the 35 sample cases, 27 involved detention hearings. Counsel was present for the initial detention hearing in all 27 cases (**100% timely**), which exceeds TIDC’s 90% threshold.

<sup>26</sup> 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.

*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 35 sample cases, 34 involved service of the petition on the youth. Counsel was timely appointed for 24 of these cases (**71% timely**), which does not meet TIDC’s 90% threshold. For cases in which the youth is not detained, the County must implement procedures that ensure timely appointments of counsel.

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

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	35		
<b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>			
Case files with detention hearings		27	
<b>Cases with attorney present at initial hearing</b>		<b>27</b>	<b>100%</b>
<b>TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION</b>			
Case files in which youth served with a petition	34		
Counsel appointed within 5 working days of service		21	
Indigence denied or counsel retained within 5 working days of service <sup>27</sup>		3	
<b>Total cases with timely presence of counsel</b>		<b>24</b>	<b>71%</b>
Cases where counsel not present in a timely fashion		10	29%

**RECOMMENDATION FOR REQUIREMENT 4**

**Appoint Counsel Promptly**

**FINDING 2 (JUVENILE CASES):** For cases in which the youth is not detained, Williamson County’s juvenile appointment process did not meet TIDC’s threshold for appointment of counsel (90% timely). Section 51.101(d) of the Family Code requires the appointment of counsel within five working days of petition service on the youth. The County must implement procedures that ensure timely appointments of counsel in cases in which a petition is served on the youth.

<sup>27</sup> 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.<sup>28</sup> 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 cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists (see Table 6). The distributions fell well within TIDC’s presumed threshold. TIDC finds Williamson County is in substantial compliance with Requirement 5.

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

Level	Attorneys on List <sup>29</sup>	Top 10% Attorneys <sup>30</sup>	Respective Share of Cases <sup>31</sup> [Column A]	Actual Share of Cases [Column B]	Top 10% Received ‘x’ Times Their Respective Share [Col. B] / [ Col. A]
Felony	53	5	9.4%	19.6%	<b>2.1</b>
Misdemeanor	34	3	8.8%	12.6%	<b>1.4</b>
Juvenile	16	2	12.5%	27.7%	<b>2.2</b>

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5**

**Attorney Selection Process**

Requirement satisfied. No findings.

<sup>28</sup> 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

<sup>29</sup> TIDC considered an attorney had been on the list for the entire year if the attorney received payment for disposing a case in FY2019 and was present on the FY2021 list.

<sup>30</sup> 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.

<sup>31</sup> 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 the Commission. 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.<sup>32</sup>

Data reported by the 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 Williamson County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance findings within two years.<sup>33</sup> TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

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<sup>32</sup> TEX. GOV'T CODE § 79.036(a-1).

<sup>33</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Summary of Findings and Recommendations**

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

### **Requirement 2: Determine Indigence According to Standards**

#### **Directed by the Indigent Defense Plan.**

**FINDING 1:** Indigence determinations must comply with Article 26.04(m) and *Abdnor v. State*. Indigence determinations may not consider the income of persons who are not legally bound to pay for the defendant's legal expenses.

### **REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.**

**FINDING 2 (JUVENILE CASES):** For cases in which the youth is not detained, Williamson County's juvenile appointment process did not meet TIDC's threshold for appointment of counsel (90% timely). Section 51.101(d) of the Family Code requires the appointment of counsel within five working days of petition service on the youth. The County must implement procedures that ensure timely appointments of counsel in cases in which a petition is served on the youth.

## 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.<sup>34</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>35</sup>
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>36</sup>
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>37</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>38</sup>
- 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>39</sup>
- 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>40</sup>

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<sup>34</sup> TEX. CODE CRIM. PROC. ART. 14.06(a).

<sup>35</sup> TEX. CODE CRIM. PROC. ART. 17.033.

<sup>36</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>37</sup> *Id.*

<sup>38</sup> TEX. CODE CRIM. PROC. ART. 15.17(e).

<sup>39</sup> *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).

<sup>40</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

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

- Provide detailed procedures used to determine whether a defendant is indigent.<sup>41</sup>
- State the financial standard(s) to determine whether a defendant is indigent.<sup>42</sup>
- List factors the court will consider when determining whether a defendant is indigent.<sup>43</sup>

**REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.**

- Establish objective qualification standards for attorneys to be on an appointment list.<sup>44</sup>
  - 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.<sup>45</sup>
  - 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.<sup>46</sup>

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<sup>41</sup> TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

<sup>42</sup> TEX. CODE CRIM. PROC. ART. 26.04(l). This box is not checked because the income of non-spousal persons is sometimes considered in determining indigence.

<sup>43</sup> TEX. CODE CRIM. PROC. ART. 26.04(m).

<sup>44</sup> TEX. CODE CRIM. PROC. ART. 26.04(d).

<sup>45</sup> 1 TEX. ADMIN. CODE § 174.1–4.

<sup>46</sup> TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

**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.<sup>47</sup>
- 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>48</sup>

**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.<sup>49</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>50</sup>
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>51</sup>

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<sup>47</sup> TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

<sup>48</sup> TEX. FAM. CODE § 51.101(d). This box is not checked because TIDC's case sample was less than 90% timely.

<sup>49</sup> TEX. CODE CRIM. PROC. ART. 1.051(c).

<sup>50</sup> 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, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”).

<sup>51</sup> TEX. CODE CRIM. PROC. ART. 1.051(f-2).

**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.<sup>52</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>53</sup>

**NOT APPLICABLE:** The County does not have a public defender.

- ☐ Alternative appointment method:<sup>54</sup>
  - 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.

**Requirement 6: Report Data Required by Statute**

- ☒ 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:
  - 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.<sup>55</sup>

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<sup>52</sup> TEX. CODE CRIM. PROC. ART. 26.04(a).

<sup>53</sup> TEX. CODE CRIM. PROC. ART. 26.044.

<sup>54</sup> TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

<sup>55</sup> TEX. GOV'T CODE § 79.036(e).