



Policy Monitoring Review of San Patricio County's Indigent Defense Systems

March 2026



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Honorable Phil King	Weatherford, State Senator
Honorable Emily Miskel	McKinney, Justice, Fifth Court of Appeals
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Defender's Office	
Mr. Jim Bethke	San Antonio, Executive Director, Bexar County Managed Assigned Counsel Program
Mr. Jay Blass Cohen	Houston, Attorney, Blass Law PLLC
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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, interviewed officials, and reviewed FY2024 data from San Patricio County. TIDC made three findings of noncompliance.

- a. Magistrates in San Patricio County did not ensure all individuals were asked whether they would like to request counsel at the Article 15.17 hearings as required by statute.
- b. Statutory County Court Judges have separate appointment lists that were not approved by a majority of the judges.
- c. One magistrate did not document the number of magistrate warnings conducted at the Article 15.17 hearing in the Judicial Council Monthly Court Activity Reports.

TIDC thanks San Patricio 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 findings within two years.²

Background

TIDC selected San Patricio 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 Ashley DeLaGarza, Cody Huffman, and Joel Lieurance made on-site visits to the County between December 9th and December 11th to conduct

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

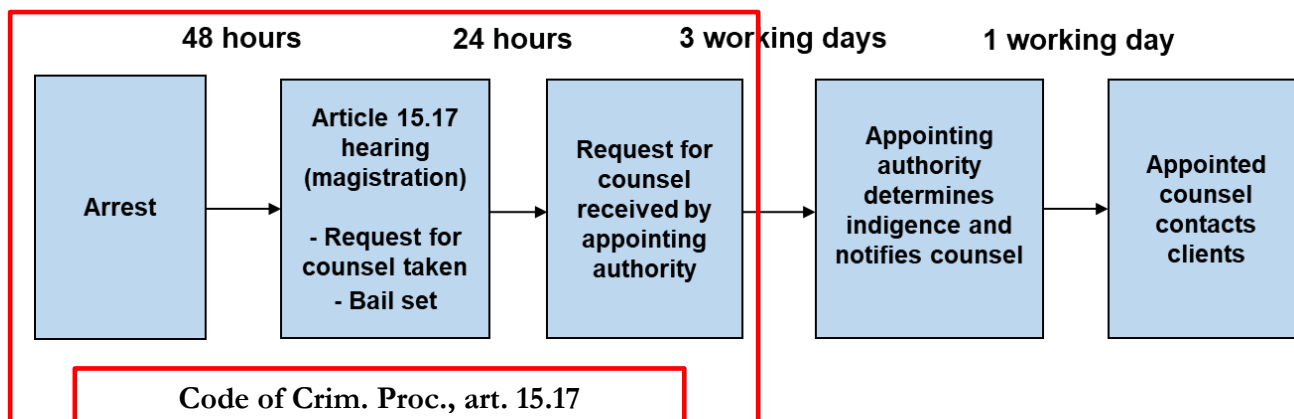
the review. TIDC utilized various approaches to obtain relevant information, including data from felony, misdemeanor, and juvenile cases filed in FY2024; the local indigent defense plans; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, court staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings, as well as misdemeanor and felony dockets.

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, ask if the person wants to request appointed 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



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>.

Local Practices for Conducting Magistrate Warnings

In San Patricio County, 19 police agencies arrest defendants who are booked into either the San Patricio County Jail or one of several municipal jails across the County. Pre-Trial Services will attempt to meet with arrestees before the Article 15.17 hearings to complete financial affidavits, if they wish to request appointed counsel. If they are unable to do so, they meet with them after the hearing. If individuals bond out before completing the affidavit, they are told to contact Pre-Trial Services. San Patricio County magistrates conduct Article 15.17 hearings in person at the County Jail and by videoconference for most municipalities. Magistrates make probable cause determinations, set bail, and explain that defendants have the right to counsel. If an arrestee requests counsel, the magistrate warning form is uploaded to Odyssey, where Pre-Trial Services has access to the request.

