



Policy Monitoring Review of Bastrop County's Indigent Defense Systems

May 2025



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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.¹ In this follow-up review, TIDC observed felony and misdemeanor dockets and Article 15.17 hearings; interviewed local officials and staff; and reviewed FY2024 case file records. TIDC found Bastrop County has addressed all four findings made in the initial report. Bastrop County does not need to respond to this report. TIDC thanks Bastrop County officials and staff for their assistance in completing this review.

Background

In January 2022, TIDC issued its initial policy monitoring report of Bastrop County's indigent defense practices. The report found that requests for counsel and accompanying financial affidavits made at the Article 15.17 hearing were not always transmitted to the appointing authority within 24 hours of the request being made. The report also made findings regarding the timely appointment of counsel in felony, misdemeanor, and juvenile cases.

Bastrop County responded by proposing to create a system that would electronically forward all counsel requests to the appointing courts. The courts would then promptly rule on felony, misdemeanor, and juvenile cases.

Current Review

TIDC's policy monitoring rules require follow-up reviews where the report included noncompliance findings.² Kenitra Brown, Cody Huffman, and Joel Lieurance conducted the follow-up review, with site visits between December 10 and 12, 2024 and on December 19, 2024. TIDC examined whether Bastrop County successfully addressed the findings from the January 2022 report. The current review focuses on the following core requirements of the Fair Defense Act:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(d)(3).

Table 1: History of Monitoring Findings

| FDA Core Requirement | Description and Initial Year of Finding | Status after 2025 Review | |
|------------------------|--|--------------------------|---------|
| | | Satisfied | Pending |
| 1. Magistrate Warnings | Magistrates did always ensure counsel requests were transmitted to the appointing authority within 24 hours of the request being made. (2022) | ✓ (2025) | |
| 4. Prompt Appointment | The timeliness of indigence determinations in sample felony cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2022) | ✓ (2025) | |
| 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. (2022) | ✓ (2025) | |
| 4. Prompt Appointment | The timeliness of indigence determinations in sample juvenile cases for youths released from custody did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2022) | ✓ (2025) | |

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.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

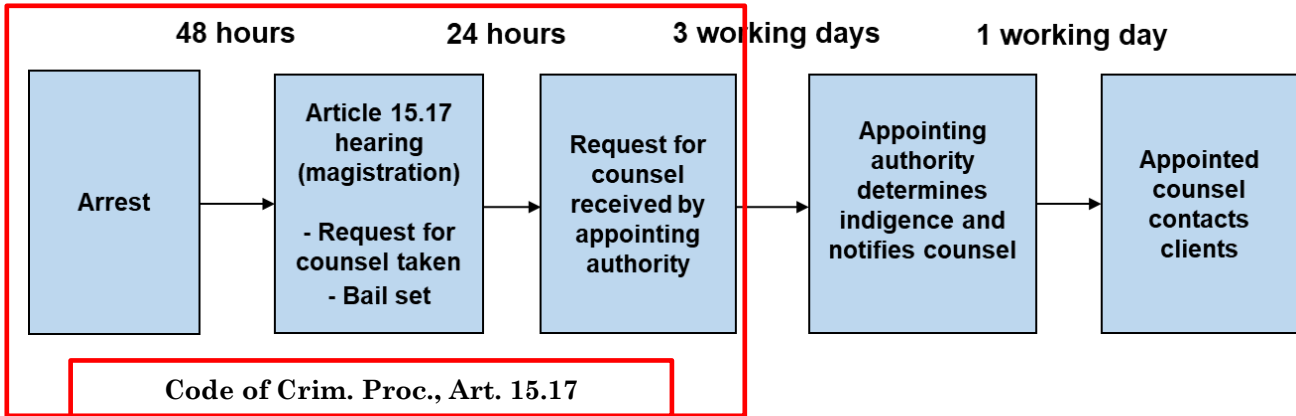
³ TEX. CODE CRIM. PROC. ART. 15.17(a).

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://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

Figure1a: Timeline for Appointment of Counsel in Adult Criminal Cases



Local Practices for Conducting Magistrate Warnings

In Bastrop County, arrested defendants are promptly brought before either the justices of the peace or municipal judges who conduct Article 15.17 hearings. Judges make probable cause determinations, set bail, explain the right to counsel, and take requests for appointed counsel. TIDC observed Article 15.17 hearings conducted by the Elgin Municipal Judge and the Justice of the Peace for Precinct 4. Both hearings were conducted virtually between judicial offices and the jail. Both judges asked each defendant if they wanted to request counsel and then went over financial affidavits with each requesting defendant. The judges then electronically forward all financial paperwork to the trial courts after the defendant signs the appropriate paperwork.

