



Policy Monitoring Review of Bastrop County's Indigent Defense Systems

January 2022



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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 For this review, TIDC observed court, interviewed officials, and reviewed FY2020 data from Bastrop County.

TIDC made four findings of noncompliance. First, when defendants requested counsel at Article 15.17 hearings, magistrates did not always send affidavits of indigence to the appointing authority within 24 hours (Finding 1). Second, the courts did not promptly appoint counsel in felony, misdemeanor, and juvenile cases (Findings 2, 3, and 4). Late appointments often occurred because of delays in transmitting requests to the appointing courts.

TIDC thanks Bastrop County officials and staff for their assistance in completing this review. TIDC staff stand 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 Bastrop County for a review through its annual county selection process, which seeks to cycle through counties around the state. This review, the first for Bastrop County, covered five of the six FDA core requirements:³

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 Wesley Shackelford, Lindsay Bellinger, Claire Buetow, and Joel Lieurance conducted the review. TIDC examined FY2020 data, including felony, misdemeanor, and juvenile case files; attorney fee vouchers; the local indigent defense

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

³ The sixth requirement is covered separately in a fiscal monitoring review. TIDC's policy monitoring rules are set in 1 TEX. ADMIN. CODE § 174.28. TIDC has received 10 complaints about Bastrop County since 2018, alleging issues with access to and quality of counsel. This review covered issues within the scope of the Fair Defense Act and TIDC's monitoring authority.

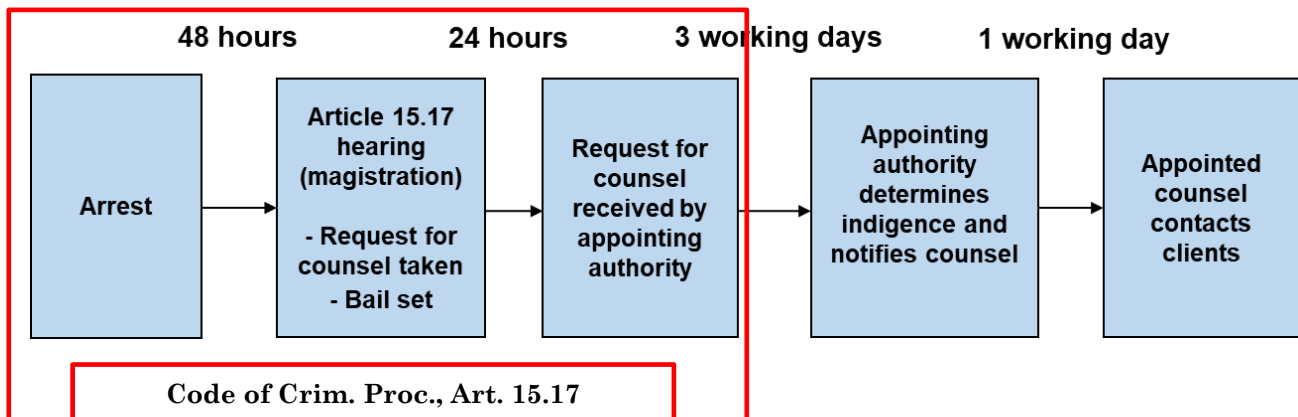
plan; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges and court coordinators and observed Article 15.17 hearings, felony dockets, and misdemeanor dockets.

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.⁴ At this hearing, the magistrate must inform the person of his or her 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.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



Local Practices for Conducting Magistrate Warnings

In Bastrop County, after being brought to the Bastrop County Jail, defendants are brought before a magistrate who makes probable cause determinations, sets bail, and asks defendants if they want to request counsel. Defendants and jailers are in-person at the jail for warnings, and magistrates may conduct warnings in-person or via videoconference (most are currently remote due to the pandemic). When defendants

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

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

⁶ TEX. CODE CRIM. PROC. ART. 15.17(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>.

request counsel at an in-person warning, the magistrate assists defendants with the indigency affidavit, and later sends the forms to the courts.

When defendants request counsel at videoconference magistration, jailers provide defendants with a financial affidavit. After defendants complete the form, jailers electronically send the forms to the magistrate, who then forwards them to the courts.

