



# **Third Follow-up Review of Jefferson County's Indigent Defense Systems**

**June 2025**



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**Mission:** Protecting the right to counsel, improving public defense.

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## **Executive Summary**

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act through policy reviews.<sup>1</sup> In this third follow-up review, TIDC observed court, interviewed officials, and reviewed FY2024 data from Jefferson County. TIDC found that the County ensured attorney contract caseloads fell within the threshold set in felony contracts. After this 2025 review, there remains one pending finding that has not been resolved:

Appointments of counsel are delayed for misdemeanor defendants who are released on bail between the Article 15.17 hearing counsel request and the appointment of counsel by the appropriate court coordinator.

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

## **Background**

In 2010, TIDC conducted a fiscal monitoring review of Jefferson County. The report identified the use of a felony contract defender system where contract attorneys would initially be appointed to a case but would later be replaced if the case moved to the trial docket. TIDC discussed the issue at its Policies and Standards Committee meeting on June 6, 2011. The Committee discussed the matter but did not reach a resolution. At a meeting of the full TIDC Board on December 1, 2011, the Board directed staff to perform an onsite review of the contract defender system in Jefferson County.

The contract defender system review examined the felony appointment process operated by the district courts (who used the contract defenders). TIDC did not review the other elements of the Fair Defense Act (FDA). The report (issued in July 2012) made findings and recommendations regarding the duration of representation by appointed counsel and the use of bail in determining indigence. The County responded by amending its indigent defense plan for felony cases.

In February 2013, Senator Rodney Ellis and Representative Joe Deshotel sent a letter to Jefferson County Judge Jeff Branick, documenting their concerns about low attorney appointment rates in the County and about the use of bail in determining indigence. In April 2013, TIDC staff met with County officials, and after a discussion, both agreed that TIDC would conduct a full policy monitoring review of

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<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

<sup>2</sup> Title 1 TEX. ADMIN. CODE § 174.28(c)(2).

the County's indigent defense practices. Judge Branick sent a letter requesting this review.

TIDC issued its full policy monitoring report in April 2014. The report made nine findings and recommendations, focusing on methods for conducting magistrate warnings, determining indigence, and making prompt appointments of counsel. TIDC found that in felony cases, courts promptly appointed counsel for persons who remained in jail, but appointments for persons making bail were delayed. In misdemeanor cases, the courts did not have procedures to promptly rule on requests made at the Article 15.17 hearing. Misdemeanor defendants requested counsel at the Article 15.17 hearing, but sometimes did not receive rulings on the requests, and later entered uncounseled pleas.

TIDC conducted a follow-up review in 2020 to verify whether pending findings had been successfully addressed. The review found the County had satisfied four of the findings from the April 2014 monitoring report. Specifically, magistrates asked all defendants if they wanted to request counsel, and the felony courts made timely appointments of counsel, but timeliness of requests in misdemeanor courts remained pending.

In 2022, TIDC conducted a second follow up review to verify whether pending findings had been addressed. The review found that all but two pending findings had been satisfied. The only remaining issues involved the timely appointment of counsel for defendants making bail shortly after magistration and the caseloads of attorneys operating under felony contracts.

## **May 2025 Follow-up Review**

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.<sup>3</sup> Staff members, Ashley DeLaGarza, Cody Huffman, and Joel Lieurance, conducted the third follow-up review. The purpose of this review was to verify that the October 2022 report recommendations were addressed. The review consisted of a site visit to Jefferson County on March 25, 2025, as well as interviews and data queries conducted off-site. TIDC relied on the following items in preparing this report: felony and misdemeanor dockets; a magistrate warning docket; interviews with Jefferson County officials and staff; the Indigent Defense Expense Report (IDER) data; and the local indigent defense plans. The County must respond to this report's findings and recommendations.