For individuals booked into the municipal jails, Pre-Trial Services assigns an individual to each jail. They will log on to Zoom or attend in person to complete forms when the individual requests an attorney. If Pre-Trial staff were unable to attend, Pre-Trial staff can review the magistration forms through Odyssey.

Pre-Trial Services is the single point of contact to send counsel requests. Once they receive the request, Pre-Trial staff work to complete the financial affidavit and send it to the appropriate judge to determine indigence and appoint counsel. Often, when an individual bonds out prior to the completion of an affidavit, they are required to contact Pre-Trial Services to set an appointment to complete the affidavit or they can complete the affidavit at their first court proceeding.

TIDC observed magistrate warnings conducted by two San Patricio County magistrates on December 11, 2025, at the San Patricio County Sheriff's Office/Jail. The magistrate judges advised all defendants of their rights but did not clearly ask each defendant whether they would like to request counsel. The magistration forms were marked as no request made, even when the question was not clearly asked to the defendants, giving them an opportunity to request. Pre-Trial staff were not present during these magistrate proceedings.

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

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

48 hours.⁸ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 165 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 99.4% of 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:	165	
0 days	53	
1 day	104	
2 days	7	
Timely Hearings	164	99.4%
More than 2 days	1	0.6%

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 From TIDC's case file review, 4% of sample felony cases and 3% of sample misdemeanor cases included a request for counsel made at the Article 15.17 hearing.

Sample counsel request rates are in line with rates reported to the Office of Court Administration (OCA), as shown in Table 2 below. TIDC staff observed that magistrate judges failed to ask whether the person would like to request counsel, which explains the low request rates. San Patricio County must ensure that all individuals are clearly asked whether they would like to request counsel and record the response as required by statute, not merely explaining that right.

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).

Table 2: Article 15.17 Data Reported to OCA

Magistrate	Misd A&B Warnings	A&B Requests	% Misd Requests	Felony Warnings	Felony Requests	% Felony Requests
JP1	654	0	0%	709	0	0%
JP2	92	0	0%	76	0	0%
JP4	100	16	16%	67	20	30%
JP5	68	0	0%	60	0	0%
JP6	0	0	n/a	0	0	n/a
JP8	95	0	0%	108	0	0%
Total	1009	16	2%	1020	20	2%

Reasonable Assistance in Completing Forms for Requesting Counsel

Defendants complete financial affidavits through Pre-Trial Services. Pre-Trial Services meets with defendants at the County Jail before or after magistration to complete financial affidavits. If defendants post bail, they can schedule phone/video interviews or meet with Pre-Trial Services in person. Pre-Trial Services provides assistance in completing the forms for both detained and out-of-custody defendants.

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.¹⁰ For requests made at the county jail, Pre-Trial Services can access requests once uploaded into Odyssey. Once a defendant completes a Pre-Trial Services interview, it is in the database.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct Prompt and Accurate Magistration Proceedings

FINDING 1 AND RECOMMENDATION: At the Article 15.17 hearing, two magistrate judges did not ask whether the individual would like to request counsel. As required by Article 15.17(e) of the Code of Criminal Procedure, magistrates in San Patricio County must ask and record whether defendants would like to request counsel. San Patricio County must ensure that all individuals are asked whether they would like to request counsel as required by statute.

¹⁰ 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 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.

Indigence Standard in Adult Criminal Cases

For adult criminal cases in San Patricio County, the county and district courts' indigent defense plan lists that the defendant will be presumed indigent if the person meets any of three conditions:

- eligible for public benefits (food stamps, Medicaid, TANF, Supplemental Security Income, or public housing);
- net household income is less than 100% of the Federal Poverty Guidelines;¹¹ or
- resides in a correctional institution or public mental health facility.

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.¹²

¹¹ The County Court indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=578>. The plan fails to mention what percentage of the federal poverty guidelines they will consider as indigent.