Assistance with Financial Affidavits and Transmittal of Those Forms

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.⁷ Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the court, or its designee, authorized to appoint counsel.⁸ The judicial practice of personally assisting with affidavits of indigence and then forwarding those requests to the trial courts ensures that counsel requests are not lost and can be promptly ruled upon. Bastrop County has addressed this finding from TIDC's initial monitoring report.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1: Bastrop County must implement procedures to ensure that counsel requests are transmitted to the appointing authority within 24 hours of the request being made. ***Successfully Addressed.***

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

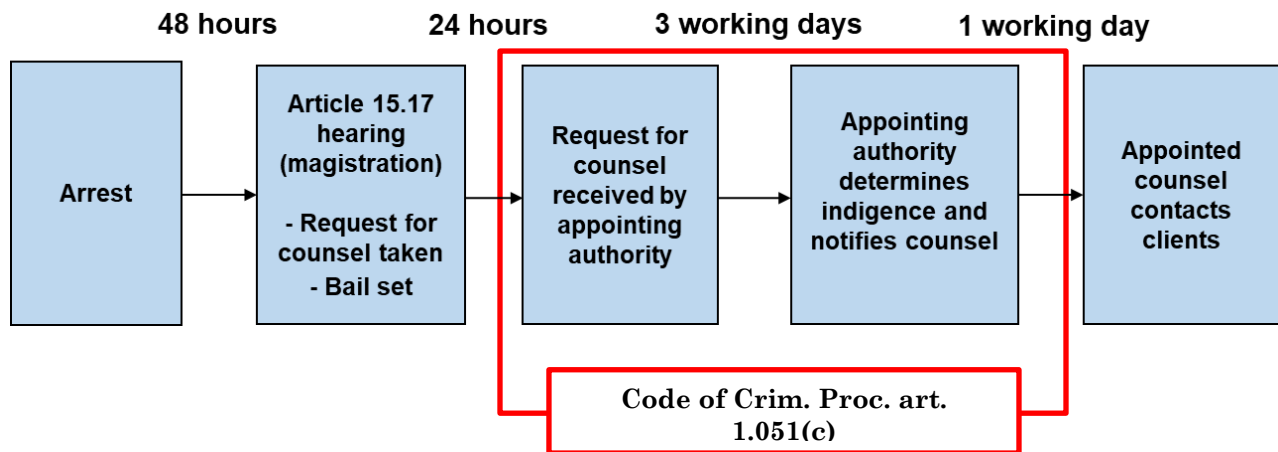
⁸ TEX. CODE CRIM. PROC. ART. 15.17(a).

Requirement 4: Appoint Counsel Promptly

Adult Cases

Under Article 1.051(c)(1) 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



Local Procedures for Determining Indigence and Appointing Counsel

In Bastrop County, magistrates ensure that counsel requests invoked at the Article 15.17 hearing are quickly transmitted to the trial courts. The district courts and statutory county court each have a coordinator who manages the appointment process. These coordinators make appointments for defendants at any time after the initiation of adversarial judicial proceedings.

To assess the timeliness of local appointment procedures, TIDC examined randomly selected cases filed in FY2024 (October 2023 to September 2024) and measured the time from counsel request until appointment of counsel or denial of indigence.

Timeliness of Appointments in Felony Cases

TIDC examined 121 sample felony cases filed in FY2024. The courts made timely appointments in 88 of 95 cases in which counsel was requested (**93% timely**). This exceeds TIDC's 90% threshold for presuming a county has practices in place to ensure timely appointment of counsel. TIDC commends Bastrop County for ensuring felony requests are ruled upon in a timely manner.

Table 2: Times to Appointment in Felony Cases

| | Sample Size | Number from sample | Percent |
|--|-------------|--------------------|------------|
| Number of case files examined | 121 | | |
| Total cases with a counsel request | | 95 | |
| Appointment / denial of indigence occurred in: | | | |
| 0 work days | | 35 | |
| 1 – 3 work days + 24 hour transfer | | 53 | |
| Total timely appointments / denials | | 88 | 93% |
| 4 - 5 work days + 24 hour transfer | | 4 | |
| More than 5 work days + 24 hour transfer | | 3 | |
| No ruling on request | | 0 | |
| Total untimely appointments / denials | | 7 | 7% |

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 115 sample misdemeanor cases filed in FY2024. The courts made timely appointments in 84 of 88 cases in which counsel was requested (**96% timely**). This exceeds TIDC’s 90% threshold for presuming a county has practices in place to ensure timely appointment of counsel. TIDC commends Bastrop County for ensuring misdemeanor requests are ruled upon in a timely manner.

