



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

**April 2019**



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## Background

The Texas Indigent Defense Commission (TIDC) monitors local jurisdictions' compliance with the Fair Defense Act through on-site reviews.<sup>1</sup> These reviews seek to promote local compliance with the requirements of the Fair Defense Act and to provide technical assistance to improve county indigent defense processes where needed.

In March 2015, the Texas Indigent Defense Commission received a complaint alleging that some defendants in Goliad County were not receiving timely magistrate warnings or appointment of counsel. After reviewing Goliad County's magistrate warning forms, magistrations data submitted to the Office of Court Administration (OCA), and misdemeanor appointment rates, TIDC decided to conduct a limited scope policy monitoring review on July 7-8, 2015, to further assess these issues.

The 2015 review found that magistrates held timely hearings but did not always record whether defendants requested counsel and did not timely transmit requests to the appointing authority. They also did not submit complete and accurate data to OCA. In addition, the courts did not timely appoint counsel in misdemeanor and felony cases. In some cases, the courts did not rule on requests for counsel before defendants entered uncounseled pleas, nor did they use a signed waiver of counsel form for entering pleas. Goliad County responded with plans to address each finding.

TIDC is required to conduct follow-up reviews within two years of a report.<sup>2</sup> This report follows up on recommendations from TIDC's January 11, 2016, report.

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

<sup>2</sup> 1 TEX. ADMIN. CODE Sec. 174.28(d)(3).

## Methodology

TIDC staff members Joel Lieurance and Claire Buetow visited Goliad County to conduct a follow-up review on February 19-20, 2019. The review focused on three core requirements of the Fair Defense Act:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE.

TIDC reviewed 60 misdemeanor and 40 felony case files FY2018 (October 2017 – September 2018), observed magistrations at the Goliad County Jail, and interviewed local officials.

## Program Assessment

**REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.**

### *Ability of Arrestees to Request Counsel*

At the Article 15.17 hearing, the magistrate must inform the accused of his or her right to counsel, ask whether the accused wants to request counsel, and receive the accused's request for counsel.<sup>3</sup> The magistrate must make a record of each step of this exchange.<sup>4</sup>

TIDC observed an Article 15.17 hearing at the Goliad County Jail on February 20, 2019. The magistrate, the Justice of the Peace for Precinct 2, read magistrate warnings to an arrestee and asked whether she wanted to request counsel; she did not, and the Justice of the Peace marked this choice on the magistration form.

TIDC reviewed 77 magistration forms as part of its felony and misdemeanor case file review. All magistration forms marked whether an arrestee requested counsel or not. Based on its observation and file review, TIDC concludes that Goliad County takes and records requests for counsel at the Article 15.17 hearing.

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

<sup>4</sup> TEX. CODE CRIM. PROC. art. 15.17(e).

### ***Transmitting Forms to the Appointing Authority***

Once a magistrate receives a request for counsel, he or she must transmit it to the appointing authority within 24 hours.<sup>5</sup> In 20 sample misdemeanor cases and 18 sample felony cases, defendants requested counsel at magistration. Requests at magistration in 7 sample misdemeanor cases and 15 sample felony cases resulted in either an untimely appointment or were never ruled on. TIDC's case file review indicates that magistrates may not be transmitting requests timely.

#### **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

##### **Conduct prompt and accurate magistration proceedings.**

**FINDING 1 AND RECOMMENDATION:** For offenses Class B misdemeanor grade and higher, the magistrate must inform arrestees of the procedure for requesting counsel, ask all arrestees whether they want to request counsel, and record each individual's response. The magistrate must then ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence.

***Successfully Addressed.***

**FINDING 2 AND RECOMMENDATION:** Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate.

***Issue Pending.***

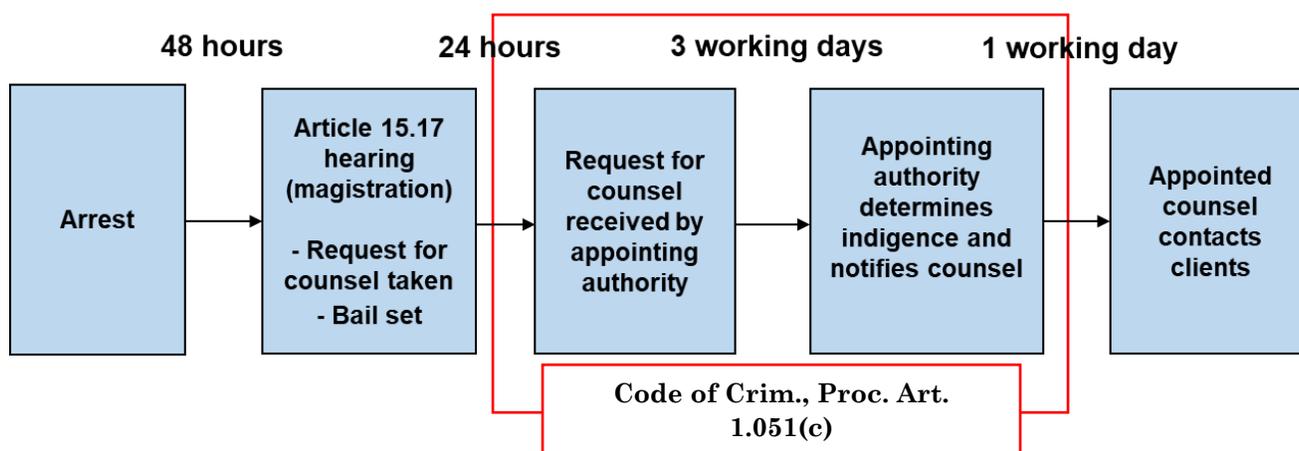
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<sup>5</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

#### REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

In a county with a population of less than 250,000, the court or its designee must appoint counsel within three working days of receiving a request for counsel.<sup>6</sup> If an arrestee makes bail, Article 1.051(j) sets the deadline for appointing counsel to be the defendant's first court appearance or the initiation of adversarial judicial proceedings, whichever comes first. *Rothgery v. Gillespie County* clarified that the initiation of adversarial judicial proceedings occurs at the Article 15.17 hearing.<sup>7</sup>

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



#### *Timeliness of Appointments in Felony Cases*

To assess the timeliness of Goliad County's current appointment procedures in felony cases, TIDC staff examined 40 sample felony cases filed in FY2018; defendants requested counsel in 21 of these cases.<sup>8</sup> Counsel was appointed timely in 3 of 21 cases (**14% timely**), which does not meet TIDC's 90% threshold (see Table 1). The felony courts must put in place procedures to ensure timely appointment of counsel.

<sup>6</sup> TEX. CODE CRIM. PROC. art. 1.051(c).

<sup>7</sup> *Rothgery v. Gillespie County*, 554 U.S. 191, 212 – 13 (2008).

<sup>8</sup> TIDC excluded four sample felony cases with a counsel request (two in which appointment dates were not listed and two with out-of-county requests).

**Table 1: Times to Appointment in Felony Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	40		
Total cases with a counsel request		21	
Appointment / denial of indigence occurred in:			
0 work days		0	
1 – 3 work days + 24-hour transfer		3	
<b>Total timely appointments / denials</b>		<b>3</b>	<b>14%</b>
More than 4 work days + 24-hour transfer		12	
No ruling on request		6	
Total untimely appointments / denials		18	86%

***Timeliness of Appointments in Misdemeanor Cases***

TIDC presumes a county is in substantial compliance with this requirement if at least 90% of cases in a sample have appointments within three working days (plus 24 hours to transfer the request).<sup>9</sup> To assess the timeliness of Goliad County’s current appointment procedures in misdemeanor cases, TIDC staff examined 60 sample misdemeanor cases filed in FY2018; defendants requested counsel in 25 of these cases.<sup>10</sup> Counsel was appointed timely in 17 of 25 cases (**68% timely**), which does not meet TIDC’s 90% threshold (see Table 2). The misdemeanor courts must put in place procedures to ensure timely appointment of counsel.

**Table 2: Times to Appointment in Misdemeanor Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	60		
Total cases with a counsel request		25	
Appointment / denial of indigence occurred in:			
0 work days		4	
1 – 3 work days + 24-hour transfer		13	
<b>Total timely appointments / denials</b>		<b>17</b>	<b>68%</b>
More than 4 work days + 24-hour transfer		7	
No ruling on request		1	
Total untimely appointments / denials		8	32%

<sup>9</sup> 1 TEX. ADMIN. CODE Sec. 174.28(c)(4)(A)(i).

<sup>10</sup> TIDC excluded four sample misdemeanor cases with a counsel request (three in which appointment dates were not listed and one which was for an out-of-county request).

## *Waivers of Counsel*

### **Pending Request for Counsel**

The 2015 report found sample misdemeanor cases in which a defendant requested counsel, but the court did not rule on the request before the defendant entered an uncounseled plea. The current review did not find any sample misdemeanor cases in which a defendant entered an uncounseled plea before the court ruled upon the defendant's request for counsel. TIDC concludes that Goliad County has successfully addressed the recommendation that it rule upon requests before accepting waivers of counsel.<sup>11</sup>

### **Waiver Language for Uncounseled Pleas**

If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea, the court must obtain a written waiver of counsel before accepting a guilty plea, and the waiver must substantially conform to the language provided in statute:<sup>12</sup>

*I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.  
(signature of defendant)*

In three sample cases, defendants (who had not requested counsel) entered uncounseled pleas, and the case files did not include a written waiver. In eight cases, the waiver form did not explicitly state that the defendant would “hereby waive [his or her] right to counsel.”

