



Policy Monitoring Review of Orange County's Indigent Defense Systems

January 2026



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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 (FDA) through policy reviews.¹ TIDC observed court proceedings, interviewed officials, and reviewed FY2023 data from Orange County. TIDC made five findings of noncompliance.

- a. Inconsistent methods for assisting defendants in applying for counsel.
- b. Untimely transmission of counsel requests to the appointing court.
- c. Untimely rulings on requests for counsel in felony cases.
- d. Untimely rulings on requests for counsel in misdemeanor cases.
- e. Waivers of defendants' right to counsel while requests for counsel were pending.

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

Background

TIDC selected Orange County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. This review covers all six FDA core requirements listed below:

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 Kenitra Brown and Joel Lieurance made an on-site visit to the County between October 22 and 25, 2024, to conduct the policy review. TIDC examined FY2023 data, including the following: felony, misdemeanor, and juvenile case files; the local indigent defense plans; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed felony and misdemeanor judges as well as justices of the peace, and Orange County staff. TIDC observed Article 15.17 hearings, as well as felony and misdemeanor dockets.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

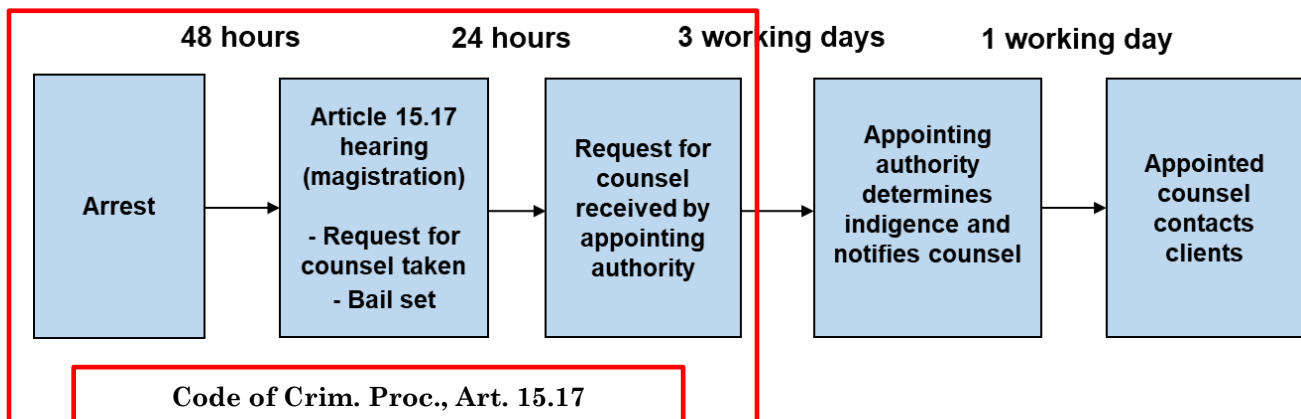
² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Program Assessment

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

Under Article 15.17 of the Texas Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.³ 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.⁴ Magistrates must transmit requests for counsel to the appointing authority within 24 hours.⁵ 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.⁶

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



Local Practices for Conducting Magistrate Warnings

In Orange 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 the right to counsel. Judges mark whether a defendant requests counsel. Jail staff then send requests for counsel to the Orange County Office of Court Administration. The Orange County Office of Court Administration conducts screening interviews. Office staff interview jailed defendants two days per week. If a defendant makes bail before the interview, the defendant can request counsel in court after the case has been filed.

³ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁶ TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tcdc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

1.a. Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁷ 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.⁸ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 61 sample case files in which staff could determine the time from arrest until the Article 15.17 hearing. Article 15.17 hearings occurred within two days of arrest for all sample cases, 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:	61	
0 days	14	
1 day	47	
2 days	0	
Timely Hearings	61	100%
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.⁹ Summary magistrate warning data must be reported to the Office of Court Administration (OCA) monthly by justice courts and municipal courts. In FY2023 (October 2022 - September 2023), the justice courts reported that about 52% of felony defendants and 58% of misdemeanor defendants requested counsel at the Article 15.17 hearing. This is an indication that defendants understand the warnings given to them and regularly request counsel.

Table 2: Article 15.17 Data Reported to OCA

Orange County	Fel. Warnings	Fel. Requests	Fel. Req Rate	Misd. Warnings	Misd. Requests	Misd. Request Rate
JP totals	1089	568	52%	929	541	58%
Pct. 1	780	455	58%	671	453	68%
Pct. 2	140	53	38%	117	41	35%
Pct. 3	95	25	26%	65	14	22%
Pct. 4	74	35	47%	76	33	43%

⁷ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁸ 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.