¹² The District County indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=632>

Indigence Standard in Juvenile Cases

For juvenile delinquency cases in San Patricio County, the test concerns the financial capabilities of the person responsible for the youth.¹³ The child is presumed indigent if the person responsible for the youth meets any of three conditions:

- eligible for public benefits (food stamps, Medicaid, TANF, Supplemental Security Income, or public housing);
- net household income less than 100% of the Federal Poverty Guidelines; or
- resides in a correctional institution or public mental health facility.

A child may still qualify as indigent if unable to retain counsel without substantial hardship.

Local Practices

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds San Patricio 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 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

¹³ The juvenile indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=649>

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).

Felony and Misdemeanor Cases

For both the felony and misdemeanor appointment lists, attorneys must obtain at least six criminal CLE hours annually or be Board Certified in Criminal Law.¹⁶

Table 2a: Qualifications for Denton County Adult Appointment Lists¹⁷

List	CLE Hours	Specific Experience
Misdemeanor	6 criminal	
State Jail and 3 rd Degree Felony	6 criminal	Participated in at least 10 misdemeanor criminal trials or 5 felony trials, either as first or second chair, 2 of which must have been before a jury;
1 st / 2 nd Degree Felony	6 criminal	Participated in at least 10 misdemeanor criminal trials or 5 felony trials, either as first or second chair, 2 of which must have been before a jury;
Capital Felony	n/a	1 st or 2 nd chair approved by the Administrative Region's Selection Committee
Misdemeanor/ Felony Appeals	6 criminal	Board certified in criminal law; or personally authored and filed at least 3 briefs or post-conviction writs of habeas corpus; submitted an appellate writing sample approved by a majority of judges; or worked as appellate court briefing clerk for at least 1 year.

Article 26.04(d) of the Code of Criminal Procedure requires a majority of judges who established the public appointment list to approve attorneys for the list. County Court at Law 1 and 2 have slightly different appointment lists. The statutory county courts must establish a misdemeanor appointment list in which each attorney is approved by a majority of the judges.

Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually to be included on the appointment lists. Attorneys may be approved to represent juveniles for some or all offense levels.

¹⁶ In reviewing case files, TIDC staff discovered there were several complaints regarding defendants, both pro se and those who received an appointed attorney, submitting their own pro se bond reduction motions. Judges should continue to monitor attorney qualifications and standards. Attorneys should continue to maintain reasonable communication with their clients as required by TEX. CODE CRIM. PROC. ART. 26.04(j)(1).

¹⁷ County court plan <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=578> and District Court Plan <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=632>

Table 2b: Qualifications for San Jacinto County Juvenile Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
CINS or Delinquent Conduct (commitment to TJJD not an option)	6 juvenile	1 year	Must have observed or participated in 5 juvenile adjudications; 5 contested juvenile adjudications; 5 juvenile adjudications; 5 juvenile dispositions; and 5 detention hearings; and participated in at least 3 criminal or juvenile trials.
Delinquent Conduct (commitment to TJJD authorized)	6 juvenile	1 year	Participated in 5 criminal or juvenile cases, of which at least 2 were tried to a jury verdict
Determinate Sentence or Proceedings for Discretionary Transfer to Criminal Court have been initiated	6 juvenile	3 years	Participated in at least 20 criminal or juvenile cases, of which at least 2 were tried to jury verdict. Tried at least 10 criminal or juvenile cases as lead counsel.

Assessment

TIDC reviewed appointment lists and CLE records. TIDC found that the County has procedures for managing appointment lists for adult criminal cases and ensuring that all attorneys on the lists meet their annual CLE requirement. However, the statutory county courts had different appointment lists.

Article 26.04(e)(1) requires the statutory county courts to establish a public appointment list. Article 26.04(d) requires a majority of the judges who established the public appointment list to approve attorneys for the list.¹⁸ The statutory county courts must establish a misdemeanor appointment list in which each attorney is approved by a majority of the judges.