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<sup>3</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

**Table 1: History of Monitoring Findings**

<b>FDA Core Requirement</b>	<b>Description and Initial Year of Finding</b>	<b>Status after Oct. 2022 Review</b>	
		<b>Satisfied</b>	<b>Pending</b>
1. Prompt Magistration	The magistrate must make a record as to whether each arrestee at the Article 15.17 hearing requests counsel. (First identified - 2014)	✓ (2020)	
1. Prompt Magistration	The magistrate must ask persons arrested on out-of-county warrants whether they want to request counsel. (2014)	✓ (2020)	
1. Prompt Magistration	The magistrate must ensure reasonable assistance in completing affidavits of indigence and must ensure the paperwork is transmitted to the appointing authority within 24 hours. (2014)	✓ (2022)	
2. Indigence Determination	The County must implement procedures to follow the felony and misdemeanor indigent defense plans' standard of indigence. (2014)	✓ (2022)	
2. Indigence Determination	The felony courts must ensure that re-determinations of indigence are only made when there is evidence of a material change in financial circumstances. (2020)	✓ (2022)	
4. Prompt Appointment	The felony courts must promptly rule upon all requests for counsel, regardless of whether the defendant makes bail. (2014)	✓ (2020)	
4. Prompt Appointment	The misdemeanor courts must promptly rule on all requests for counsel. (2014)	✓ (2022)	
4. Prompt Appointment	Appointments of counsel are delayed for defendants making bail in the period between Article 15.17 counsel requests and the court coordinator making appointments of counsel. (2022)		✓ (Misdemeanor cases only 2025)
4. Prompt Appointment	The misdemeanor courts must ensure all requests for counsel are ruled upon prior to a waiver of counsel. <sup>4</sup> (2014)	✓ (2022)	
5. Attorney Selection Process	The contracts for felony cases need to include a maximum caseload or workload. (2014)	✓ (2020)	
5. Attorney Selection Process	Jefferson County must follow the maximum caseload terms set in its contracts with attorneys handling felony cases. (2020)	✓ (2025)	

<sup>4</sup> In some instances, defendants entered uncounseled pleas, but the case files did not include waivers of counsel.

## Program Assessment

TIDC compared the core requirements of the Fair Defense Act (FDA) with the County's performance for each recommendation listed in the 2020 report. This review examined previous findings and recommendations covering the following core FDA requirements:

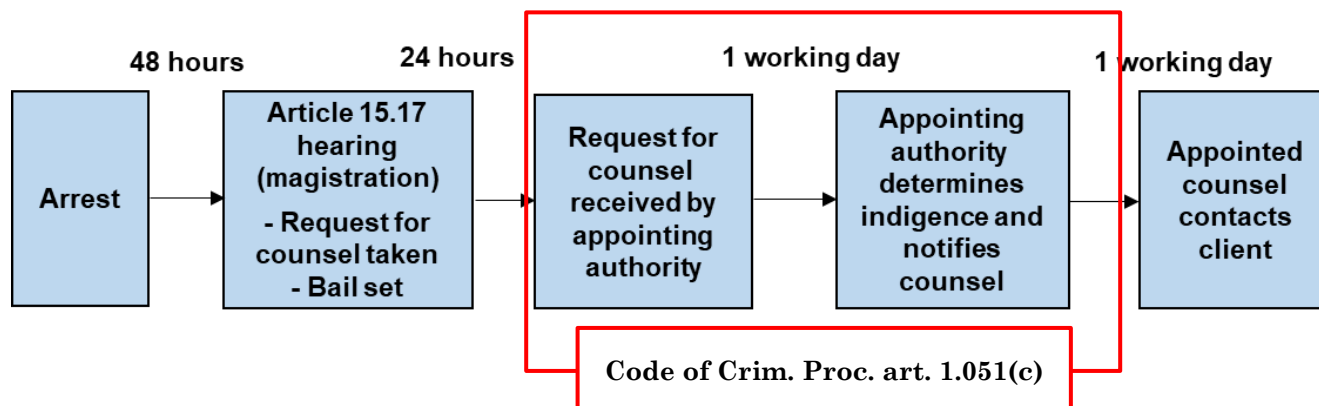
REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

REQUIREMENT 5: ATTORNEY SELECTION PROCESS

### Requirement 4: Appoint counsel promptly.

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population over 250,000 must rule on a request for counsel within one working day of receiving the request.

**Figure: Timeline for Appointment of Counsel in Adult Criminal Cases**



### Appointing Counsel Pursuant to Jefferson County's Indigent Defense Plan

Previously, the 2022 review identified cases where defendants in misdemeanor and felony cases submitted approved indigence applications from the 15.17 hearing and the defendant posted bond prior to the indigent defense coordinator (IDC) appointing counsel. In 2025, Jefferson County staff indicated that when a person makes bail after magistrations but before the appointment of counsel, the magistrations judge is appointing an attorney for felony cases immediately. The magistrations judge does not have appointing authority for misdemeanor cases. For misdemeanor cases, Jefferson County staff indicated the appointment occurs at the first court hearing after the case is filed. The first hearing can sometimes be months after the initial request and when the client was first arrested, making the appointment untimely.