⁹ TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

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.¹⁰ Since the courts require a screening interview, and that interview only occurs twice per week, this requirement is not always being met.

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.¹¹ Since the courts require a screening interview, and that interview only occurs twice per week, this requirement is not always being met.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1 AND RECOMMENDATION: At the Article 15.17 hearing, a magistrate must ensure arrested persons have 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 AND RECOMMENDATION: Article 15.17(a) requires requests for counsel and associated paperwork be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

¹⁰ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹¹ TEX. CODE CRIM. PROC. ART. 15.17(a).

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

Under Article 26.04(l) of the Texas 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 presumptions for determining indigence are set in each county's indigent defense plans.

2.a. Indigence Standard in Adult Criminal Cases

For criminal cases in Orange County, the adult indigent defense plan lists tests that would determine whether a defendant qualifies as indigent.¹² A defendant qualifies as indigent if:

- eligible to receive public benefits (food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing); or
- the person's net household income is less than 100% of the Federal Poverty Guidelines.

A defendant may still qualify as indigent if unable to retain counsel without substantial hardship. The posting of bail may not be considered in determining indigence.

2.b. Indigence Standard in Juvenile Cases

For juvenile delinquency cases in Orange County, the juvenile indigent defense plan lists similar tests qualifying juveniles as indigent, but the test concerns the financial capabilities of the person responsible for the youth.¹³ The responsible person qualifies as indigent if:

- eligible to receive public benefits (food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing);
- net household income is less than 130% of the Federal Poverty Guidelines; or
- the person resides in a correctional institution or public mental health facility.

¹² The adult indigent defense plan is available at <https://tidc.tamu.edu/Public.Net/Reports/IDPlanNarrative.aspx?cid=181>.

¹³ The juvenile indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=394>.

The responsible person may still qualify as indigent if unable to retain counsel without substantial hardship.

Assessment

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC found that Orange 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 Texas 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.¹⁴ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.¹⁵

3.a. Felony and Misdemeanor Cases

For all adult criminal appointments, attorneys must obtain at least six criminal CLE hours annually.

Table 3a: Qualifications for Orange County Adult Appointment Lists

List	Requirements
Felony, Misdemeanor	• 2 years criminal experience or 3 criminal jury trials. • Must never have been found to have provided ineffective representation. • Maintain an office in Orange or Jefferson County.
2 nd Chair	None, but under supervision of an attorney on the list.
Capital Felony	1 st or 2 nd chair approved by the Administrative Region's Selection Committee.

3.b. Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually.

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

¹⁵ TEX. CODE CRIM. PROC. ART. 26.04(d).

Table 3b: Qualifications for Orange County Juvenile Appointment Lists

List	Requirements
CINS (commitment to TJJD NOT an option)	• Represented 3 juvenile respondents in detention hearings or final disposition in CINS or delinquent conduct cases; • Certify misdemeanor defendant to final judgment; or • Accompany application with recommendation of juvenile judge.
Delinquent Conduct (commitment to TJJD NOT an option)	• Represented 3 juvenile respondents in detention hearings or final disposition in CINS or delinquent conduct cases; • Certify misdemeanor defendant to final judgment; or • Accompany application with recommendation of juvenile judge.
Delinquent Conduct (commitment to TJJD authorized)	• Represented 3 juvenile respondents in detention hearings or final disposition in CINS or delinquent conduct cases; • Certify misdemeanor defendant to final judgment; or • Accompany application with recommendation of juvenile judge.
Determinate sentence petition approved by grand jury	• Represented 3 juvenile respondents to final disposition in determinate sentence or discretionary transfer cases; • Approved for appointment in felony or misdemeanor cases in Orange County; or • Accompany application with recommendation of juvenile judge.
Discretionary transfer to criminal court or certification petition	• Represented 3 juvenile respondents to final disposition in determinate sentence or discretionary transfer cases; • Approved for appointment in felony or misdemeanor cases in Orange County; or • Accompany application with recommendation of juvenile judge.