Table 3: Times to Appointment in Misdemeanor Cases

| | Sample Size | Number from sample | Percent |
|--|-------------|--------------------|------------|
| Number of case files examined | 115 | | |
| Total cases with a counsel request | | 88 | |
| Appointment / denial of indigence occurred in: | | | |
| 0 work days | | 34 | |
| 1 – 3 work days + 24 hour transfer | | 50 | |
| Total timely appointments / denials | | 84 | 96% |
| 4 - 5 work days + 24 hour transfer | | 2 | |
| More than 5 work days + 24 hour transfer | | 2 | |
| No ruling on request | | 0 | |
| Total untimely appointments / denials | | 4 | 4% |

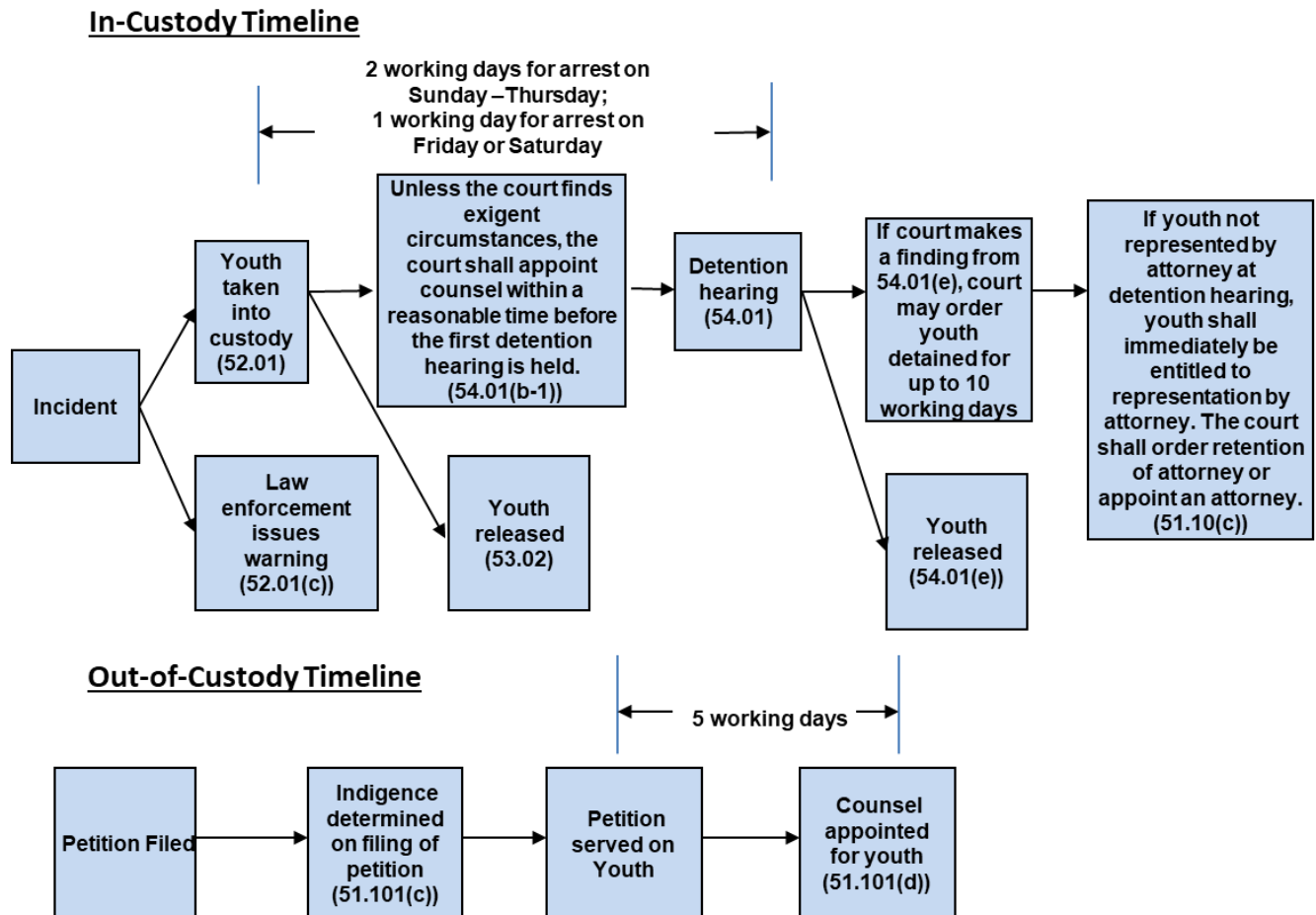
Juvenile Cases

Counsel must be appointed for youth alleged to have engaged in delinquent conduct when the child is brought to a detention hearing and when served with a copy of the petition alleging misconduct.⁹ 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,

