



Third Follow-up Review of Deaf Smith 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 (“FDA”) through policy reviews.¹ In this third follow-up review, TIDC observed an arraignment docket, conducted interviews of the county judge and the public defenders appearing before him, and examined FY2023 case file records. TIDC observed that Deaf Smith County has addressed past findings of noncompliance. TIDC thanks Deaf Smith County officials and staff for their assistance in completing this review.

Background

In May 2013, TIDC conducted an informal review of Deaf Smith County’s misdemeanor appointment procedures and found requests for counsel at magistrature were not transmitted to the county judge, so no counsel was appointed for unrepresented defendants. In March 2015, TIDC conducted a limited scope review and again found requests were not transferred to the county judge. Defendants with pending counsel requests often entered uncounseled pleas. In August 2017, TIDC conducted a follow-up review and found requests were transferred, but some were not ruled upon timely or never ruled upon by the county judge. In some cases, defendants who had requested counsel entered uncounseled pleas. TIDC issued a second follow-up report in 2020, and this report found all counsel requests were ruled upon in a timely manner, but many were denied indigence for incomplete affidavits. The 2020 report made two findings: (1) Article 15.17 requires magistrates to ensure reasonable assistance with financial forms and (2) the indigent defense plan stated when determining indigence, dependents were taken into account, but the plan formula did not allow for dependents.

¹ TEX. GOV’T CODE § 79.037(a)–(b).

Table 1: History of Monitoring Findings for Deaf Smith County

FDA Core Requirement	Description and Initial Year of Finding	Status after 2024 Review	
		Satisfied	Pending
1. Prompt Magistration	Affidavits of indigence were not complete, and Article 15.17 requires magistrates ensure reasonable assistance in completing financial forms. (2020)	✓ (2024)	
2. Local Indigence Standard	The local indigence standard stated it took dependents into account, but the plan's formula did not take dependents into account. (2020)	✓ (2024)	
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. (2015)	✓(2020)	
4. Prompt Appointment	Local procedures did not ensure requests for counsel were ruled upon prior to waivers of counsel. (2015)	✓(2020)	
4. Prompt Appointment	The language on the waiver of counsel form did not closely match the language of Article 1.051(g). (2017)	✓(2020)	

Current Review

TIDC staff, Natasha George and Joel Lieurance, conducted the third follow-up review with on-site visits on April 24, 2024, and on December 11, 2024. This report addresses unresolved issues related to two core Fair Defense Act (FDA) requirements:²

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

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

For this review, TIDC examined misdemeanor cases filed during FY2023 (October 2022 – September 2023) and observed a misdemeanor docket.

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

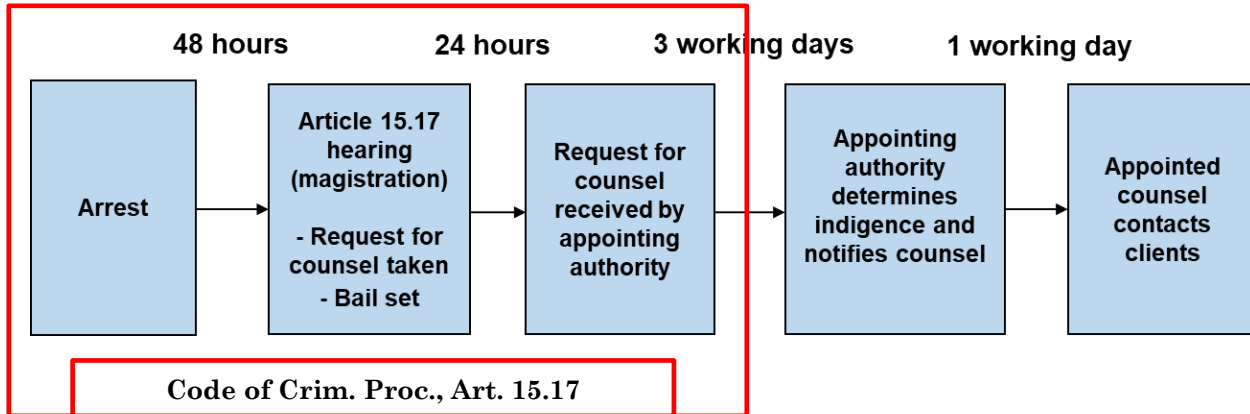
² 1 TEX. ADMIN. CODE § 174.28.

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

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

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 1: Timeline for Appointment of Counsel in Adult Criminal Cases



Deaf Smith County's Article 15.17 Procedures

People arrested in Deaf Smith County are booked in to the jail and are typically magistrated by a justice of the peace for their Article 15.17 hearing. The magistrate determines whether there is probable cause to detain the individual, sets bail, and asks whether the defendant would like to request counsel. If a defendant requests counsel, the magistrate marks the request on the warning form, and jail staff assist the defendant with completing the affidavit. The affidavit is notarized and sent to the county judge. From TIDC's case file review, eleven sample defendants requested counsel at the Article 15.17 hearing, and all eleven affidavits were completed that same day and forwarded to the county judge. Based on this data, TIDC finds that Deaf Smith County has addressed this finding dealing with reasonable assistance and transmission of counsel requests.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings.

2020 Finding 1 and Recommendation: Under Article 15.17(a) of the Code of Criminal Procedure, Deaf Smith County magistrates must ensure reasonable assistance in completing forms to request counsel. ***Successfully Addressed.***

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>.

Requirement 2: Determine Indigence According to Standards Directed by the Indigent Defense Plan

Under Article 26.04(l) of the 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. The local standards for determining indigence are set in each county's indigent defense plans. Formerly, the indigent defense plan stated that indigence determinations would take into consideration the amount needed for support of the defendant and the defendant's dependents. However, the actual calculation for indigence determinations examined whether the defendant's income exceeded the Federal Poverty Guidelines for one person (i.e. zero dependents).

In the current review, TIDC examined the indigent defense plan,⁷ and found that the contradiction from the previous plan has been removed. The current plan has an income test based on 100% of the Federal Poverty Guidelines, which adjust the number of dependents in the household. Based on this change, TIDC finds that Deaf Smith County has addressed the finding dealing with a clear standard of indigence.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

Determine Indigence According to Standards Directed by the Indigent Defense Plan

2020 Finding 2 and Recommendation: Under Article 26.04(l) of the Code of Criminal Procedure, Deaf Smith County must clarify the standard of indigence in its plan. *Successfully Addressed.*

Conclusion

TIDC finds that Deaf Smith County has successfully addressed the findings made in the 2020 policy monitoring report. The County does not need to respond to this report. TIDC commends Deaf Smith County officials and staff for their commitment to improving local indigent defense practices.

⁷ The Adult Indigent Defense Plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=371>.