



Third Follow-up Policy Monitoring Review of Wharton County's Indigent Defense Systems

July 2026



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Chair:

Honorable Missy Medary	Corpus Christi, Presiding Judge, 5 th Administrative Judicial Region of Texas
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Honorable Brent Hagenbuch	Denton, State Senator
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
Honorable Valerie Covey	Georgetown, Williamson County Commissioner
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Mission: Protecting the right to counsel, improving public defense.

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Executive Summary

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act (FDA) through policy reviews.¹ In this third follow-up review, TIDC interviewed local officials and staff and reviewed FY2025 case file records. TIDC found that the previous report's findings covering magistrate warnings and timely appointment of counsel in misdemeanor cases remain pending. TIDC thanks Wharton County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its findings within two years.²

Background

In July 2014, TIDC issued a limited scope report on Wharton County's indigent defense practices. The limited scope report covered the ability of misdemeanor arrestees to request and obtain appointed counsel. The report found that at the Article 15.17 hearing, magistrates only asked defendants who did not expect to make bail whether they wanted to request appointed counsel. When misdemeanor defendants came to court, requests for counsel were not always ruled on prior to a waiver of counsel. This waiver of counsel form did not track the language found in Article 1.051(g) of the Code of Criminal Procedure. TIDC's case sample did not contain enough counsel requests to make an analysis of the timeliness of counsel appointments.

TIDC issued follow-up reports in 2017 and 2023. TIDC found that magistrates asked each defendant whether they wanted to request appointed counsel, but when defendants requested, affidavits of indigence were not immediately filled out, and there were gaps in transmitting those affidavits to the appointing courts. As a result, appointments were not always timely, and sometimes defendants waived counsel without the court ruling on the request for counsel. The reviews also found the form memorializing a defendant's choice to waive counsel had been revised to track Article 1.051(g).

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status After 2026 Review	
		Satisfied	Pending
1. Magistrate Warnings	Magistrates must ask each arrestee if counsel is requested. (2014)	✓ (2017)	
1. Magistrate Warnings	Magistrates must ensure reasonable assistance with affidavits of indigence and must transmit this paperwork to the appointing courts within 24 hours. (2017)		✓
4. Prompt Appointment	The timeliness of indigence determinations in sample misdemeanor cases did not meet TIDC's threshold for presuming a jurisdiction's processes ensure timely appointments. (2017)		✓
4. Prompt Appointment	The court must rule upon all requests for counsel prior to a waiver of counsel. (2017)		✓
4. Prompt Appointment	Waivers of counsel must use language that closely tracks Article 1.051(g). (2014)	✓ (2017)	

Program Assessment

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.³ Staff members Kenitra Brown and Joel Lieurance conducted the current 2026 follow-up review. The purpose of this review was to verify whether the March 2023 report findings were addressed. The review consisted of a site visit to Wharton County between March 25 and 26, 2026. TIDC relied on the following items in preparing this report: interviews with County officials and staff; misdemeanor case files; and the local indigent defense plans. The County must respond to this report's findings and recommendations.

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

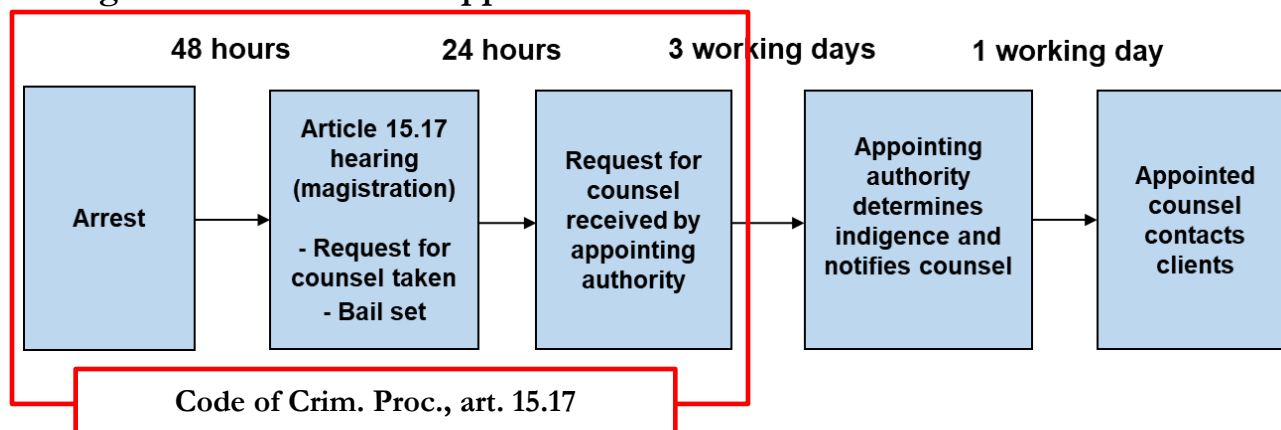
- REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS
- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

