



# **Policy Monitoring Review of Taylor County's Indigent Defense Systems**

**April 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 FY2020 data from Taylor County. TIDC made five findings of noncompliance.

When defendants request counsel at the Article 15.17 hearing, there were informal practices for ensuring assistance with affidavits of indigence and for transmitting the documents to the courts. However, many of these requests were not promptly transferred to the courts. Taylor County must put in place consistent methods for assisting with counsel requests and for transmitting them to the courts.

As a result of inconsistent methods for assisting defendants in applying for counsel and sending requests to the courts, many appointments in both felony and misdemeanor cases were not timely. The misdemeanor courts did not always document dates that counsel was appointed. The courts must document whether counsel appointments are timely.

TIDC thanks Taylor County officials and staff for their assistance in completing this review. TIDC staff stand ready to provide technical and financial assistance to remedy these issues. TIDC will conduct a follow-up review regarding its finding within two years.<sup>2</sup>

## **Background**

TIDC selected Taylor County for a review through its annual county selection process, which seeks to cycle through counties around the state. This review covers the first five of the six FDA core requirements, and an accompanying fiscal monitoring review covers the sixth requirement:

**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 William Cox and Joel Lieurance conducted the review. TIDC examined FY2020 data, including felony and misdemeanor case files; summary records

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

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

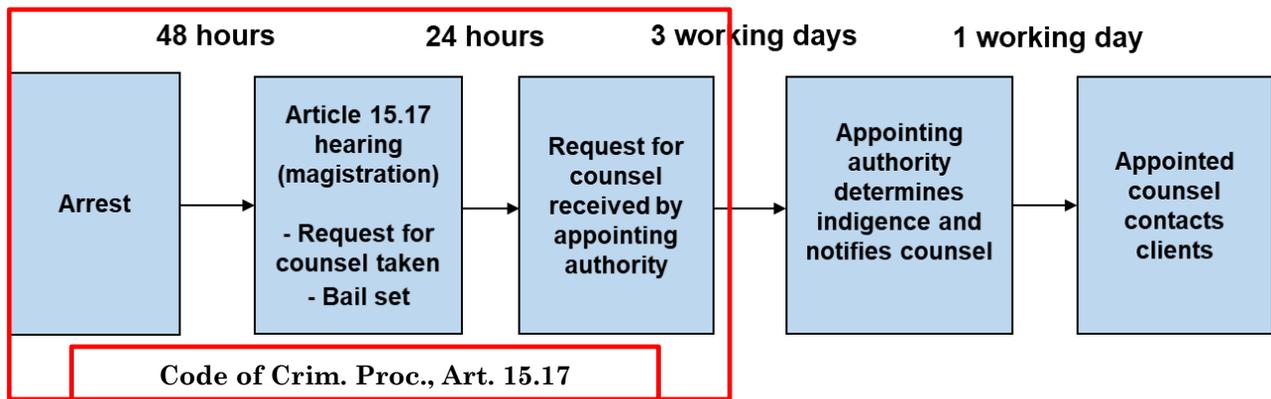
examined by juvenile probation; the local indigent defense plan; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, County staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings, felony dockets, and misdemeanor dockets.

## 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>3</sup> 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.<sup>4</sup> Magistrates must transmit requests for counsel to the appointing authority within 24 hours.<sup>5</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>6</sup>

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



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

In Taylor 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. Many warnings are conducted by videoconference, and if a defendant requests counsel, jail staff provide the defendant

<sup>3</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>4</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

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

<sup>6</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>.

with a copy of the affidavit of indigence. The magistrate tells defendants that jail staff is available to assist with the affidavits.

**1.a. Timeliness of Warnings**

An arrested person must be brought before a magistrate within 48 hours of arrest.<sup>7</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>8</sup> To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 271 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**

	<b>Sample Size</b>	<b>Percent</b>
Article 15.17 hearing occurs x days after arrest:	271	
0 days	90	33%
1 day	174	64%
2 days	7	3%
<b>Timely Hearings</b>	<b>271</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 an arrested person of the right to counsel, ask whether the person wants to request counsel, and record whether the person requests counsel.<sup>9</sup> According to reports submitted by justice courts to the Office of Court Administration (OCA), about 55% of misdemeanor defendants requested counsel and 64% of felony defendants requested counsel in FY2020. This is an indication that arrested persons understand their right to counsel at the Article 15.17 hearing and regularly request counsel.

**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.<sup>10</sup> Jail staff assist arrestees in completing affidavits of indigence.

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

<sup>8</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. TIDC excluded cases in which it could not determine the timeliness of magistrate warnings

<sup>9</sup> TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

<sup>10</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

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.

