



Follow-up Review of Jim Wells County's Indigent Defense Systems

June 2024

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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 conducting this follow-up review, TIDC interviewed local officials and staff, observed Article 15.17 hearings and a felony docket, and examined FY2023 case file records. TIDC determined that Jim Wells County successfully addressed one finding from the 2019 review, regarding misdemeanor guilty pleas entered by defendants with unresolved counsel requests. The following three topics have findings that remain pending: 1) the timely appointment of counsel in felony and misdemeanor cases; 2) providing assistance with affidavits of indigence; and 3) transmitting counsel requests from the jail to the courts within the statutory twenty-four (24) hour time period.

TIDC thanks Jim Wells County officials and staff for their assistance in completing this review. TIDC staff stand ready to provide technical and financial assistance to remedy these outstanding issues. To discuss accessing these resources, please do not hesitate to contact us for more information. TIDC will conduct a second follow-up review within two years.²

Background

In 2019, TIDC selected Jim Wells County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. The resulting report contained four findings covering procedures related to magistrate warnings, timely appointments of counsel, and waivers of counsel.

Jim Wells County responded to the report’s findings by noting that counsel requests will be transmitted from the jail to the trial courts within 24 hours, and trial courts would promptly rule on requests.

¹ TEX. GOV’T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings for Jim Wells County

| FDA Core Requirement | Description and Initial Year of Finding | Status after 2024 Review | |
|------------------------|--|--------------------------|---------|
| | | Satisfied | Pending |
| 1. Prompt Magistration | Arrestees were not receiving assistance in completing assistance in completing affidavits of indigence. Requests for counsel were not promptly transmitted to the courts. (2019) | | ✓ |
| 4. Prompt Appointment | In felony cases, timeliness in sample cases did not meet TIDC’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2019) | | ✓ |
| 4. Prompt Appointment | In misdemeanor cases, timeliness in sample cases did not meet TIDC’s threshold for presuming a jurisdiction’s processes ensure timely appointments. (2019) | | ✓ |
| 4. Prompt Appointment | In misdemeanor cases, procedures did not ensure requests for counsel were ruled upon prior to waivers of counsel. (2016) | ✓ (2024) | |

Current Review

TIDC staff members, Ashley De La Garza and Joel Lieurance, conducted the second follow-up review with an on-site visit between January 20 and 23, 2024. This report addresses unresolved issues related to two core Fair Defense Act (FDA) requirements:³

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

For this review, TIDC examined data from FY2023 (October 2022 – September 2023), including felony and misdemeanor case files. TIDC observed magistrate warnings and a felony docket and spoke with County officials and staff regarding procedures for taking counsel requests and transmitting those requests to the appointing judges.

Program Assessment

Requirement 1: Conduct Prompt and Accurate Article 15.17 Proceedings.

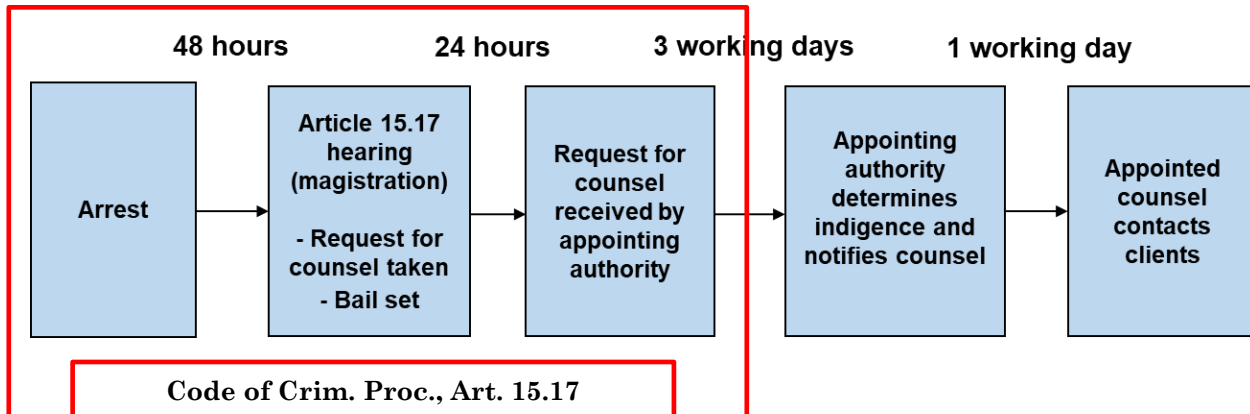
Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.⁴ At this hearing, the magistrate must inform the person of the right to counsel, inform the person of the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the

³ 1 TEX. ADMIN. CODE § 174.28.