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 necessary forms for requesting counsel.⁵ If the magistrate has authority to appoint counsel, the magistrate must appoint counsel according to the timelines set in Article 1.051.⁶ If the magistrate does not have authority to appoint counsel, the magistrate must transmit requests for counsel to the appointing authority within 24 hours.⁷ 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.⁸

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



Reasonable Assistance in Completion of Financial Forms and Transmission to the Appointing Authority

At the Article 15.17 hearing, the magistrate must ensure the arrestee has reasonable assistance in completing the necessary forms for requesting counsel.⁹

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. 15.17(a).

⁸ 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>.

⁹ TEX. CODE CRIM. PROC. art. 15.17(a).

Counsel requests and associated financial paperwork must be sent to the appointing authority within 24 hours of the request being made.¹⁰

According to interviews, when defendants request counsel at the Article 15.17 hearing, they complete the affidavit of indigence shortly after they finish booking papers. Jail staff are available to provide assistance with the affidavit, and staff review the paperwork for completeness before sending it on. The paperwork is sent to the 329th District Court Coordinator by courier on each business day. From TIDC's file review, several requests were either not ruled upon or were ruled upon at a much later date than the counsel request. This is an indication that the procedures for sending requests to the appointing authority may not be foolproof. The County may wish to consider sending requests to the 329th District Coordinator electronically on the day that they are made, regardless of whether the request is made on a business day. It is also possible that some defendants make bail before completing financial affidavits.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct Prompt and Accurate Magistration Proceedings

2023 FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires the magistrate to ensure that assistance in completing financial paperwork for counsel requests is provided at the time of the Article 15.17 hearing. Article 15.17(a) further requires this paperwork to be transmitted to the appointing authority within 24 hours of the request being made. Wharton County must implement procedures to ensure that all arrestees who request counsel have associated financial paperwork promptly completed and transmitted to the appointing authority within 24 hours of the request being made. *Issue Pending.*

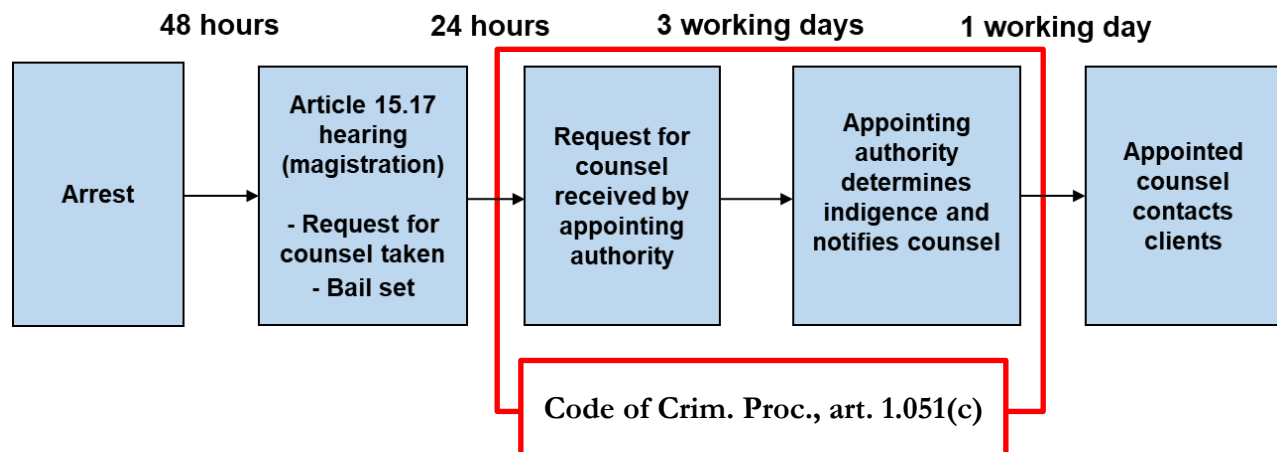
Requirement 4: Appoint Counsel Promptly

Under Article 1.051(c)(1) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request. Under *Rothgery v. Gillespie County*¹¹, appointments of counsel cannot be delayed for defendants making bail.