1.a. Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁸ 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 48 hours.⁹ To determine the timeliness of Article 15.17 warnings in the County, TIDC examined 204 sample case files, in which it could determine the time from arrest until the Article 15.17 hearing.¹⁰ All sample Article 15.17 hearings occurred within two days of arrest, 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:	204	
0 days	48	23.5%
1 day	151	74.0%
2 days	5	2.5%
Timely Hearings	204	100%
More than 2 days	0	0.0%

1.b. 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.¹¹ From TIDC sample case files, 74% of felony defendants and 68% of misdemeanor defendants requested counsel at the Article 15.17 hearing. This is an indication that defendants understand their right to counsel at the Article 15.17 hearing and regularly request counsel.

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

⁹ 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.

¹⁰ TIDC examined 320 felony and misdemeanor case files, but many did not include magistrate warning forms, so TIDC could not assess the time from arrest to magistration in all sample cases. Five misdemeanor cases included waivers of magistration. TIDC excluded from its analysis those case in which it could not determine the time from arrest to magistrate warnings.

¹¹ TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

1.c. Reasonable Assistance in Completing Forms for Requesting Counsel

At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel.¹² For in-person hearings, judges assist in completing affidavits of indigence. For virtual hearings, jail staff provide defendants with the affidavit of indigence and electronically send completed affidavits to the magistrate.

1.d. Transmitting Forms to the Appointing Authority

Magistrates must transmit requests for counsel to the appointing authority within 24 hours of the request being made.¹³ For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant issuing county.¹⁴

The courts stated that they rule on requests as soon as they receive them. Based on file review, requests made at the Article 15.17 hearing were often untimely, while requests made later were almost always timely. From a combined sample of felony and misdemeanor cases, 98% of cases with a counsel request that was made after the Article 15.17 hearing received a timely ruling, but only 60% of cases with a request from the Article 15.17 hearing received a timely ruling. This is an indication that requests at the Article 15.17 hearing are not being transferred timely. The County must implement procedures to ensure that counsel requests are transmitted to the appointing authority within 24 hours of the request being made.

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.

¹² TEX. CODE CRIM. PROC. ART. 15.17(a).

¹³ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹⁴ TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

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 standards for determining indigence are set in each county's indigent defense plans. The ultimate test is whether the defendant is financially able to employ counsel.¹⁵ Some defendants may not qualify as indigent under the local standard set in the plan, but still not have the financial ability to employ counsel.

2.a. Indigence Determinations in Adult Criminal Cases

For adult criminal cases in Bastrop County, defendants are presumed indigent if they have a household income at or below 125% of the Federal Poverty Guidelines and non-exempt assets less than \$2,500.¹⁶ Defendants will also be considered indigent if they have been determined eligible to receive Medicaid, Temporary Assistance to Needy Families, Supplemental Security Income, or public housing. Defendants who do not meet these conditions may still qualify for a court appointed attorney if unable to retain private counsel without substantial hardship.

2.b. Indigence Determinations in Juvenile Cases

In juvenile cases, if the income of the person responsible for the youth is less than 110% of the Federal Poverty Guidelines, the youth is presumed to be indigent.¹⁷ The youth may also be determined to be indigent if the responsible person is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing. If the youth does not qualify under these conditions,

¹⁵ TEX. CODE CRIM. PROC. ART. 1.051(b).

¹⁶ The Bastrop County District Court Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=487>. The Bastrop County Court Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=516>.

¹⁷ The Bastrop Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=515>.

the youth may still be determined to be indigent if counsel cannot be retained without substantial hardship.

2.c. Local Practices

Court coordinators evaluate requests for counsel made outside of court. Judges evaluate requests for counsel made in court. From TIDC’s review of case files, courts did not deny indigence in any sample felony or juvenile cases but denied indigence in 11% of sample misdemeanor cases. Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds that Bastrop 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.¹⁸ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.

