



# **Follow-up Policy Monitoring Review of Dawson County's Indigent Defense Systems**

**June 2020**



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**MISSION**

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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## Background

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

TIDC conducted an initial review of Dawson County in 2013. The review assessed Dawson County's compliance with six core requirements of the Fair Defense Act<sup>2</sup> and made five compliance recommendations. TIDC conducted a follow-up review in 2017 and found that three recommendations had been addressed and two had not.

**Table 1: History of Monitoring Findings**

FDA Core Requirement	Description and Year of Finding	Status before 2020 Review	
		Satisfied	Pending
3. Minimum Attorney Qualifications	Dawson County must implement procedures to track CLE hours of attorneys on the juvenile appointment list. (2013)	✓ (2017)	
4. Prompt Appointment	The timeliness of indigence determinations in sample misdemeanor cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2013, 2017)		✓
4. Prompt Appointment	Local procedures did not ensure requests for counsel were ruled upon prior to waivers of counsel. (2013, 2017)		✓
5. Attorney Selection Process	The parties to the contract for felony defense services must follow the terms of the contract according to the contract's caseload limitations. (2013)	✓ (2017)	
5. Attorney Selection Process	The County must ensure procedures are in place to make indigent defense payments only after itemized fee vouchers are submitted and approved by the appointing authority. (2013)	✓ (2017)	

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

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

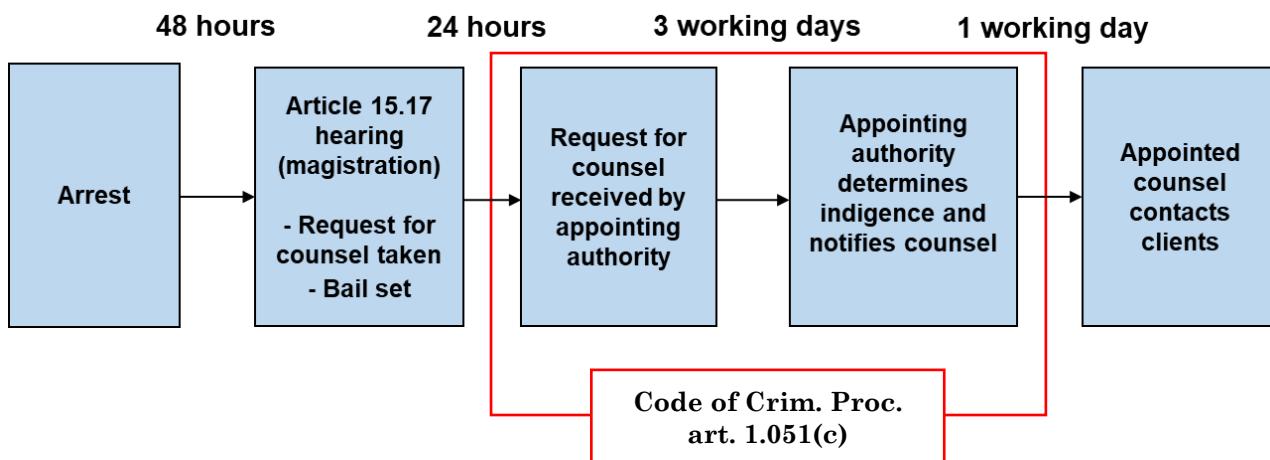
## Current Review

TIDC's policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.<sup>3</sup> TIDC staff members Joel Lieurance and Claire Buetow visited Dawson County on February 18, 2020 to review misdemeanor case files and magistrate forms and interview local officials.

## Program Assessment

Article 1.051(c) of the Code of Criminal Procedure requires the court or its designee to appoint counsel by the end of the third working day following receipt of the request for counsel.

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



### *Timeliness of Appointments in Misdemeanor Cases*

To assess the timeliness of Dawson County's appointment procedures in misdemeanor cases, TIDC examined 80 sample misdemeanor cases filed in FY2019 (October 2018 – September 2019). Counsel was appointed timely in 4 of 12 sample misdemeanor cases having a request for counsel (**33% timely**). This level of timeliness does not meet TIDC's 90% threshold for presuming a jurisdiction's procedures ensure prompt appointment of counsel.

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

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

	Sample Size	Number from sample	Percent
Number of case files examined	80		
Total cases with a counsel request		12	
Appointment / denial of indigence occurred in:			
0 work days		1	
1 – 3 work days + 24 hour transfer		3	
<b>Total timely appointments / denials</b>		<b>4</b>	<b>33%</b>
More than 3 work days + 24 hour transfer		0	
No ruling on request		8	
<b>Total untimely appointments / denials</b>		<b>8</b>	<b>67%</b>

Four requests made after magistration resulted in timely appointments. Eight requests made at magistration were not ruled on. It appears that, as in previous reviews in 2013 and 2017, in-court requests receive appointments or denials of counsel immediately, and that requests made at magistration are not ruled on.

Under Article 15.17(a), the magistrate must transmit requests within 24 hours of taking them. According to interviews with local officials, magistrates take requests and assist defendants with completing financial applications, and task jail staff with transferring them; it appears, however, that the requests do not get to the court for a determination of indigence. Dawson County must implement procedures to ensure timely determinations of indigence in misdemeanor cases.

### ***Waivers of Counsel in Misdemeanor Cases***

Article 1.051(f-2) requires the court to advise the defendant of the right to counsel and the procedure for requesting appointed counsel (and give the defendant a reasonable opportunity to request appointed counsel) before the court directs or encourages the defendant to communicate with the attorney representing the state.<sup>4</sup> In pertinent part, Article 1.051(f-2) states the following:

In any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under

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<sup>4</sup> TEX. CODE CRIM. PROC. art. 1.051(f-2).

Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

- (1) Has been given a reasonable opportunity to retain and has failed to retain private counsel; or
- (2) Waives or has waived the opportunity to retain private counsel.

The court hearing misdemeanor cases failed to rule on a defendant's request for counsel in eight sample misdemeanor cases. In four cases, the defendant later entered an uncounseled plea.<sup>5</sup> The absence of a ruling on a pending counsel request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Dawson 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).

#### **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

##### **Prompt Appointment of Counsel**

**2020 FINDING AND RECOMMENDATION 1:** Dawson County must implement procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be transmitted to the appointing authority so that all requests can be ruled upon.

***Issue Pending.***

**2020 FINDING AND RECOMMENDATION 2:** As required by Article 1.051(f-2), Dawson County must rule upon all requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon all requests for counsel, the courts must ensure procedures are in place to: (1) receive all requests and (2) appoint counsel or document the denial of indigence.

***Issue Pending.***

## **Conclusion**

TIDC thanks Dawson 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>6</sup> TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

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<sup>5</sup> In addition, in four cases in which the defendant had not requested counsel, they plead guilty without signing a waiver of counsel. Art. 1.051(g) requires a written waiver to enter a plea.

<sup>6</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Recommendations from the June 2020 Review**

The County must provide a written response to each of the June 2020 report recommendations. TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

### **Core Requirement 4. Appoint counsel promptly.**

**2017 Recommendation 1:** Dawson County must implement procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be transmitted to the appointing authority so that all requests can be ruled upon. ***Issue pending.***

**2017 Recommendation 2:** As required by Article 1.051(f-2), Dawson County must rule upon all requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon all requests for counsel, the courts must ensure procedures are in place to: (1) receive all requests and (2) appoint counsel or document the denial of indigence. ***Issue pending.***