Assessment

TIDC reviewed appointment lists and CLE records. TIDC found that the County has procedures for managing appointment lists and ensuring that all attorneys on the lists meet their annual CLE requirement. The courts noted they had difficulties attracting attorneys wishing to accept appointments in criminal cases.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications

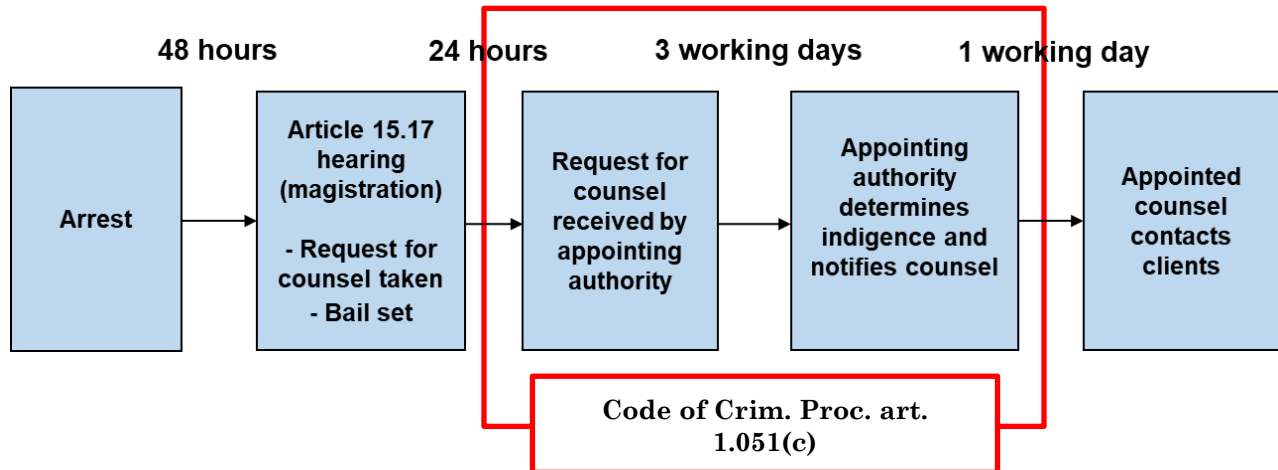
Requirement satisfied. No findings.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population 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), then the defendant's first opportunity to request counsel is at their 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.

4.a. Timeliness of Appointment in Felony Cases

TIDC examined 80 sample felony cases filed in FY2023. The courts made timely appointments of counsel in 33 of 63 cases in which counsel was requested (**52% 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. Late appointments appeared to occur primarily because counsel requests made at the Article 15.17 hearing were generally not ruled upon until after case filing.

Table 4: Times to Appointment in Felony Cases

	Sample Size	Number from sample	Percent
Number of case files examined	80		
Total cases with a counsel request		63	
Appointment / denial of indigence occurred in:			
0 workdays		27	
1 – 3 workdays + 24 hour transfer		6	
Total timely appointments / denials		33	52%
4 – 7 workdays + 24 hour transfer		5	
More than 7 work days + 24 hour transfer		24	
No ruling on request		1	
Total untimely appointments / denials		30	48%

4.b. Timeliness of Appointments in Misdemeanor Cases

TIDC examined 90 sample misdemeanor cases filed in FY2023. The courts made timely appointments of counsel in 28 of 52 cases in which counsel was requested (**54% 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. Late appointments appeared to occur primarily because counsel requests made at the Article 15.17 hearing were generally not ruled upon until after case filing.

Table 5: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from sample	Percent
Number of case files examined	90		
Total cases with a counsel request		52	
Appointment / denial of indigence occurred in:			
0 workdays		25	
1 – 3 workdays + 24-hour transfer		3	
Total timely appointments / denials		28	54%
4 – 7 workdays + 24-hour transfer		2	
More than 7 workdays + 24-hour transfer		11	
No ruling on request		11	
Total untimely appointments / denials		24	46%

4.c. Waivers of Counsel in Misdemeanor Cases

Article 1.051 of the Texas 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 that substantially conforms to the language of Article 1.051(g).

TIDC's case file examination contained 11 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)). Orange 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.¹⁶ Under Section 54.01(b-1) of the Texas 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. When a petition is filed, Subsection 51.101(c) directs the court to determine whether a youth's family is indigent. Subsection 51.101(d) requires the court to appoint counsel, for those found to be indigent, within five working days of service of the petition on the youth.¹⁷