Table 2: Qualifications for Bastrop County Appointment Lists

List	Years Experience	# of Jury Trials or # of App. Briefs	Other Notes
Capital Murder 1 st Chair	n/a	15 felony jury trials; 2 death penalty cases	Be on 2 nd Administrative Region's appointment list
Capital Murder 2 nd Chair	n/a	n/a	Be on 2 nd Administrative Region's appointment list
Felonies	3 years crim. law; 1 year in Courts of Bastrop, Burleson, Lee, or Washington Counties.	n/a	
Appeals	3 years crim. law; 1 year in Courts of Bastrop, Burleson, Lee, or Washington Counties.	2 appellate briefs / post conviction writs or be board certified in criminal law.	n/a
Misdemeanors	2 years; 1 year in County Court at Law	n/a	Commit to attend at least 75% of all Bastrop County Court at Law general criminal or juvenile dockets.
Juvenile CINS Charges or Delinquent Conduct where Commitment to TJJD is Not an Authorized Disposition	1 in juvenile law; 6 mos. in County Court at Law	n/a	Commit to attend at least 75% of all Bastrop County Court at Law general criminal or juvenile dockets.
Juvenile Delinquent Conduct and Commitment to TJJD without a Determinative Sentence	1 in juvenile law; 6 mos. in County Court at Law	n/a	Commit to attend at least 75% of all Bastrop County Court at Law general criminal or juvenile dockets.
Juvenile Determinative Sentence Proceedings / Discretionary Transfer to Criminal Court	1 in juvenile law; 6 mos. in County Court at Law	n/a	Commit to attend at least 75% of all Bastrop County Court at Law general criminal or juvenile dockets.

¹⁸ 1 TEX. ADMIN. CODE §§ 174.1 – 4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

3.a. Felony Cases

All felony attorneys who take court appointments must be board certified in criminal law or must obtain at least 10 criminal CLE hours annually.

3.b. Misdemeanor Cases

All misdemeanor attorneys who take court appointments must be board certified in criminal law or must obtain at least 6 criminal CLE hours annually, including one hour of ethics. The courts approve attorneys for each list. Higher offense levels require a greater number of trials and years of experience in criminal litigation than lower levels.

3.c. Juvenile Cases

All attorneys who take juvenile cases must obtain at least 6 juvenile CLE hours annually or be board certified in juvenile law. The court over juvenile matters approves attorneys for each list. Attorneys must commit to attend at least 75% of all Bastrop County Court at Law general criminal or juvenile dockets.

Assessment

TIDC reviewed appointment lists and CLE records and found that the County has procedures for managing appointment lists and for ensuring that all attorneys on the lists meet their annual CLE requirement. TIDC finds Bastrop County is in substantial compliance with Requirement 3.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications

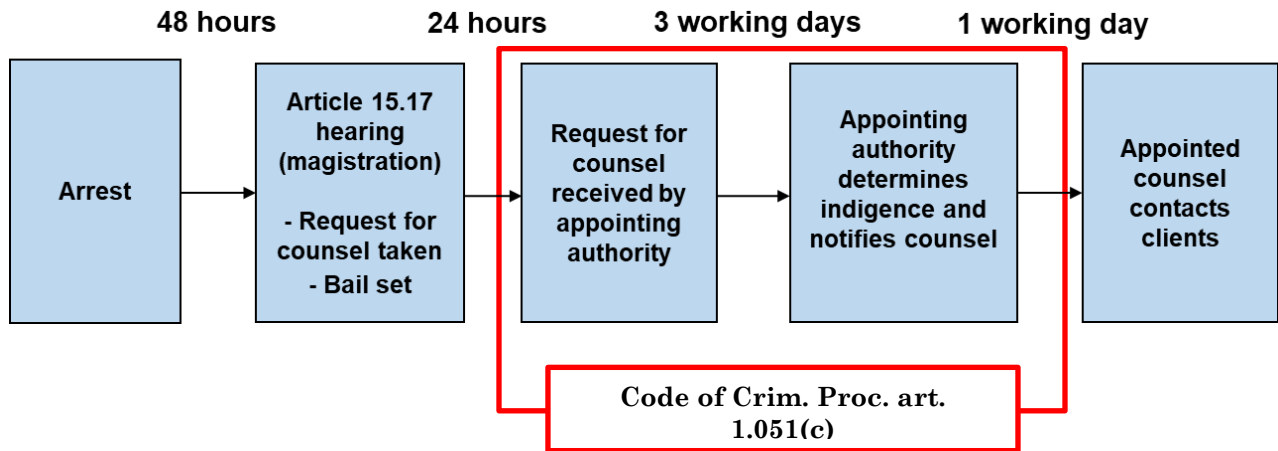
Requirement satisfied. No findings.