¹⁸ Article 26.04(d) states:

(d) A public appointment list from which an attorney is appointed as required by Subsection (a) shall contain the names of qualified attorneys, each of whom:

- (1) applies to be included on the list;
- (2) meets the objective qualifications specified by the judges under Subsection (e);
- (3) meets any applicable qualifications specified by the Texas Indigent Defense Commission; and
- (4) is approved by a majority of the judges who established the appointment list under Subsection (e).

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications

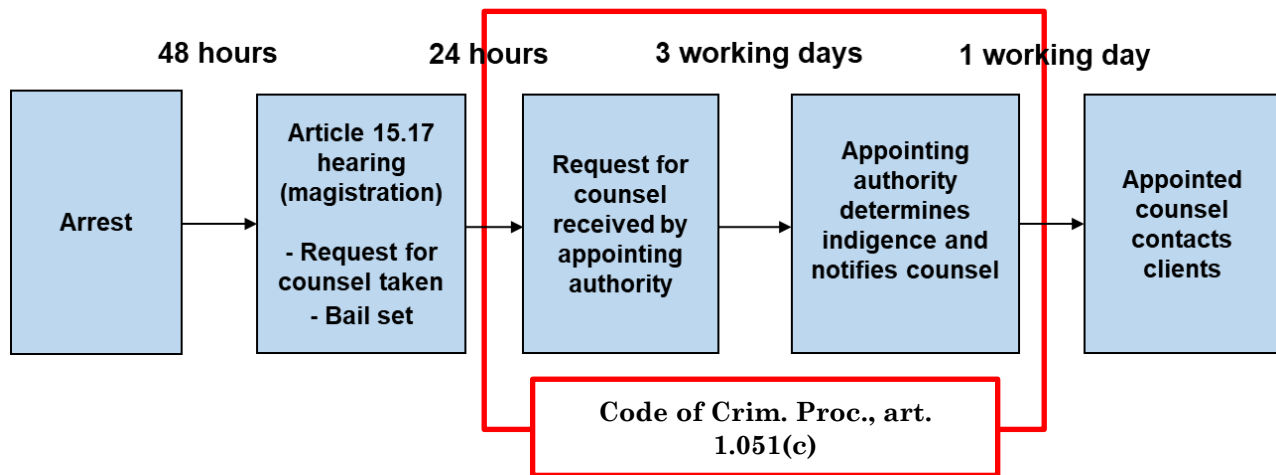
FINDING 2 AND RECOMMENDATION: Article 26.04(d) of the Code of Criminal Procedure requires a majority of the judges who established the public appointment list to approve attorneys for the list. The statutory county courts must establish a misdemeanor appointment list in which each attorney is approved by a majority of the judges.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

Under Article 1.051(c)(2) 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), the defendant has the first opportunity to request counsel at the 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 to appointment of counsel or denial of indigence. TIDC examined cases filed in FY2024 (October 2023 to September 2024).

Timeliness of Appointment in Felony Cases

TIDC examined 89 sample felony cases filed in FY2024. The courts made timely appointments or denials of indigence in 65 of 68 cases in which counsel was requested (**96% timely**). This is above TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel. If a greater percentage of defendants request counsel at the Article 15.17 hearing, the timeliness of felony appointments could fall if processes are not implemented to timely transmit and rule on such requests. TIDC will continue to track the timeliness of felony appointments to ensure that changes to the Article 15.17 hearing do not disrupt the timely appointment of counsel.

Table 3: Times to Appointment in Felony Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	89		
Total cases with a counsel request		68	
Appointment/denial of indigence occurred in:			
0 workdays		25	
1 – 3 workdays + 24-hour transfer		40	
Total timely appointments/denials		65	96%
4 – 7 workdays + 24-hour transfer		2	
More than 7 workdays + 24-hour transfer		1	
No ruling on request		0	
Total untimely appointments/denials		3	4%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 110 sample misdemeanor cases filed in FY24. The courts made timely appointments or denials of indigence in 45 of 50 cases in which counsel was requested (**90% timely**). This is at TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel. If a greater percentage of defendants request counsel at the Article 15.17 hearing, the timeliness of misdemeanor appointments could fall if processes are not implemented to timely transmit and rule on such requests. TIDC will continue to track the timeliness of misdemeanor appointments to ensure that changes to the Article 15.17 hearing do not disrupt the timely appointment of counsel.

