



Second Follow-up Review of Milam County's Indigent Defense Systems

October 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 follow-up review, TIDC observed court, interviewed officials, and reviewed FY2024 data from Milam County. TIDC found that in misdemeanor cases, appointments often did not occur until after formal case filing with the county clerk. Felony appointments were within TIDC's presumed threshold.

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

Background

In June 2016, TIDC conducted an informal drop-in review in Milam County to examine misdemeanor appointment procedures. The drop-in review revealed that when arrestees requested counsel at the Article 15.17 hearing, many of these requests were not ruled upon, and a large portion of those arrestees entered uncounseled pleas.

As a result of the 2016 drop-in review, TIDC conducted a limited scope monitoring review in 2018 to examine methods for handling counsel requests in misdemeanor cases. The report found that misdemeanor defendants were not able to request counsel and receive rulings on those requests according to standards listed in Milam's indigent defense plan. Instead, defendants were directed to speak with the prosecutor. The County responded by stating that determinations of indigence would follow the standards set in the indigent defense plan. The County Court would designate days to determine indigence and assure timely appointments of counsel.

TIDC issued a follow-up report in 2023. That report examined felony cases as well as misdemeanor cases. The report found that the prior finding about adhering to qualifying standards set in the indigent defense plan had been addressed, but there were still issues with timely appointment of counsel in both felony and misdemeanor cases.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² Title 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings for Milam County

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status After 2025 Review	
		Satisfied	Pending
2. Indigence Determinations	Determinations of indigence must follow standards set in the indigent defense plan. (2018)	✓ (2023)	
4. Prompt Appointment	The timeliness of felony appointments does not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2023)	✓ (2025)	
4. Prompt Appointment	The timeliness of misdemeanor appointments does not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2018)		✓
4. Prompt Appointment (waivers of counsel)	The court must explain the procedures for requesting counsel prior to communications between the prosecutor and unrepresented defendants. (2018)	✓ (2023)	
4. Prompt Appointment (waivers of counsel)	The court must rule on all counsel requests prior to waivers of counsel. (2023)		✓

Program Assessment

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.³ Staff members Cody Huffman and Joel Lieurance conducted the second follow-up review. The purpose of this review was to verify that the July 2023 report findings were addressed. The review consisted of site visits to Milam County between July 23 and 24, 2025, and on August 5, 2025. TIDC relied on the following items in preparing this report: observation of felony and misdemeanor dockets and a magistrate warning docket; interviews with County officials and staff; felony and misdemeanor case files; and the local indigent defense plans. The County must respond to this report's findings and recommendations.

TIDC compared the core requirements of the FDA with the County's performance for each finding listed in the 2023 report. This review examined previous findings and recommendations covering the following core FDA requirement:

- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

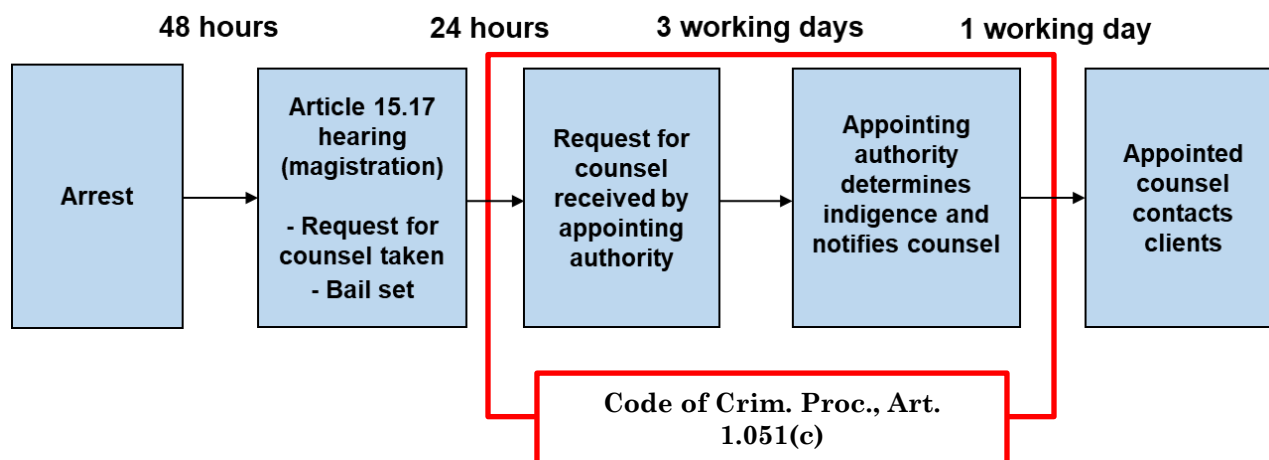
Requirement 4: Appoint Counsel Promptly

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

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

working days of receiving the request. Under *Rothgery v. Gillespie County*, appointments of counsel cannot be delayed for defendants making bail.⁴