From TIDC's observations, an informal process is in place for jail staff to assist with affidavits of indigence. However, there are no formal procedures, allowing for one to check whether the affidavit was completed at the time of the Article 15.17 hearing or whether the affidavit was transmitted to the courts within 24 hours of the request being made. 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 a 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.<sup>11</sup> For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.<sup>12</sup> In Taylor County, completed affidavits are placed in a box for the indigent defense coordinator. She picks them up each business day.

As noted previously, there are no consistent methods to ensure all persons requesting counsel have their requests and associated financial forms sent to the courts within 24 hours of the request being made. The County must provide a consistent method to ensure requests are sent to the appointing authority within 24 hours of the request being made such as the checklist described above.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings**

**FINDING 1:** 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 2:** 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.

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

<sup>12</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 statutory test for indigence is whether the defendant is financially able to employ counsel.<sup>13</sup> Some defendants may not meet the presumption set in the local indigence plan, but still not have the financial ability to employ counsel.

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

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

1. At the time of requesting appointed counsel, the accused or accused's dependents are 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 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register and the value of the non-exempt assets and property owned by the accused:
  - a. does not exceed \$2,500.00;
  - b. does not exceed \$5,000.00 in the case of a suspect whose household includes a person who is age 60 or over, disabled, or institutionalized; or
  - c. does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.
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

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<sup>13</sup> TEX. CODE CRIM. PROC. ART. 1.051(b).

a proceeding in which admission or commitment to such a mental health facility is sought.<sup>14</sup>

The posting of bail or ability to post bail 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, but the standard is based on the person responsible for the youth.<sup>15</sup>

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

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

## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

### **Determination of Indigence**

Requirement satisfied. No findings.

## **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>16</sup> Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.<sup>17</sup>

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

For both the felony and misdemeanor appointment lists, attorneys must obtain at least eight criminal CLE hours annually or be board certified in criminal law.<sup>18</sup> The courts noted they had difficulties attracting attorneys wishing to accept appointments in criminal cases.

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<sup>14</sup> The Taylor County Adult Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=162>.

<sup>15</sup> The Taylor Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=43>.

<sup>16</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.

<sup>17</sup> TEX. CODE CRIM. PROC. ART. 26.04(d).

<sup>18</sup> The indigent defense plans list a minimum of 8 criminal / juvenile CLE hours per year, but each list requires an attorney to average at least 10 criminal / juvenile CLE hours per year.

**Table 2a: Qualifications for Taylor County Adult Appointment Lists**

<b>List</b>	<b>CLE Hours</b>	<b># Years Experience</b>	<b># of Jury Trials or # of App. Briefs</b>
Misdemeanor	10 criminal	n/a	n/a
Misdemeanor Jail-Call <sup>19</sup>	10 criminal	n/a	n/a
Misdemeanor - MTR	10 criminal	n/a	n/a
State Jail Felony	10 criminal	1	1 criminal jury trial (or sat 2 <sup>nd</sup> chair in felony jury trial)
Felony MTR	10 criminal	1	1 criminal jury trial (or sat 2 <sup>nd</sup> chair in felony jury trial)
3 <sup>rd</sup> Degree Felony	10 criminal	2	1 criminal jury trial
2 <sup>nd</sup> Degree Felony	10 criminal	4	2 criminal jury trials (at least 1 felony trial)
1 <sup>st</sup> Degree Felony	10 criminal	5	3 criminal jury trials (at least 2 felony trials)
Capital Felony	n/a	n/a	1 <sup>st</sup> chair approved by the 7 <sup>th</sup> Administrative Region's Selection Committee
Appeals	10 criminal	n/a	1 criminal appellate brief or post-conviction writ

**3.b. Juvenile Cases**

The juvenile courts require all attorneys to obtain at least eight juvenile CLE hours annually or be board certified in juvenile law.