Table 4: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	110		
Total cases with a counsel request		50	
Appointment/denial of indigence occurred in:			
0 workdays		28	
1 – 3 workdays + 24-hour transfer		17	
Total timely appointments/denials		45	90%
4 – 7 workdays + 24-hour transfer		3	
More than 7 workdays + 24-hour transfer		1	
No ruling on request		1	
Total untimely appointments/denials		5	10%

Waivers of Counsel in Misdemeanor Cases

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. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid. 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 had no sample pro se pleas for defendants with pending counsel requests. All sample pro se cases were either active or dismissed.

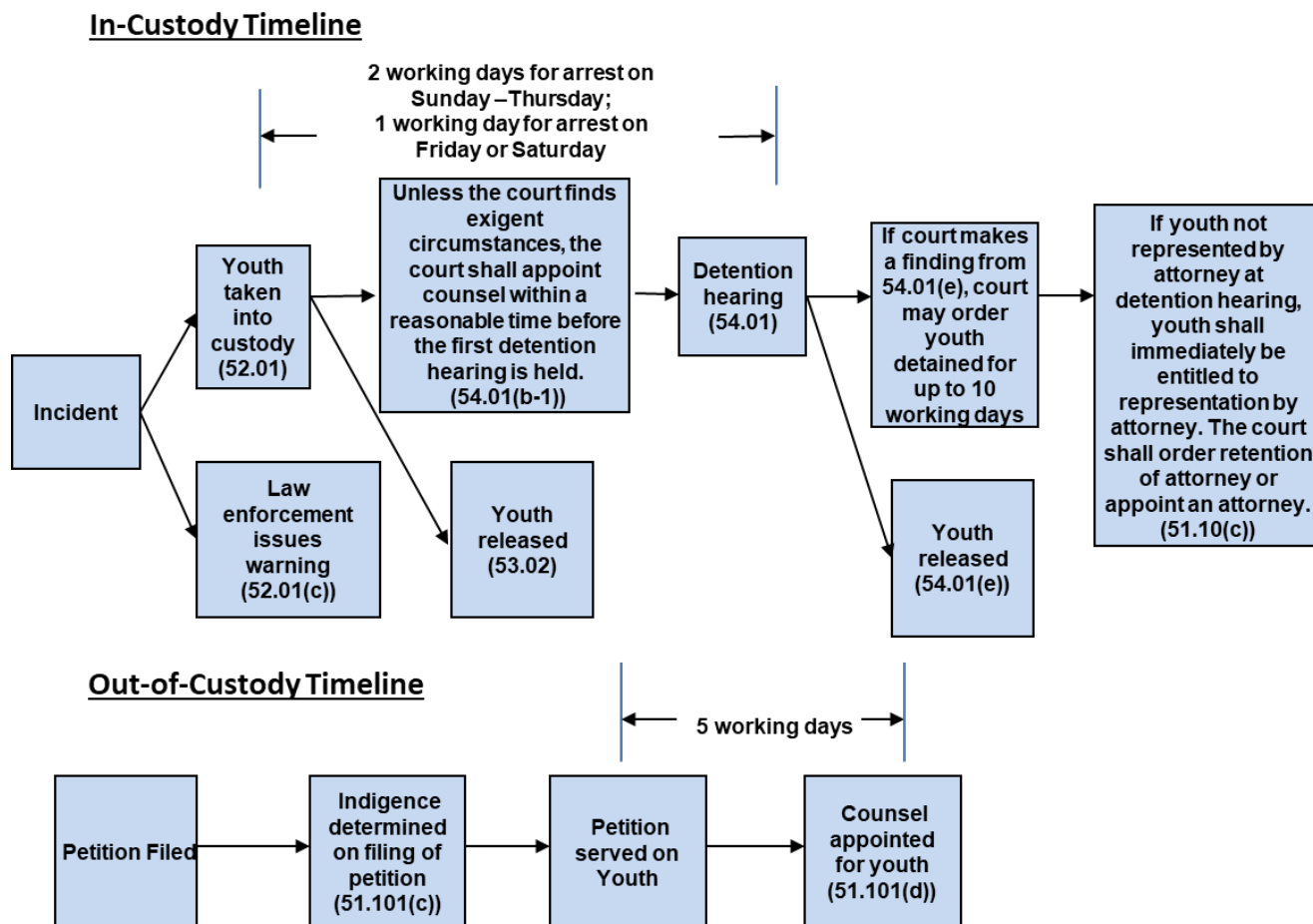
Juvenile Cases

The courts must appoint counsel 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.¹⁹ 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, the court shall appoint counsel within a reasonable time before the first detention hearing. When a petition is filed, Section

¹⁹ TEX. FAM. CODE § 51.10(f).

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. Section 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 juvenile.²⁰

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



Juvenile Detention Hearings

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC staff examined 20 cases filed in FY2024 (October 2023 – September 2024).

²⁰ 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.

Section 54.01(b-1) of the Family Code requires counsel to be appointed prior to the initial detention hearing unless appointment is not feasible due to exigent circumstances.²¹ Of the 20 sample cases, 18 involved detention hearings. Counsel was present for the initial detention hearing in 18 sample cases (**100% timely**).

Appointment After Service of the Petition

Under Section 51.101(c) and (d) of the 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 20 sample cases, 20 involved service of the petition on the youth. Counsel was timely appointed, or indigence was denied for 20 of these cases (**100% timely**).

Table 5: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	20		
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 petition filed	20		
Counsel appointed within 5 working days of service		18	
Indigence denied or counsel retained within 5 working days of service ²²		2	
Total cases with timely presence of counsel		20	100%
Cases where counsel not present in a timely fashion		0	0%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

Requirement satisfied. No findings.