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

necessary forms for requesting counsel.⁵ Magistrates must transmit requests for counsel to the appointing authority within 24 hours.⁶ 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.⁷

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



Jim Wells County’s Article 15.17 Procedures

After arrest in Jim Wells County, defendants are booked in at the jail and go before a magistrate for the Article 15.17 hearing. The magistrates presiding over these hearings include five justices of the peace who conduct the hearings in person at the jail. Each 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. Jail staff provide the defendant with the affidavit of indigence after the defendant goes back to the cell. Jail staff are available as a resource in completing the affidavit, and they collect it back after defendants complete the form. This process results in delays and lost affidavits. Once the affidavit is collected, it is walked across the street and delivered to the district or statutory county court. TIDC’s file examination included several felony and misdemeanor requests that were either not ruled upon or were ruled upon much later than the original Article 15.17 request. TIDC finds that Jim Wells County has not addressed this finding dealing with reasonable assistance and transmission of counsel requests.

To address this issue, the County may wish to give defendants the affidavit of indigence before meeting with the judge or during magistration to ensure it is completed

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

⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁷ 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>.

and timely collected. Jail staff would then promptly ensure it is forwarded to the appropriate appointment authority.

Ability of Defendants to Request Counsel

TIDC observed magistrate warnings conducted by two of the County’s justices of the peace. For both judges, TIDC saw that all defendants were asked if they wanted to request counsel. Based on data reported by justice courts to the Office of Court Administration (OCA), counsel request rates have increased since our last review. At the time of our 2019 review, about 18% of misdemeanor defendants and 31% of felony defendants requested counsel at the Article 15.17 hearing. Those numbers have now grown to about 45% of misdemeanor defendants and 81% of felony defendants. This has led to an increased need to ensure defendants promptly complete affidavits of indigence.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

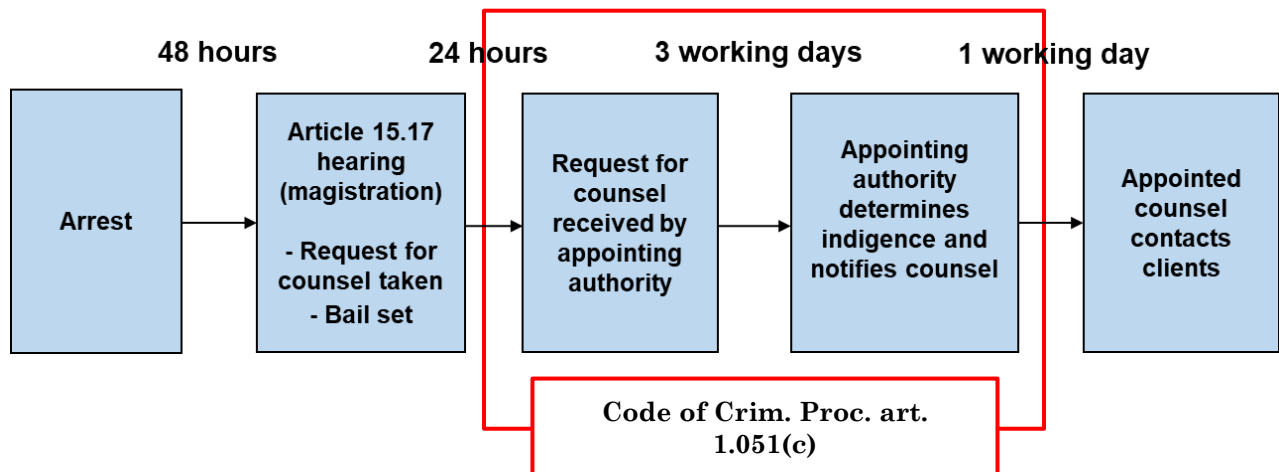
Conduct prompt and accurate magistration proceedings.