**Table 2b: Qualifications for Taylor County Juvenile Appointment Lists**

<b>List</b>	<b>CLE Hours</b>	<b># Years Experience</b>	<b># of Jury Trials or # of App. Briefs</b>
CINS or Delinquent Conduct (commitment to TJJD not an option)	10 juvenile	n/a	n/a
Delinquent Conduct (commitment to TJJD authorized); Det. Sentence Proceedings; Disc. Transfer to Crim. Court	10 juvenile	5	3 criminal jury trials (at least 2 felony trials)

**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.

<p><b><u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3</u></b></p> <p><b>Establish Minimum Attorney Qualifications</b></p> <p>Requirement satisfied. No findings.</p>
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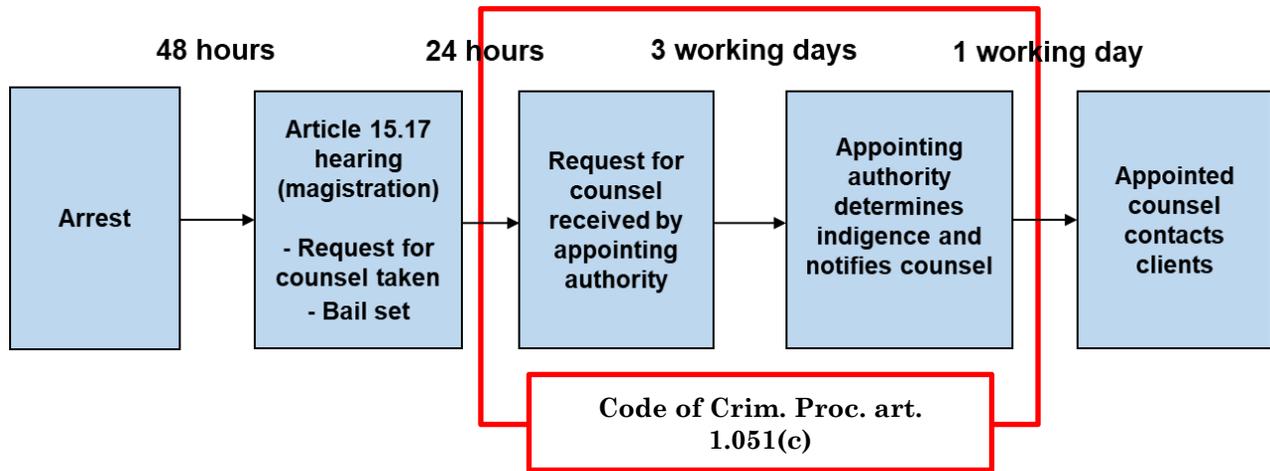
<sup>19</sup> This list requires the person answering the telephone to state whether the attorney will be available for the next day.

## 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 the first part of FY2020 (October 2019 to February 2020).

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

TIDC examined 142 sample felony cases filed in FY2020.<sup>20</sup> The courts made timely appointments of counsel in 77 of 128 cases in which counsel was requested (**60% timely**). This falls below TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases. If the courts received all counsel requests within 24 hours, the felony courts would likely be able to meet TIDC's timeliness threshold.

<sup>20</sup> TIDC examined 181 felony case files but excluded cases in which it could not find magistrate warning forms.

**Table 3: 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	142		
Total cases with a counsel request		79	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		28	
1 – 3 work days + 24 hour transfer		49	
<b>Total timely appointments / denials</b>		<b>77</b>	<b>60%</b>
4 - 6 work days + 24 hour transfer		11	
More than 6 work days + 24 hour transfer		33	
No ruling on request		7	
Total untimely appointments / denials		51	40%

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

TIDC examined 146 sample misdemeanor cases filed in FY2020.<sup>21</sup> The courts made timely appointments of counsel in 42 of 116 cases in which counsel was requested (**36% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in misdemeanor cases. If the courts received all counsel requests within 24 hours, the misdemeanor courts would likely be able to meet TIDC’s timeliness threshold.

**Table 4: 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	146		
Total cases with a counsel request		116	
<b>Appointment / denial of indigence occurred in:</b>			
0 work days		23	
1 – 3 work days + 24 hour transfer		19	
<b>Total timely appointments / denials</b>		<b>42</b>	<b>36%</b>
4 - 6 work days + 24 hour transfer		8	
More than 6 work days + 24 hour transfer		45	
No ruling on request		21	
Total untimely appointments / denials		74	64%

<sup>21</sup> TIDC examined 208 misdemeanor case files but excluded cases in which it could not find magistrate warning forms.

### *Documentation of Appointment Dates in Misdemeanor Cases*

The misdemeanor courts did not always document dates that counsel was appointed. During our review, the courts noted they were correcting their procedures to always document dates of appointment. The courts must ensure they can document whether counsel appointments are timely.

### *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 case file examination contained several samples in which the court did not rule on requests for counsel. In one of these sample cases, a misdemeanor defendant requested counsel at the Article 15.17 hearing and later entered an uncounseled plea without the request being ruled upon. The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Taylor County must ensure that its procedures for ruling on counsel requests meet the requirements of both Article 1.051(c) and 1.051(f-2).