²¹ 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.

²² TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY SELECTION PROCESS

Article 26.04(b)(6) of the 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.

In assigned counsel systems, 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 receive no more than three times their respective share of appointments.²³ If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome a finding about the distribution of appointments by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

Assessment

TIDC analyzed the distribution of cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists during FY2024 (see Table 6). The distributions fell within TIDC's presumed threshold. TIDC finds San Patricio County is in substantial compliance with Requirement 5.

Table 6: Share of Cases Paid to Top 10% of Attorneys

Level	Attorneys on List ²⁴	Top 10% Attorneys ²⁵	Respective Share of Cases ²⁶ [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	12	1	8.3%	15.3%	1.8
Misdemeanor	16	2	12.5%	21.3%	1.7
Juvenile	6	1	16.7%	47.1%	2.8

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

²⁴ TIDC considered an attorney to be on the appointment list if the attorney was on any court lists for the offense level.

²⁵ 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.

²⁶ 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.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

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. Since FY2014, financial data reports must include attorney-level information.²⁷

Under Title 1, Sections 171.7 – 8 of the Texas Administrative Code, justice of the peace and municipal courts must submit Judicial Council Monthly Court Activity Reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. TIDC uses these reports as a guide to understand if arrestees are informed of their right to counsel, and if they invoke that right.

TIDC found that all but one²⁸ of the justice courts reported conducting Article 15.17 hearings to the Office of Court Administration (OCA). All justice courts must put in place methods to capture and report the number of Article 15.17 hearings and the number of requests for counsel in their Judicial Council Monthly Court Activity Reports.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

FINDING 3 AND RECOMMENDATION: Under Title 1 Tex. Admin. Code § 171.7, justice courts must submit to OCA monthly reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. The justice courts must put in place methods to capture and report both elements in their Judicial Council Monthly Court Activity Reports.