TIDC staff discussed attorney appointment timelines. TIDC staff noted the decision in *Rothgery v. Gillespie County*, that appointment of counsel cannot be

delayed for defendants making bail.<sup>5</sup> Under Article 1.051(c)(2) and the Jefferson County Court Indigent Defense Plan<sup>6</sup>, counsel must be appointed or denied within one working day of the appointing authority receiving a defendant's request for counsel. Jefferson County must follow its Indigent Defense Plan, and the time frames required in the Texas Code of Criminal Procedure to appoint counsel after a defendant is found to be indigent.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.**

**2025 Finding and Recommendation:** Appointments of counsel do not meet statutorily required timelines for misdemeanor defendants making bail in the period between Article 15.17 counsel requests and the court coordinator making appointments of counsel.

*Partially Addressed in 2025.*

## **Requirement 5: Attorney Selection Process.**

TIDC has established Contract Defender Rules (Title 1, Rules 174.10 – 174.25 of the Texas Administrative Code). TIDC measures the fairness of the selection process in contract cases by whether there is an open solicitation process that meets this requirement in the Contract Defender Rules. TIDC also reviews the contents of contracts to ensure they address all elements required by the rules.

In the 2014 review, TIDC found that the contracts for felony cases did not include a maximum caseload or workload as required by the Texas Administrative Code.<sup>7</sup> Before the 2020 review, the contracts were amended to limit appointed attorney' caseloads to a maximum of 150 felony cases per year, but TIDC monitors found that some attorneys exceeded the maximum number of cases.<sup>8</sup> After the

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<sup>5</sup> *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), held that a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of ~~adversary~~ (adversarial) judicial proceedings that trigger attachment of the Sixth Amendment right to counsel. Prior to *Rothgery*, some viewed Article 1.051(j) as allowing for the appointment of counsel to be delayed until the first trial court appearance. However, *Rothgery* made clear that adversarial judicial proceedings were initiated at the Article 15.17 hearing. Article 1.051(j) of the Code of Criminal Procedure states:

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

<sup>6</sup> The Jefferson County misdemeanor plan is available at: <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=576>.

<sup>7</sup> This requirement is set in 1 Tex. Admin. Code § 174.21.

<sup>8</sup> The contract states, "The maximum caseload allowed Attorney pursuant to their contract should not exceed 150 felony cases per year."

September 2022 review, the contracts were amended again to limit appointed attorney caseloads to a maximum of 175 cases a year.<sup>9</sup> According to FY2024 data reported by the Jefferson County Auditor’s Office, no contract attorneys disposed more than 175 felony cases during the year. The courts handling felony cases have been challenged with a large volume of incoming cases and have added a contract attorney to each court to manage caseloads. Jefferson County has addressed TIDC’s finding that maximum contract caseloads must be established and not exceeded.<sup>10</sup>

**Table 2: FY2024 Felony Contract Defender Cases Disposed**

<b>Attorney Name</b>	<b>Felony Contract Cases Disposed</b>
Kevin Mantellini	89
Carl Parker	131
Kevin Laine	159
Donald Duesler	95
David Grove	76
Marsha Normand	136
Phillip Van Zandt	164
Charles Rojas	117
John West	122
Langston Adams	103
Jason Nicks	155
Marvin Lewis	134
Brittanie Holmes	136

**FINDINGS AND RECOMMENDATION FOR REQUIREMENT 5: ATTORNEY SELECTION PROCESS.**

Requirement Satisfied. No Findings.

<sup>9</sup> The contract states, “Accordingly, Public Defender caseloads shall not exceed 175 cases. Rotation Attorney caseloads shall be in accordance with the *Guidelines*.”

<sup>10</sup> While the contract caseload limits were met, those caseload limits exceed TIDC’s Caseload Guidelines. While many attorneys meet TIDC Caseload Guidelines, a few do not. If another contract attorney was added, all contract attorneys could meet TIDC’s Caseload Guidelines.

## **Conclusion**

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

## **Pending Findings and Recommendations**

Jefferson County must respond in writing about how it will address the pending finding.

### **Requirement 4: Appoint counsel promptly.**

**2025 Finding and Recommendation 1:** Appointments of counsel do not meet statutorily required timelines for misdemeanor defendants making bail in the period between Article 15.17 counsel requests and the court coordinator making appointments of counsel.