### ***4.d. Juvenile Cases***

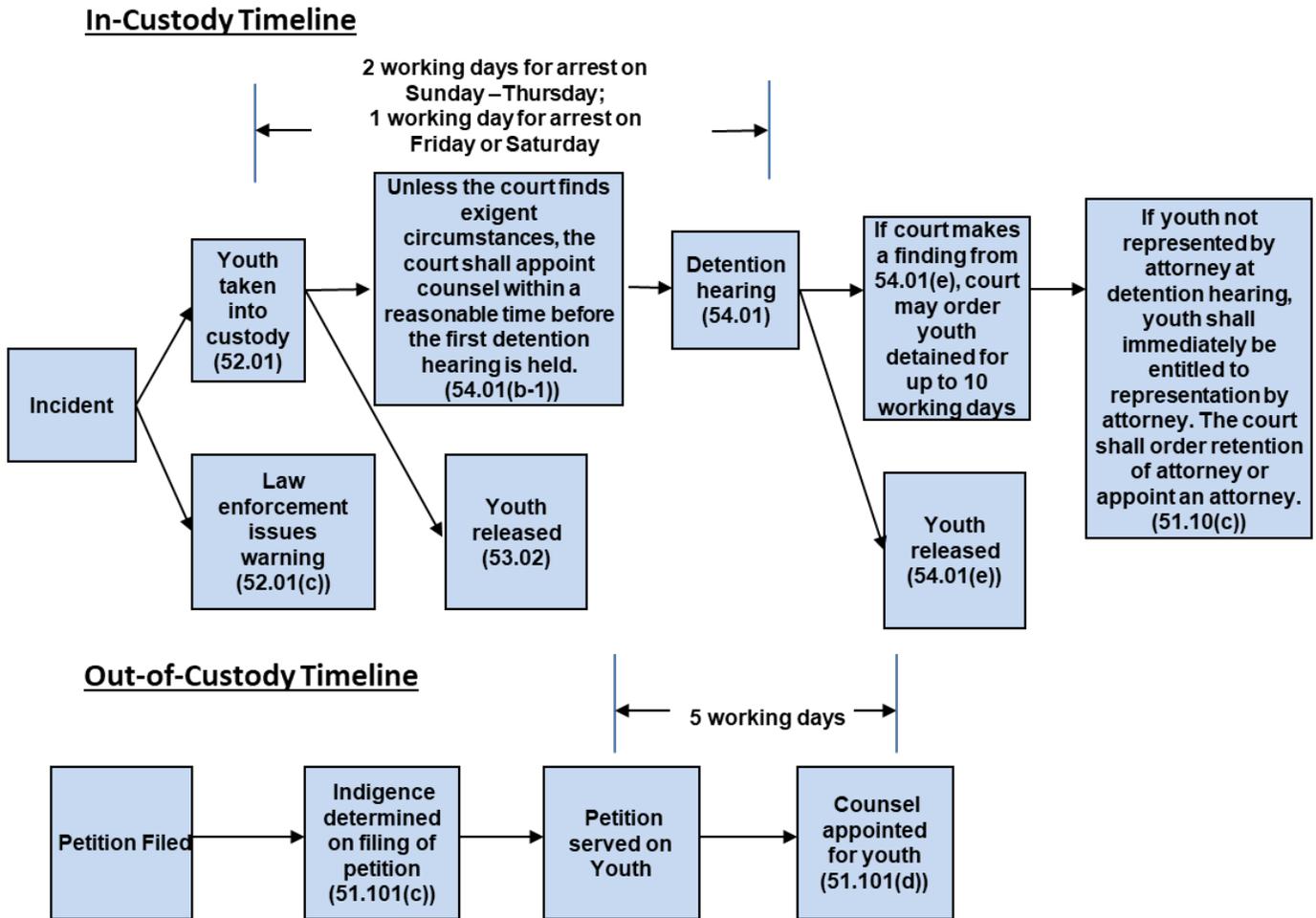
Counsel must be appointed for youths alleged to have engaged in delinquent conduct when the youth is brought to a detention hearing and when the youth is served with a copy of the petition alleging misconduct.<sup>22</sup> Under Section 54.01(b-1) of the Family Code, unless the court finds the appointment 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>23</sup>

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<sup>22</sup> TEX. FAM. CODE § 51.10(f).

<sup>23</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;

**Figure 2: Timeline for Appointment of Counsel in Juvenile Cases**



*Juvenile Detention Hearings*

To assess the timeliness of the County’s appointment procedures in juvenile cases, Taylor County staff examined 32 cases filed in FY2020 (October 2019 – September 2020). 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>24</sup> Of the 32 sample cases, 25 involved detention hearings. Counsel was

- (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.