²⁷ TEX. GOV'T CODE § 79.036(a-1).

²⁸ Justice of Peace #6 conducted 15.17 hearings but did not report the magistrate warning data to OCA.

Conclusion

TIDC thanks San Patricio 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.²⁹ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²⁹ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

San Patricio 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, two magistrate judges did not ask whether the individual would like to request counsel. As required by Article 15.17(e) of the Code of Criminal Procedure, magistrates in San Patricio County must ask and record whether defendants would like to request counsel. San Patricio County must ensure that all individuals are asked whether they would like to request counsel as required by statute.

REQUIREMENT 3: MINIMUM ATTORNEY QUALIFICATIONS

FINDING 2 AND RECOMMENDATION: Article 26.04(d) of the Code of Criminal Procedure requires a majority of the judges who established the public appointment list to approve attorneys for the list. The statutory county courts must establish a misdemeanor appointment list in which each attorney is approved by a majority of the judges.

REQUIREMENT 6: STATUTORY DATA REPORTING

FINDING 3 AND RECOMMENDATION: Under Title 1 Tex. Admin. Code § 171.7, justice courts must submit to OCA monthly reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. The justice courts must put in place methods to capture and report both elements in their Judicial Council Monthly Court Activity Reports.

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.³⁰
 - 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.³¹
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³²
- ☒ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³³
- ☐ 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.³⁴
- ☐ 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 250,000.³⁵ **NOT APPLICABLE.**
- ☒ 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.³⁶

³⁰ TEX. CODE CRIM. PROC. ART. 14.06(a).

³¹ TEX. CODE CRIM. PROC. ART. 17.033.

³² TEX. CODE CRIM. PROC. ART. 15.17(a).

³³ *Id.*

³⁴ TEX. CODE CRIM. PROC. ART. 15.17(e). This box is not checked because magistrates do not always ask defendants if they would like to request appointed counsel.

³⁵ *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).

³⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³⁷
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁸
- ☒ List factors the court will consider when determining whether a defendant is indigent.³⁹

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

- ☐ Establish objective qualification standards for attorneys to be on an appointment list.⁴⁰
 - 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.⁴¹
 - Standards must require attorneys to submit the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county annually by October 15. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30.⁴²

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.⁴³
- ☒ 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.⁴⁴

³⁷ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³⁸ TEX. CODE CRIM. PROC. ART. 26.04(l).

³⁹ TEX. CODE CRIM. PROC. ART. 26.04(m).

⁴⁰ TEX. CODE CRIM. PROC. ART. 26.04(d). This box is not checked because the two statutory county courts maintain separate appointment lists.

⁴¹ 1 TEX. ADMIN. CODE § 174.1–.4.

⁴² TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

⁴³ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

⁴⁴ 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 250,000.⁴⁵
- ☒ 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.⁴⁶
- ☒ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁴⁷

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.⁴⁸
- ☐ Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.⁴⁹

NOT APPLICABLE.

- ☐ Alternative appointment method:⁵⁰
 - 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.

- ☒ Capital Felony Cases: The system must meet the requirements set out in Article 26.052 of the Code of Criminal Procedure.⁵¹

⁴⁵ TEX. CODE CRIM. PROC. ART. 1.051(c).

⁴⁶ 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.”).

⁴⁷ TEX. CODE CRIM. PROC. ART. 1.051(f-2).

⁴⁸ TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴⁹ TEX. CODE CRIM. PROC. ART. 26.044.

⁵⁰ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

⁵¹ TEX. CODE CRIM. PROC. ART. 26.052.

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:⁵²
 - 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.

⁵² TEX. GOV'T CODE § 79.036(a-1). 1 Tex. Admin. Code § 171.7 – 8. This box is not checked because one magistrate did not report the number of magistrate warnings conducted on the Judicial Council Monthly Court Activity Reports.