¹⁰ TEX. CODE CRIM. PROC. art. 15.17(a).

¹¹ *Rothgery v. Gillespie County*, 554 U.S. 191 (2008).

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

In Wharton County, the 329th District Court Coordinator appoints counsel for defendants who request counsel from jail in both felony and misdemeanor cases. The County Judge appoints counsel for misdemeanor defendants who request it in court. According to interviews, denials of indigence made by the 329th District Court Coordinator are faxed back to the jail to notify defendants. TIDC did not observe any of them in our case file review, and we are not sure if they regularly make it into the case file. Regarding denials of indigence made in court, these are made orally. Wharton County should consider creating documentation for all indigence denials and ensure that denials become part of case files. This will help track appointment timeliness and ensure that waivers of counsel meet the requirements set in Article 1.051(f-2) of the Code of Criminal Procedure.

Timeliness of Appointments in Misdemeanor Cases

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request to the appointment of counsel or denial of indigence. Under TIDC's monitoring rules, a county is presumed to be following the prompt appointment of counsel requirement if at least 90% of indigence determinations in the monitor's sample are timely.¹²

¹² 1 TEX. ADMIN. CODE § 174.28.

TIDC staff examined 100 sample misdemeanor cases filed in FY2025 (October 2024 – September 2025). From this sample, TIDC found 49 counsel requests. Counsel was appointed in a timely manner in 31% of cases with a request for counsel. This falls below TIDC’s threshold of 90% for presuming a jurisdiction’s procedures ensure timely appointment of counsel. Wharton County must put in place procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be promptly transmitted to the appointing authority so that all requests can be timely ruled upon.

Table 2: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	100		
Total cases with a counsel request		49	
Appointment/denial of indigence occurred in:			
0 workdays		5	
1 – 3 workdays + 24-hour transfer		10	
Total timely appointments/denials		15	31%
4 - 7 workdays + 24-hour transfer		2	
More than 7 workdays + 24-hour transfer		12	
No ruling on request		20	
Total untimely appointments/denials		34	69%

Waivers of Counsel

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel, allowing 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 or retain 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).¹³

¹³ 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

TIDC found six sample cases in which misdemeanor defendants requested counsel at the Article 15.17 hearing and later entered uncounseled pleas without evidence that their requests were ruled on. The absence of a ruling on a pending request raises the possibility of statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Wharton 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). To address this finding, Wharton County should consider properly documenting denials of indigence and making sure the denials are part of the case files.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

2023 FINDING 2 AND RECOMMENDATION: Wharton County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the County must rule on all requests for counsel within three working days. Wharton County must put in place procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be promptly transmitted to the appointing authority so that all requests can be timely ruled upon. *Issue Pending.*

2023 FINDING 3 AND RECOMMENDATION: As required by Article 1.051(f-2), Wharton County must rule upon all requests for counsel prior to a defendant's waiver of the right to retain counsel. To rule upon all requests for counsel, the courts must ensure procedures are in place to (1) receive all requests and (2) appoint counsel or document the denial of indigence. *Issue Pending.*

Conclusion

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

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)"

Pending Findings and Recommendations

Wharton County must respond in writing describing how it will address the pending findings.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

2026 FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires the magistrate to ensure that assistance in completing financial paperwork for counsel requests is provided at the time of the Article 15.17 hearing. Article 15.17(a) further requires this paperwork to be transmitted to the appointing authority within 24 hours of the request being made. Wharton County must implement procedures to ensure that all arrestees who request counsel have associated financial paperwork promptly completed and transmitted to the appointing authority within 24 hours of the request being made.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

2026 FINDING 2 AND RECOMMENDATION: Wharton County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the County must rule on all requests for counsel within three working days. Wharton County must put in place procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be promptly transmitted to the appointing authority so that all requests can be timely ruled upon.

2026 FINDING 3 AND RECOMMENDATION: As required by Article 1.051(f-2), Wharton County must rule upon all requests for counsel prior to a defendant's waiver of the right to retain counsel. To rule upon all requests for counsel, the courts must ensure procedures are in place to: (1) receive all requests; and (2) appoint counsel or document the denial of indigence.