From interviews with staff at the County Attorney's office, TIDC learned that Goliad County began using this waiver form to comply with a recommendation from TIDC's previous monitoring report, which found that the County would be in compliance if it used the waiver form from its indigent defense plan for accepting pleas. TIDC staff was mistaken in recommending that form, and on further review determined that it does not substantially conform to the statutory language.

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<sup>11</sup> TIDC's case file review did not indicate whether the prosecutor communicated with defendants with pending requests for counsel before the prosecutor recommended a dismissal. Article 1.051(f-1) prohibits this communication.

<sup>12</sup> TEX. CODE CRIM. PROC. art. 1.051(g).

Following its 2019 visit, TIDC provided the County with its model waiver form,<sup>13</sup> and the County agreed to use that form instead.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

**Appoint counsel promptly.**

**FINDING 3 AND RECOMMENDATION:** Goliad County must implement processes that ensure timely appointment of counsel in misdemeanor and felony cases.

***Issue Pending.***

**FINDING 4 AND RECOMMENDATION:** As required by Article 1.051(f-2), Goliad County must rule upon requests for counsel prior to a waiver of counsel.

***Successfully Addressed.***

**FINDING 5 AND RECOMMENDATION:** As required by Article 1.051(g), an unrepresented defendant must sign a waiver of counsel substantially conforming to the language in Article 1.051(g) before a pro se plea can be entered. ~~If the county were to use the waiver of counsel form listed in its indigent defense plan, this recommendation would be met.~~

***Successfully Addressed.***

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<sup>13</sup> See Appendix A.

**REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE.**

Justices of the peace must submit monthly court activity reports to the Office of Court Administration (OCA).<sup>14</sup> These reports must include the number of individuals requesting counsel at Article 15.17 hearings. For FY2018 (October 2017 – September 2018), Goliad County justices of the peace reported 280 magistrate warnings and 124 requests for counsel. The monitor’s record review indicated that these reports are complete and accurate.

**Table 3: Article 15.17 Requests for Counsel**

<b>Court</b>	<b>Misd. Requests</b>	<b>Misd. Warnings</b>	<b>Misd. Req. Rate</b>	<b>Felony Requests</b>	<b>Felony Warnings</b>	<b>Fel. Req. Rate</b>
JP1	27	72	38%	21	61	34%
JP2	25	58	43%	51	89	57%
Total	52	130	40%	72	150	48%

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6**

**Report data required by statute.**

**FINDING 6 AND RECOMMENDATION:** Justices of the peace must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

***Successfully Addressed.***

**Conclusion**

TIDC thanks Goliad County officials for their assistance during its visits and commends them for their commitment to improving local indigent defense practices. TIDC will continue to monitor whether the County has satisfied its two pending recommendations. TIDC is available for technical assistance; please contact Joel Lieurance, Senior Policy Analyst, with questions.

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<sup>14</sup> 1 TEX. ADMIN. CODE Sec. 171.7.

## Summary of Recommendations

**FINDING 1 AND RECOMMENDATION:** For offenses Class B misdemeanor grade and higher, the magistrate must inform arrestees of the procedure for requesting counsel, ask all arrestees whether they want to request counsel, and record each individual's response. The magistrate must then ensure reasonable assistance is provided to any arrestee requesting counsel in completing the necessary paperwork to determine indigence.

*Successfully Addressed.*

**FINDING 2 AND RECOMMENDATION:** Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate.

*Issue Pending.*

**FINDING 3 AND RECOMMENDATION:** Goliad County must implement processes that ensure timely appointment of counsel in misdemeanor and felony cases.

*Issue Pending.*

**FINDING 4 AND RECOMMENDATION:** As required by Article 1.051(f-2), Goliad County must rule upon requests for counsel prior to a waiver of counsel.

*Successfully Addressed.*

**FINDING 5 AND RECOMMENDATION:** As required by Article 1.051(g), an unrepresented defendant must sign a waiver of counsel substantially conforming to the language in Article 1.051(g) before a pro se plea can be entered. ~~If the county were to use the waiver of counsel form listed in its indigent defense plan, this recommendation would be met.~~

*Successfully Addressed.*

**FINDING 6 AND RECOMMENDATION:** Justices of the peace must report the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

*Successfully Addressed.*

## **Appendix A. Model Waiver Form**

Cause Number: \_\_\_\_\_

**IN THE [INSERT COURT]  
[INSERT COUNTY] COUNTY, TEXAS**

**WAIVER OF COUNSEL FOR PURPOSES OF ENTERING  
A GUILTY PLEA OR PROCEEDING TO TRIAL**

I have been advised of the nature of the charges against me and the dangers and disadvantages of self-representation. My waiver is voluntarily and intelligently made. Furthermore,

I have been advised this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel.

\_\_\_\_\_  
Defendant

Date: \_\_\_\_\_

I have determined that this waiver is voluntarily and intelligently made.

\_\_\_\_\_  
Judge Presiding

Date: \_\_\_\_\_