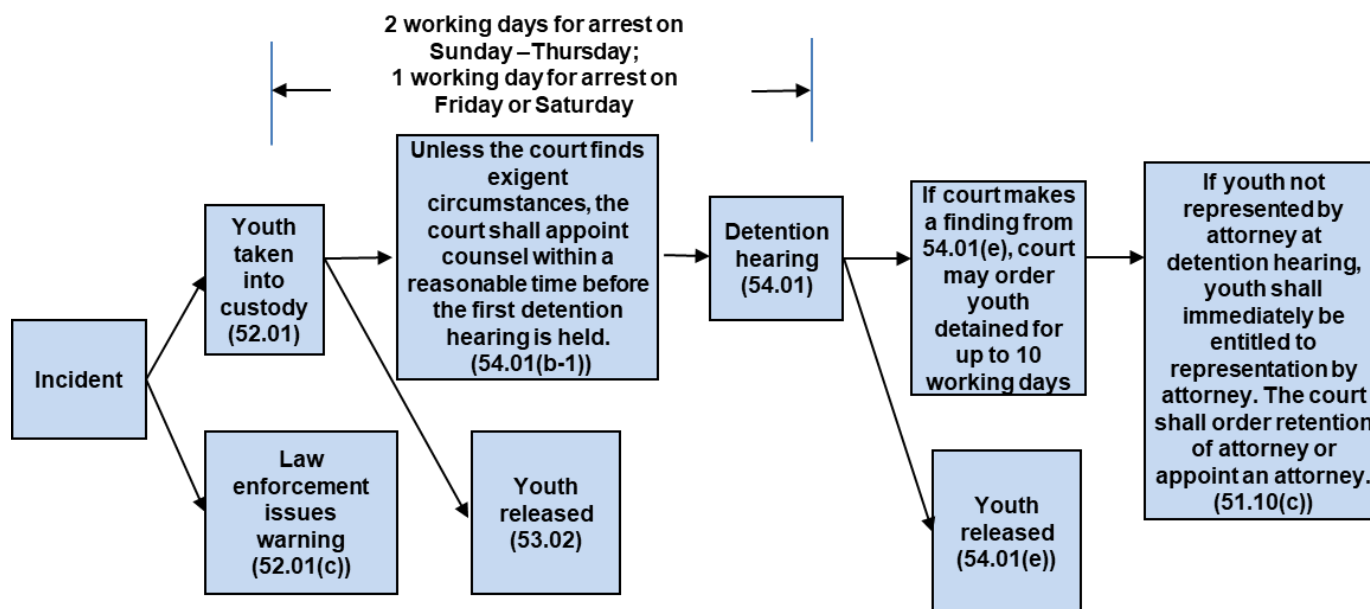
¹⁶ TEX. FAM. CODE § 51.10(f).

¹⁷ 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

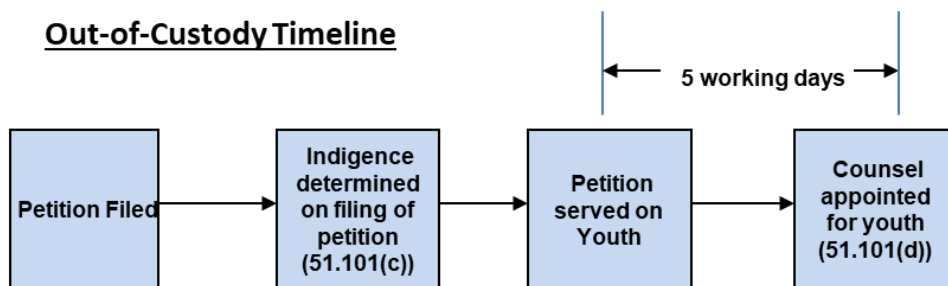
- (1) a hearing to consider transfer to criminal court as required by Section 54.02;
- (2) an adjudication hearing as required by Section 54.03;
- (3) a disposition hearing as required by Section 54.04;
- (4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section 54.05(f); or
- (5) hearings required by Chapter 55.

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, TIDC staff examined 72 cases filed in FY2023. Section 54.01(b-1) of the Texas Family Code requires counsel be appointed prior to the initial detention hearing unless appointment is not feasible due to exigent circumstances.¹⁸ Of the 35 sample cases, 18 involved detention hearings. Counsel was present for the initial detention hearing in all 18 cases (**100% timely**), which exceeds TIDC’s 90% threshold.

Appointment After Service of the Petition

Under Subsections 51.101(c) and (d) of the Texas 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, 27 involved service of the petition

¹⁸ 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.

on the youth. Counsel was timely appointed in all of these cases (**100% timely**), which exceeds TIDC's 90% threshold.