⁹ TEX. FAM. CODE § 51.10(f).

the court shall appoint counsel within a reasonable time before the first detention hearing. Subsection 51.101(c) of the Family Code directs the court to determine whether a youth’s family is indigent upon the filing of the petition. 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.¹⁰

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



Appointment After Service of the Petition

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC staff examined 31 cases filed in FY2024. Under Subsections 51.101(c) and (d) of the Family Code, once a petition is served on the youth, the court has five working

¹⁰ 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.

days to appoint counsel or order the retention of counsel for the youth. Counsel was timely appointed for 28 of these cases (**90% timely**), which meets TIDC’s 90% threshold. TIDC commends Bastrop County for developing procedures to make timely appointments in juvenile cases.

Table 4: Times to Appointment in Juvenile Cases

| | Sample Size | Number from Sample | Percent |
|---|--------------------|---------------------------|----------------|
| Total juvenile cases examined | 31 | | |
| TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION | | | |
| Case files in which youth served with a petition | 31 | | |
| Counsel appointed within 5 working days of service | | 16 | |
| Indigence denied or counsel retained within 5 working days of service ¹¹ | | 12 | |
| Total cases with timely presence of counsel | | 28 | 90% |
| Cases where counsel not present in a timely fashion | | 3 | 10% |

Additional Observations

TIDC’s case file examination included several files in which defendants complained about attorneys not visiting them in jail. We encourage Bastrop County to clearly set expectations for attorneys to visit incarcerated clients.¹² If specific attorneys regularly receive client complaints alleging no pre-court visitation, the courts may need to notify attorneys they are not meeting court expectations.¹³

Additionally, TIDC observed a docket in which staff were unclear as to whether immigration consequences were explained to defendants. Article 26.13(a)(4) of the Code of Criminal Procedure requires defendants to be admonished that if they are non-citizens, the plea may result in deportation or other immigration consequences.

¹¹ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

¹² Article 26.04(b)(5) of the Code of Criminal Procedure states:

(b) Procedures adopted under Subsection (a) [indigent defense plan] shall:

(5) ensure that each attorney appointed from a public appointment list to represent an indigent defendant perform the attorney’s duty owed to the defendant in accordance with the adopted procedures, the requirements of this code, and the applicable rules of ethics;

¹³ Article 26.04(j)(1) of the Code of Criminal Procedure states:

(j) An attorney appointed under this article shall:

(1) make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and to interview the defendant as soon as practicable after the attorney is appointed.

Article 26.04(k) goes on to note that, “A court may replace an attorney who violates Subsection (j)(1) with other counsel.”

Subsection (d-1) requires the admonitions to be made both orally and in writing.¹⁴ TIDC staff did not observe this admonishment in their direct court observations, and it was not included in the plea paperwork, both of which are required to comply with Article 26.13(a)(4).

TIDC staff believe non-citizen defendants could benefit if defense counsel consulted with an attorney or organization having immigration law expertise. MyPadilla provides this service at no cost to appointed attorneys representing non-citizen defendants arrested in Texas. MyPadilla is a non-profit organization that is affiliated with the Capital Area Private Defender Service and is fully funded by TIDC. The County or appointed attorneys may request a training by visiting <https://mypadilla.com/training>.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 2 (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)(1) requires all district courts rule on all requests for counsel within three working days (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)(1)'s timeline. *Successfully Addressed.*

FINDING 3 (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)(1) requires all county courts rule on all requests for counsel within three working days (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)(1)'s timeline. *Successfully Addressed.*

¹⁴ Article 26.13(a)(4) of the Code of Criminal Procedure states:

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

(4) the fact that if the defendant is not a citizen of the United States of America, a plea of guilty or nolo contendere for the offense charged may result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law;

Article 26.13(d-1) states:

(d-1) The court shall make the admonition required by Subsection (a)(4) both orally and in writing. Unless the court has received the statement as described by Subsection (d), the court must receive a statement signed by the defendant and the defendant's attorney that the defendant understands the admonition required by Subsection (a)(4) and is aware of the consequences of the plea. If the defendant is unable or refuses to sign the statement, the court shall make a record of that fact.

FINDING 4 (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 youth. For cases in which the youth is not detained, Bastrop County must implement procedures that ensure timely appointments of counsel. ***Successfully Addressed.***

Conclusion

TIDC thanks Bastrop County officials and staff for their assistance in completing this review. Bastrop County has successfully addressed the findings made in the 2022 policy monitoring report. The County does not need to respond to this report. TIDC commends Bastrop County officials for their commitment to improving local indigent defense practices.