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



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 against him or her. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the defendant's first opportunity to request counsel is 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. TIDC examined cases filed in the first part of FY2020 (October 2019 to February 2020). TIDC also observed felony and misdemeanor dockets' procedures for appointing counsel and conducted interviews with judges and staff.

4.a. Timeliness of Appointment in Felony Cases

TIDC examined 107 sample felony cases filed in the first part of FY2020. Counsel was timely appointed in 78 of 98 cases in which counsel was requested (**80% timely**). This falls below TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases.¹⁹

¹⁹ As noted above under Requirement 1, untimely appointments seem to be mostly attributable to delays transferring requests for counsel from the Article 15.17 hearing.

Table 3: Times to Appointment in Felony Cases

	Sample Size	Number from sample	Percent
Number of case files examined	107		
Total cases with a counsel request		98	
Appointment / denial of indigence occurred in:			
0 work days		36	
1 – 3 work days + 24 hour transfer		42	
Total timely appointments / denials		78	80%
4 - 5 work days + 24 hour transfer		5	
More than 5 work days + 24 hour transfer		14	
No ruling on request		1	
Total untimely appointments / denials		20	20%

4.b. Timeliness of Appointments in Misdemeanor Cases

TIDC examined 213 sample misdemeanor cases filed in the first part of FY2020. Counsel was timely appointed in 89 of 142 cases in which counsel was requested (**63% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in misdemeanor cases.²⁰

Table 4: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from sample	Percent
Number of case files examined	213		
Total cases with a counsel request		142	
Appointment / denial of indigence occurred in:			
0 work days		46	
1 – 3 work days + 24 hour transfer		43	
Total timely appointments / denials		89	63%
4 - 5 work days + 24 hour transfer		8	
More than 5 work days + 24 hour transfer		44	
No ruling on request		1	
Total untimely appointments / denials		53	37%

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

²⁰ As noted above under Requirement 1, untimely appointments seem to be mostly attributable to delays transferring requests for counsel from the Article 15.17 hearing.

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, which must conform to the language of Article 1.051(g).²¹

TIDC found 20 sample misdemeanor cases having waivers of counsel made for the purpose of speaking with the prosecutor. The court ruled upon requests for counsel in each case prior to granting any waiver to speak with the prosecutor, meeting the requirements of Article 1.051(f-2).

TIDC noted, however, that five misdemeanor defendants in its case file sample waived their right to magistration and another five defendants waived their right to arraignment. Each waiver form stated that defendants²² who signed were waiving their right to request counsel as well. Although used infrequently, these procedures delay opportunities to understand the right to counsel and invoke it.

4.d. Juvenile Cases

Counsel must be appointed 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.²³ 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. Under Subsections 51.101(c) and (d) of the Family Code, once a

²¹ The waiver language of Article 1.051(g) states:

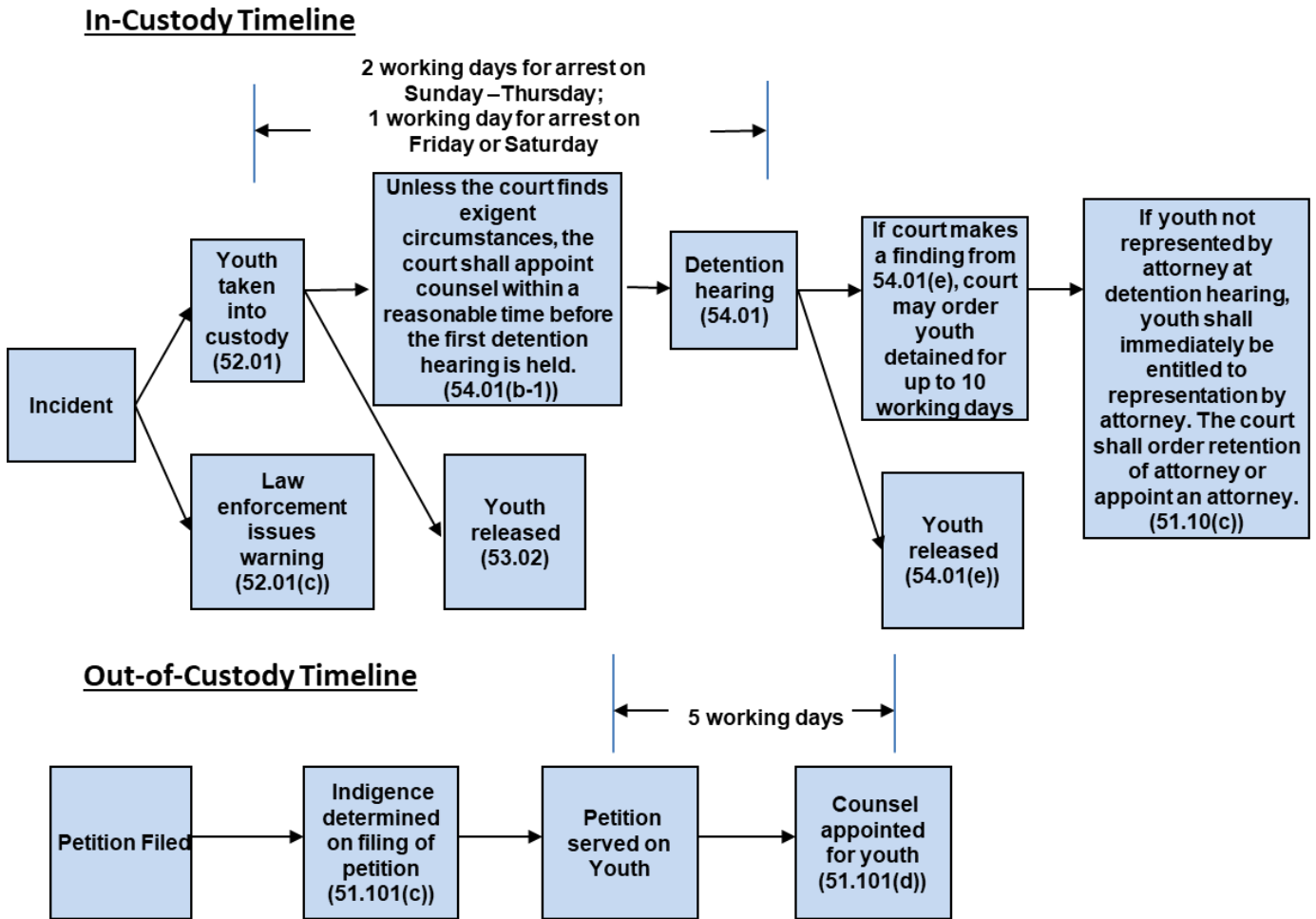
"I have been advised this _____ day of _____, 2____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)"

²² The arraignment form stated that arraignment was being waived by the "undersigned attorney," but was signed by unrepresented defendants.

²³ TEX. FAM. CODE § 51.10(f).

petition is served on the youth, the court has five working days to appoint counsel or order the retention of counsel for the youth.²⁴

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



²⁴ 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.

Under Section 51.10(e), the court may appoint counsel and order the person responsible for the youth to pay a reasonable attorney’s fee set by the court.

Juvenile Detention Hearings

To assess the timeliness of the County's appointment procedures in juvenile cases, TIDC examined 14 cases filed in the first part of FY2020.²⁵ Section 54.01(b-1) of the Family Code requires counsel be appointed prior to the initial detention hearing, unless appointment is not feasible due to exigent circumstances.²⁶ Of the 14 sample cases, only one involved a detention hearing. Counsel was present at this initial detention hearing.

Appointment After Service of the Petition

Under Subsections 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 14 sample cases, counsel was timely appointed for 9 of these cases (**64% timely**), which does not meet TIDC's 90% threshold. For cases in which the youth is not detained, the County must implement procedures that ensure timely appointments of counsel.