Table 6: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	35		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		18	
Cases with attorney present at initial hearing		18	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	27		
Counsel appointed within 5 working days of service		27	
Indigence denied or counsel retained within 5 working days of service ¹⁹		0	
Total cases with timely presence of counsel		27	100%
Cases where counsel not present in a timely fashion		0	0%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 3 (FELONY CASES) AND RECOMMENDATION: Orange County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), 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) AND RECOMMENDATION: Orange County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), 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) AND RECOMMENDATION: The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

¹⁹ 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 Texas 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. For a rotational system, TIDC presumes a jurisdiction has a fair, neutral, and nondiscriminatory appointment system if the top 10% of attorneys receiving cases of a given case level receives no more than three times their respective share of appointments.²⁰ 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 reviewed appointment distributions across felony, misdemeanor, and juvenile cases. TIDC found that all three levels fell within TIDC's presumption for having a fair, neutral, and nondiscriminatory appointment system. TIDC heard from the courts that the County badly needs new attorneys for all appointment lists.

Table 7: Share of Cases Paid to Top 10% of Attorneys

Level	Attorneys Eligible for Appointment from List	Top 10% Attorneys ²¹	Respective Share of Cases ²² [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	7	1	14.3%	26.5%	1.9
Misdemeanor	8	1	12.5%	32.4%	2.6
Juvenile	3	1	33.3%	68.0%	2.0

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

²⁰ 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

²¹ 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.

²² 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. Financial data reports must include attorney-level information.

Data reported by the Orange 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 Orange 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.²³ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²³ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

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

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

FINDING 1 AND RECOMMENDATION: At the Article 15.17 hearing, a magistrate must ensure arrested persons have 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 AND RECOMMENDATION: Article 15.17(a) requires requests for counsel and associated paperwork be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

FINDING 3 (FELONY CASES) AND RECOMMENDATION: Orange County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), 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) AND RECOMMENDATION: Orange County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), 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) AND RECOMMENDATION: The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

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.²⁴
 - 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.²⁵
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.²⁶
- ☐ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.²⁷
- ☒ 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.²⁸
- ☐ 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 250,000.²⁹
- ☐ 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.³⁰

²⁴ TEX. CODE CRIM. PROC. ART. 14.06(a).

²⁵ TEX. CODE CRIM. PROC. ART. 17.033.

²⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

²⁷ *Id.* This box is not checked because indigence screening does not occur for every defendant.

²⁸ TEX. CODE CRIM. PROC. ART. 15.17(e).

²⁹ *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).

³⁰ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because indigence screening does not occur for every defendant.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³¹
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³²
- ☒ List factors the court will consider when determining whether a defendant is indigent.³³

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.³⁴
 - 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.³⁵
 - Standards must require attorneys to submit the percentage of each attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county. The report is due by October 15 each year. It must be made on a form prescribed by TIDC for the prior 12 months that begins on October 1 and ends on September 30.³⁶

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.³⁷
- ☒ 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.³⁸

³¹ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³² TEX. CODE CRIM. PROC. ART. 26.04(l).

³³ TEX. CODE CRIM. PROC. ART. 26.04(m).

³⁴ TEX. CODE CRIM. PROC. ART. 26.04(d).

³⁵ 1 TEX. ADMIN. CODE § 174.1–.4.

³⁶ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

³⁷ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

³⁸ TEX. FAM. CODE § 51.101(d).

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 250,000.³⁹
- ☐ 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.⁴⁰
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁴¹

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.⁴²
- ☐ Public Defender: The system must meet the requirements set out in Article 26.044 of the Texas Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.⁴³

NOT APPLICABLE.

- ☐ Alternative appointment method:⁴⁴
 - 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.

³⁹ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because several detained defendants did not receive timely appointments.

⁴⁰ 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, [the Article 15.17 hearing] 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.

⁴¹ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because 11 sample misdemeanor requests for counsel were not ruled upon. One defendant pled while having a pending request.

⁴² TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴³ TEX. CODE CRIM. PROC. ART. 26.044.

⁴⁴ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

REQUIREMENT 6: STATUTORY DATA REPORTING

- ☒ 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:⁴⁵
 - In each district, statutory county, and appellate court;
 - In cases for which a private attorney is appointed for an indigent defendant;
 - In cases for which a public defender is appointed for an indigent defendant;
 - In cases for which counsel is appointed for an indigent juvenile; and,
 - For investigation expenses, expert witness expenses, or other litigation expenses.

⁴⁵ TEX. GOV'T CODE § 79.036(a-1). 1 Tex. Admin. Code § 171.7 – 8.