Figure: Timeline for Appointment of Counsel in Adult Criminal Cases



Under Article 15.17 and local procedures, 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. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the first opportunity for the defendant to request counsel is at the initial appearance in the trial court.

To assess the timeliness of local appointment procedures, TIDC examined 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 70 sample felony cases filed in FY2024. The courts made timely appointments in 47 of 52 cases in which counsel was requested (**90% timely**). This level of timeliness meets TIDC's 90% threshold for presuming a county has

⁴ *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), held 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, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Prior to *Rothgery*, some viewed Article 1.051(j) as allowing for the appointment of counsel to be delayed until the first trial court appearance. However, *Rothgery* made clear that adversarial judicial proceedings were initiated at the Article 15.17 hearing. Article 1.051(j) of the Code of Criminal Procedure states:

(j) Notwithstanding any other provision of this section, if an indigent defendant is released from custody prior to the appointment of counsel under this section, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

practices in place to ensure timely appointment of counsel. TIDC commends Milam 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	70		
Total cases with a counsel request		52	
Appointment/denial of indigence occurred in:			
0 work days		20	
1 – 3 work days + 24-hour transfer		27	
Total timely appointments/denials		47	90%
4 - 7 work days + 24-hour transfer		3	
More than 7 work days + 24-hour transfer		2	
No ruling on request		0	
Total untimely appointments/denials		5	10%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 78 sample misdemeanor cases filed in FY2024. The courts made timely appointments in 23 of 43 cases in which counsel was requested (**53% timely**). This falls below TIDC’s 90% threshold for presuming a county has practices in place to ensure timely appointment of counsel. Milam County must put in place procedures to ensure timely appointment of counsel in misdemeanor cases. Late determinations of indigence occurred because appointments of counsel were often delayed for defendants who made bail. These appointments occurred in court after formal case filing.

Table 3: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	78		
Total cases with a counsel request		43	
Appointment/denial of indigence occurred in:			
0 work days		16	
1 – 3 work days + 24-hour transfer		7	
Total timely appointments/denials		23	53%
4 - 7 work days + 24-hour transfer		0	
More than 7 work days + 24-hour transfer		9	
No ruling on request		11	
Total untimely appointments/denials		20	47%

Waivers of Counsel

Article 1.051 of the 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, the language of which must substantially conform to the language of Article 1.051(g).

TIDC's case file examination contained 11 misdemeanor samples in which defendants requested counsel at the Article 15.17 hearing, but the court did not rule on the requests. In one of these cases, the defendant entered an uncounseled plea without the request having been 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)). Milam 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

Appoint Counsel Promptly

2023 FINDING 1 AND RECOMMENDATION (FELONY CASES): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of felony cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy the appointment timeline in Article 1.051(c)(1) in felony cases. ***Successfully Addressed.***

2023 FINDING 2 AND RECOMMENDATION (MISDEMEANOR CASES): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of misdemeanor cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy the appointment timeline in Article 1.051(c)(1) in misdemeanor cases. ***Issue Pending.***

2023 FINDING 3 AND RECOMMENDATION: The absence of a ruling in sample misdemeanor requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Milam 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). ***Issue Pending.***

Conclusion

TIDC enjoyed meeting with Milam County officials and staff and appreciates their cooperation during this review. TIDC stands ready to provide any assistance the County may need to address the issues identified in this report.

Pending Findings and Recommendations

Milam County must respond in writing about how it will address the pending findings.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

2025 FINDING 1 AND RECOMMENDATION (MISDEMEANOR CASES): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of misdemeanor cases fell below the Commission's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy the appointment timeline in Article 1.051(c)(1) in misdemeanor cases. ***Issue Pending.***

2025 FINDING 2 AND RECOMMENDATION: The absence of a ruling in sample misdemeanor requests for counsel raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Milam 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). ***Issue Pending.***