

# Harris County District Courts Trying Criminal Cases

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## RESPONSE TO TIDC RECOMMENDATIONS 2021

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### REQUIREMENT 1:

#### CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

**RECOMMENDATION 1:** Harris County must ensure that reasonable assistance in completing forms necessary to obtain appointed counsel is provided, so that all arrestees who request counsel can have the request ruled upon within statutorily required timeframes. Under Article 15.17(a), this duty falls on the magistrate presiding over the Article 15.17 hearing. Article 15.17 requires the magistrate transmit the forms requesting the appointment of counsel to the appointing authority within 24 hours of the request.

The District Courts have developed an automated process to docket the request for appointment of counsel. The request is captured now electronically during the 15.17 hearing before the Harris County Criminal Law Hearing Officers. This allows the request for counsel to be automatically included in the home court's docket that is published the following morning.

The District Courts are working in conjunction with the Harris County District Clerk, Harris County Pretrial Services and the County Criminal Courts at Law to develop an automated system to ensure defendants at the 15.17 hearing may electronically submit an affidavit of financial condition for the determination of indigency. This would allow the same automation for this document to get to the home court's docket the following morning. A subcommittee of representatives from each agency has been meeting several times a month to build the system and ensure the process correctly captures the required data. Test runs currently are being conducted. The process should be available for all district courts by September 2021.

### REQUIREMENT 2:

#### DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN

**NO PENDING RECOMMENDATIONS.** This report found Harris County had successfully addressed all four recommendations from the 2016 report.

### REQUIREMENT 4:

#### APPOINT COUNSEL PROMPTLY

**RECOMMENDATION 6 (FELONY CASES):** TIDC's sample of attorney appointments in felony cases fell below the Commission's threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel (90% timely). Article 1.051(c)(2) requires all district courts rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The County must implement practices that satisfy Article 1.051(c)(2)'s timeline.  
*Issue Pending.*

It is important to note that the District Courts were displaced from the Harris County Criminal Justice Center from August 2017 and were not able to fully reoccupy courtrooms

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until June 2020. The original displacement was caused by building flooding that occurred during Hurricane Harvey. The District Courts were unable to occupy their courtrooms during this period, and were doubled up in the Civil Courthouse where there were no hold over cells. When the District Courts were allowed back into the Criminal Justice Center in June of 2018, not all of the courtrooms were made available and courts had to share courtrooms to hold jail dockets. The District Courts have been occupying their own courtrooms since June 2020, but social distancing requirements caused by the COVID-19 pandemic have further restricted the capacity to hold court.

These disasters and displacements have highlighted issues in court procedures that rarely occurred under “normal” circumstances. Pre-Harvey and pre-pandemic, most defendants, whether in custody or on bond, were seen by the home court judge the day after magistration or bonding out. This allowed the home court to address appointment of counsel and rule on indigency within the statutory timeframe of art. 1.051(c)(2). However, when Courts were unable to physically hold dockets, the district courts realized that some court coordinators were resetting cases without realizing the required timelines.

To address this, District Court Administration has reaffirmed the procedures with coordinators to ensure uniform compliance. In 2017, District Court Administration put in place a report for coordinators to review a daily list of inmates in custody without counsel. In light of this finding by the monitoring review, District Court Administration created a similar report of defendants on bond without counsel. Court Coordinators have received training on the use of these forms in their daily procedures.

**RECOMMENDATION 7 (MISDEMEANOR CASES):** TIDC’s sample of attorney appointments in misdemeanor cases fell below the Commission’s threshold for presuming a jurisdiction’s appointment system ensures timely appointment of counsel (90% timely). Article 1.051(c)(2) requires all statutory county courts rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The County must implement practices that satisfy Article 1.051(c)(2)’s timeline. *Issue Pending.*

County Criminal Courts-at-Law will send a separate response addressing all misdemeanor issues.

**RECOMMENDATION 8 (JUVENILE CASES):** TIDC’s sample of attorney appointments in juvenile cases fell below the Commission’s threshold for presuming a jurisdiction’s appointment system ensures timely 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 juvenile. For cases in which the juvenile is not detained, Harris County must implement procedures that ensure timely appointments of counsel. *Issue Pending.*

After the September 2015 audit report, we learned that the indigency form probation completed (financial status form) was still not making it to the coordinators in a timely fashion. We then implemented a process by which the coordinators were appointing attorneys for out of custody youth upon the filing of the petition by the District Attorney’s Office.