<sup>24</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.

present for the initial detention hearing in all 25 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 32 sample cases, all 32 involved service of the petition on the youth. Counsel was timely appointed for 31 of these cases (**97% timely**), which exceeds TIDC’s 90% threshold.

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

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	32		
<b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>			
Case files with detention hearings		25	
<b>Cases with attorney present at initial hearing</b>		<b>25</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	32		
Counsel appointed within 5 working days of service		29	
Indigence denied or counsel retained within 5 working days of service <sup>25</sup>		2	
<b>Total cases with timely presence of counsel</b>		<b>31</b>	<b>97%</b>
Cases where counsel not present in a timely fashion		1	3%

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

**Appoint Counsel Promptly**

**FINDING 3 (FELONY CASES):** Taylor 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):** Taylor 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.

**FINDING 5 (MISDEMEANOR CASES):** The misdemeanor courts did not always document dates that counsel was appointed. The courts must ensure they can document whether counsel appointments are timely.

<sup>25</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>26</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 within TIDC’s presumed threshold. TIDC finds Taylor County is in substantial compliance with Requirement 5.

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

Level	Attorneys on List <sup>27</sup>	Top 10% Attorneys <sup>28</sup>	Respective Share of Cases <sup>29</sup> [Column A]	Actual Share of Cases [Column B]	Top 10% Received ‘x’ Times Their Respective Share [Col. B] / [ Col. A]
Felony	14	1	7.1%	10.1%	<b>1.41</b>
Misdemeanor	18	2	11.1%	24.9%	<b>2.25</b>
Juvenile	9	1	11.1%	33.0%	<b>2.97</b>

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5**

**Attorney Selection Process**

Requirement satisfied. No findings.

<sup>26</sup> 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

<sup>27</sup> TIDC considered an attorney to be on the appointment list if the attorney was on any court lists for the offense level.

<sup>28</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>29</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.

TIDC conducted a fiscal monitoring review of Taylor County's indigent defense expenses and shares its findings in a separate report.

### **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6**

#### **Statutory Data Reporting**

Requirement satisfied. No findings.

## **Conclusion**

TIDC thanks Taylor 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.<sup>30</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>30</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Summary of Findings and Recommendations**

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

### **REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.**

**FINDING 1:** 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. 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 2:** 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 being made.

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

**FINDING 3 (FELONY CASES):** Taylor 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):** Taylor 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.

**FINDING 5 (MISDEMEANOR CASES):** The misdemeanor courts did not always document dates that counsel was appointed. The courts must ensure they can document whether counsel appointments are timely.

## 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>31</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>32</sup>
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>33</sup>
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>34</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>35</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>36</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>37</sup>

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<sup>31</sup> TEX. CODE CRIM. PROC. ART. 14.06(a).

<sup>32</sup> TEX. CODE CRIM. PROC. ART. 17.033.

<sup>33</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>34</sup> *Id.* This box is not checked because affidavits are not always completed at the time defendants request counsel.

<sup>35</sup> TEX. CODE CRIM. PROC. ART. 15.17(e).

<sup>36</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>37</sup> 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.<sup>38</sup>
- ☒ State the financial standard(s) to determine whether a defendant is indigent.<sup>39</sup>
- ☒ List factors the court will consider when determining whether a defendant is indigent.<sup>40</sup>

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

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.<sup>41</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>42</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>43</sup>

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<sup>38</sup> TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

<sup>39</sup> TEX. CODE CRIM. PROC. ART. 26.04(l).

<sup>40</sup> TEX. CODE CRIM. PROC. ART. 26.04(m).

<sup>41</sup> TEX. CODE CRIM. PROC. ART. 26.04(d).

<sup>42</sup> 1 TEX. ADMIN. CODE § 174.1–.4.

<sup>43</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>44</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>45</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>46</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>47</sup>
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>48</sup>

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<sup>44</sup> TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

<sup>45</sup> TEX. FAM. CODE § 51.101(d).

<sup>46</sup> TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because several detained defendants did not receive timely appointments.

<sup>47</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.”). This box is not checked because several defendants who made bail did not receive timely appointments.

<sup>48</sup> TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because one misdemeanor defendant requested counsel but entered an uncounseled plea before the request was ruled upon.

**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>49</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>50</sup>

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

- ☐ Alternative appointment method:<sup>51</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.

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<sup>49</sup> TEX. CODE CRIM. PROC. ART. 26.04(a).

<sup>50</sup> TEX. CODE CRIM. PROC. ART. 26.044.

<sup>51</sup> TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).