2019 FINDING and RECOMMENDATION 1: Article 15.17(a) requires that magistrates ensure reasonable assistance in completing forms necessary to obtain appointed counsel. These forms must then be transmitted to the appointing authority within 24 hours. Jim Wells County magistrates must ensure counsel requests and associated financial forms are promptly completed and transmitted to the courts. ***Issue Pending.***

Requirement 4: Appoint counsel promptly.

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 occurs 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 until appointment of counsel or denial of indigence. Under TIDC’s monitoring rules, a county is presumed to promptly appoint counsel if at least 90% of indigence determinations in the monitor’s sample are timely.⁸

Timeliness of Appointments in Felony Cases

TIDC examined 90 felony cases filed in FY2023 (October 2022 – September 2023) to determine the timeliness of felony appointments. From this sample, TIDC found 61 cases with counsel requests. Counsel was **appointed in a timely manner in 72% of those cases**. This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. The primary cause of late appointments appeared to be that counsel requests forms were not always transmitted to the district court within 24 hours of arrest. Jim Wells County must implement practices that satisfy the three working day appointment timeline in felony cases.

Table 2: Times from Request to Appointment in Felony Cases

| | Number from Sample | Percent of Sample |
|--|--------------------|-------------------|
| Total records examined | 90 | |
| Requests for counsel | 61 | |
| Request for counsel ruled upon in ‘x’ workdays | | |
| 0 workdays | 30 | |
| 1 to 3 workdays + 24 hours allowed to transmit a request | 14 | |
| Timely Rulings on Requests | 44 | 72% |
| Between 4 and 7 workdays | 1 | |
| More than 7 workdays | 10 | |
| No ruling on request | 6 | |
| Untimely / No Rulings on Requests | 17 | 28% |

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 118 misdemeanor cases filed in FY2023 (October 2022 – September 2023) to determine the timeliness of misdemeanor appointments. From this sample, TIDC found 38 cases with counsel requests. Counsel was **appointed in a timely manner in 16% of those cases**. This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. The primary cause of late appointments appeared to be that counsel requests forms were not always

⁸ 1 TEX. ADMIN. CODE § 174.28.

transmitted to the county court within 24 hours of arrest. Jim Wells County must implement practices that satisfy the three working day appointment timeline in misdemeanor cases.

Table 3: Times from Request to Appointment in Misdemeanor Cases

| | Number from Sample | Percent of Sample |
|--|--------------------|-------------------|
| Total records examined | 118 | |
| Requests for counsel | 38 | |
| Request for counsel ruled upon in 'x' workdays | | |
| 0 workdays | 2 | |
| 1 to 3 workdays + 24 hours allowed to transmit a request | 4 | |
| Timely Rulings on Requests | 6 | 16% |
| Between 4 and 7 workdays | 0 | |
| More than 7 workdays | 11 | |
| No ruling on request | 21 | |
| Untimely / No Rulings on Requests | 32 | 84% |

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. 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 samples did not include any cases in which a defendant entered a guilty plea while having a pending request for counsel. TIDC finds that Jim Wells County has addressed the issue of defendants waiving counsel while having pending counsel requests.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly.

2019 FINDING and RECOMMENDATION 2 (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 allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in felony cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases. *Issue Pending.*

2019 FINDING and RECOMMENDATION 3 (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 allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases. *Issue Pending.*

2019 FINDING and RECOMMENDATION 4 (misdemeanor cases): The absence of a ruling on 10 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)). Jim Wells 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). *Successfully Addressed.*

Conclusion

TIDC thanks Jim Wells County officials and staff for their assistance in completing this review. TIDC will conduct a second follow-up review regarding its noncompliance findings within two years.⁹ TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

⁹ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

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

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

2024 Finding 1 and Recommendation: Article 15.17(a) requires that magistrates ensure reasonable assistance in completing forms necessary to obtain appointed counsel. These forms must then be transmitted to the appointing authority within 24 hours. Jim Wells County magistrates must ensure counsel requests and associated financial forms are promptly completed and transmitted to the courts. *Issue Pending.*

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

2024 Finding 2 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 allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in felony cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases. *Issue Pending.*

2024 Finding 3 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 allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases. *Issue Pending.*