Juvenile DCA began appointing counsel to every non-detained juvenile within 5 days of the case being initially docketed, unless notice is received from HCJPD court officers that the family doesn’t meet the requirements for indigent defense. When the juvenile DCA

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administrative staff enters a petition, they email the coordinators to let them know a petition has been filed so they can appoint as needed to ensure the youth has an attorney before being served. This coordinated effort resulted in significant improvement (over 30%) in addressing the statutory requirement “counsel must be appointed within five working days of a petition being served on the juvenile” as outlined in the Texas Family Code 51.10(d).

In reviewing the selection of cases included in the 2020 audit period, DCA concluded that most of the issues may be traced to staff turnover and related training challenges that were isolated to the audit period. These issues have been mitigated through management supervision and training reinforcement during the interim, and appointment of counsel to non-detained juveniles continues to become more efficient.

In addition to the new policies and processes implemented, the Juvenile District Court Manager is holding quarterly meetings with HCJPD Court Administrative staff and the coordinators to ensure effectiveness of the changes, and address any concerns immediately with further policy implementation as necessary.

In addition, DCA and Precinct 1 Constable’s Division are working together to come up with a system by which the coordinator is notified when a juvenile is served. Electronic distribution of this information should streamline the process. DCA, HCJPD, District Attorney and the District Clerks Office are working together to make the Juvenile Division “paperless.” Though our efforts were stalled by COVID, we are working to fast track these electronic processes.

## **REQUIREMENT 5:**

### **INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS**

**RECOMMENDATION 9 (FELONY CASES):** TIDC recommends the district courts implement a system meeting the Commission’s Contract Defender Rules for all term assignments exceeding one week. A notification for application is currently used, but the courts need to formalize contracts with defense attorneys. *Issue Pending.*

The District Courts no longer use their term attorney system for appointments of more than one week. In the absence of approved contracts for term assignments, the District Courts do not utilize this procedure.

**RECOMMENDATION 10 (FELONY CASES):** The district courts must put in place an appointment system that meets Article 26.04(f)’s requirement that the public defender be given priority in appointments. *New Recommendation.*

Until September 2020, the Harris County Public Defender (PDO) input his availability in the District Courts Fair Defense Management System. Spot reviews revealed that the PDO had set himself to low availability, which may account for the appearance that the PDO was not given priority. In September 2020, the District Courts amended the Fair Defense plan to require the Harris County Public Defender to appear on every requested list for every court requesting.

In 2021, the District Courts implemented the PDO Appointment Tracking System, that is now in use by 15 District Courts plus the RIC Docket. The new system gives priority to the PDO by pre-assigning newly filed cases where the defendant has requested representation and there is a financial affidavit filed at the

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15.17 hearing. The system fully automates the cases being pre-assigned, and is used by the PDO to notify the courts of the attorney assigned to each case.

If the PDO finds his caseload insufficient, the PDO always has had, and will continue to have, the option to increase the caseload further by making additional requests through the FDAMS system per the plan.

**RECOMMENDATION 11 (MISDEMEANOR CASES):** TIDC recommends the statutory county courts implement a system that meets the Contract Defender Rules for all term assignments exceeding one week. This includes a notification for attorneys to apply and execute contracts containing all required terms. *Issue Pending.*

County Criminal Courts-at-Law will send a separate response addressing all misdemeanor issues.

## **REQUIREMENT 6:**

### **PROMULGATE STANDARD ATTORNEY FEE SCHEDULE AND PAYMENT PROCESS**

**RECOMMENDATION 14:** TIDC examined two cases in which payments were made without documentation of the services rendered by appointed counsel. Under Article 26.05(b), the Harris District and County Courts must follow the fee schedule set by the County and must include proper documentation for making payments under the fee schedule. *New Recommendation.*

Pursuant to Code of Criminal Procedure art. 26.05, and *State ex rel. Wice v. Fifth Judicial Dist. Court of Appeals*, 581 S.W.3d 189, 200 (Tex. Crim. App. 2018), the District Courts have developed a process with the Harris County Auditor to ensure that appointed attorneys receive payment of fees in accordance with a fee schedule that complies with Article 26.05(c) of the Texas Code of Criminal Procedure.

The Harris County Auditor has been instructed to notify a District Court of non-compliance with the approved fee schedule for felony courts. District Court Administration is spot checking the process, and this seems to be bringing attention to the matter. District Court Administration now also provides support services to the attorneys and courts to resolve these issues.

## **REQUIREMENT 7:**

### **STATUTORY DATA REPORTING**

**NO PENDING RECOMMENDATIONS.** This report found Harris County had successfully addressed all four recommendations from the 2016 report.