Table 5: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	14		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		1	
Cases with attorney present at initial hearing		1	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	14		
Counsel appointed within 5 working days of service		9	
Indigence denied or counsel retained within 5 working days of service ²⁷		0	
Total cases with timely presence of counsel		9	64%
Cases where counsel not present in a timely fashion		5	36%

²⁵ TIDC examined all juvenile cases that were filed between October 2019 and February 2020 and had been disposed by July 2021.

²⁶ 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.

²⁷ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

RECOMMENDATION 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.

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.

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.

REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY 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 at a given level receive no more than three times their respective share of appointments.²⁸ If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome the presumption by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

Assessment

TIDC examined the distribution of cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists. (See Table 6.) The distributions fell well within TIDC’s presumed threshold. TIDC finds Bastrop County is in substantial compliance with Requirement 5.

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

Level	Attorneys on List ²⁹	Top 10% Attorneys ³⁰	Respective Share of Cases ³¹ [Column A]	Actual Share of Cases [Column B]	Top 10% Received ‘x’ Times Their Respective Share [Col. B] / [Col. A]
Felony	8	1	12.5%	20.2%	1.6
Misdemeanor	20	2	10.0%	21.1%	2.1
Juvenile	10	1	10.0%	23.5%	2.4

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

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

²⁹ TIDC considered an attorney had been on the list for the entire year if the attorney received payment for disposing a case in FY2020 and was present on the FY2021 list.

³⁰ 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.

³¹ 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.

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.³²

TIDC conducted a fiscal monitoring review of Bastrop County's indigent defense expenses and shares its findings in a separate report.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

Requirement satisfied. No findings.

Conclusion

TIDC thanks Bastrop 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.³³ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

³² TEX. GOV'T CODE § 79.036(a-1).

³³ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

Bastrop County must respond in writing how it will address the report's finding.

REQUIREMENT 1: 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.

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.

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.

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.

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.³⁴
 - 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.³⁵
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³⁶
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³⁷
- 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.³⁸
- 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 250,000.³⁹
- 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.⁴⁰

³⁴ TEX. CODE CRIM. PROC. ART. 14.06(a).

³⁵ TEX. CODE CRIM. PROC. ART. 17.033.

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

³⁷ *Id.*

³⁸ TEX. CODE CRIM. PROC. ART. 15.17(e).

³⁹ *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). This box is not checked because magistrates do not have appointing authority.

⁴⁰ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because TIDC found delays in transmitting requests to the appointing authority.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.⁴¹
- ☒ State the financial standard(s) to determine whether a defendant is indigent.⁴²
- ☒ List factors the court will consider when determining whether a defendant is indigent.⁴³

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.⁴⁴
 - 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.⁴⁵
 - Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county. 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 30.⁴⁶

⁴¹ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

⁴² TEX. CODE CRIM. PROC. ART. 26.04(l).

⁴³ TEX. CODE CRIM. PROC. ART. 26.04(m).

⁴⁴ TEX. CODE CRIM. PROC. ART. 26.04(d).

⁴⁵ 1 TEX. ADMIN. CODE § 174.1–.4.

⁴⁶ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

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.⁴⁷
- 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.⁴⁸

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 250,000.⁴⁹
- 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.⁵⁰
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁵¹

⁴⁷ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

⁴⁸ TEX. FAM. CODE § 51.101(d). This box is not checked because TIDC’s case sample was less than 90% timely.

⁴⁹ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because TIDC’s case sample was less than 90% timely.

⁵⁰ 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, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”). This box is not checked because TIDC’s case sample was less than 90% timely.

⁵¹ TEX. CODE CRIM. PROC. ART. 1.051(f-2).

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.⁵²
- ☐ 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.⁵³
NOT APPLICABLE: The County does not have a public defender.
- ☐ Alternative appointment method:⁵⁴
 - 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: The County does not operate an alternative appointment program.

⁵² TEX. CODE CRIM. PROC. ART. 26.04(a).

⁵³ TEX. CODE CRIM. PROC. ART. 26.044.

⁵⁴ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).