



Second Follow-up Review of Kinney County's Indigent Defense Systems

February 2026



209 W. 14th Street, Room 202 (Price Daniel Building)
Austin, Texas 78701
Phone: 512.936.6994; Fax: 512.463.5724
www.tidc.texas.gov

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Judicial Region of Texas

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Sarah Gammell

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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 follow-up review, TIDC interviewed officials and reviewed FY2024 data from Kinney County. TIDC finds that Kinney County has addressed four past findings, covering how magistrate warnings are conducted, waivers of counsel, and data reporting. One finding remains, concerning the timely appointment of counsel in misdemeanor cases.

TIDC thanks Kinney County officials and staff for their assistance in completing this review. TIDC staff stands ready to provide technical and financial assistance to remedy this issue. TIDC will attempt to conduct a second follow-up review regarding its findings within two years.²

Background

On October 13, 2021, Representative Nicole Collier, Chair of the House Committee on Criminal Jurisprudence, requested that TIDC conduct policy and fiscal monitoring reviews of Kinney County's misdemeanor indigent defense system. In response to Representative Collier's request, TIDC conducted a limited scope policy monitoring review, covering the ability to request and receive appointed counsel in misdemeanor cases.

The policy report examined whether misdemeanor defendants were able to request and receive appointed counsel in a timely manner and whether data reported to TIDC and the Office of Court Administration (OCA) appeared reasonably accurate. The report found that defendants were able to request counsel at the Article 15.17 hearing, but financial forms were not always provided to defendants, and these forms were not sent to the trial court. As a result, counsel was not appointed timely, and some defendants entered uncounseled pleas while their requests were pending. Additionally, data reported to OCA by the justice court did not match data examined by TIDC.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² Title 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings for Kinney County

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status After 2026 Review	
		Satisfied	Pending
1. Article 15.17 Proceedings	Magistrates did not ensure reasonable assistance in completing affidavits of indigence. (2022)	✓ (2025)	
1. Article 15.17 Proceedings	Requests for counsel made at the Article 15.17 hearing were not transmitted to the trial court. (2022)	✓ (2025)	
4. Prompt Appointment	The timeliness of misdemeanor appointments did not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2022)		✓
4. Prompt Appointment (waivers of counsel)	Uncounseled misdemeanor defendants waived counsel without pending requests being ruled upon. (2022)	✓ (2025)	
6. Report Data	The Justice Court did not submit accurate totals of Article 15.17 requests to OCA. (2022)	✓ (2025)	

Program Assessment

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.³ Staff members Kenitra Brown, Cody Huffman, and Joel Lieurance conducted the follow-up review. The purpose of this review was to verify whether the July 2022 report findings were addressed. The review consisted of a site visit to Kinney County between September 18 and 19, 2025. TIDC relied on the following items in preparing this report: interviews with County officials and staff; misdemeanor case files; magistrate warning form data; 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 2022 report. This review examined previous findings and recommendations covering the following core FDA requirements:

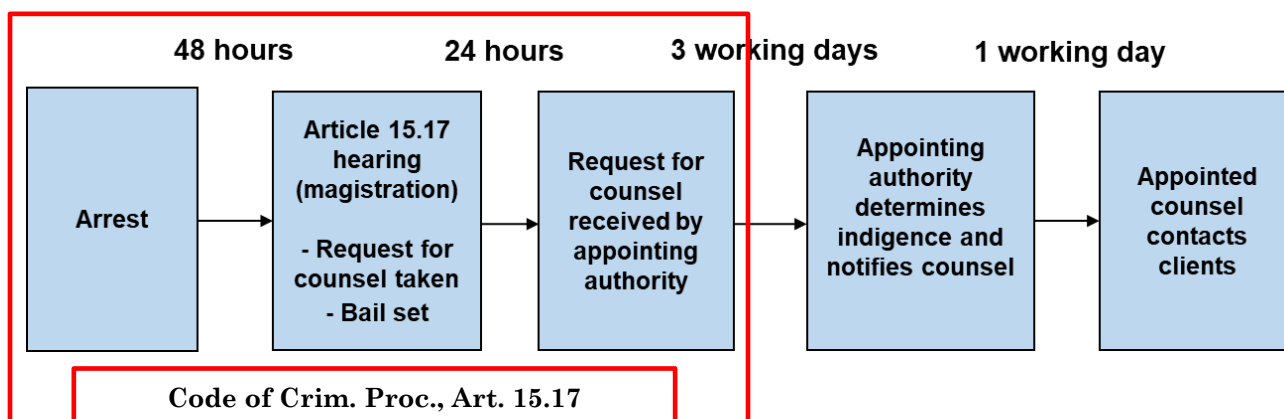
- REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS
- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY
- REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

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 and procedures for requesting counsel. If the person requests appointed counsel, the magistrate must 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



Historical Practices

Governor Abbott launched Operation Lonestar (OLS) in March 2021. In May, Governor Abbott issued a disaster declaration covering much of the border region. On August 20, 2021, the Texas Department of Emergency Management launched a central magistrature facility in Del Rio (Centralized Magistrature) to provide magistrate warnings for OLS arrestees from Val Verde and Kinney counties. If OLS defendants in Kinney County requested appointed counsel, their requests were routed to the Lone Star Defenders Office, which would assign counsel for defendants. This practice of sending defendants to the Del Rio Centralized Magistrature facility ended on August 31, 2025.

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

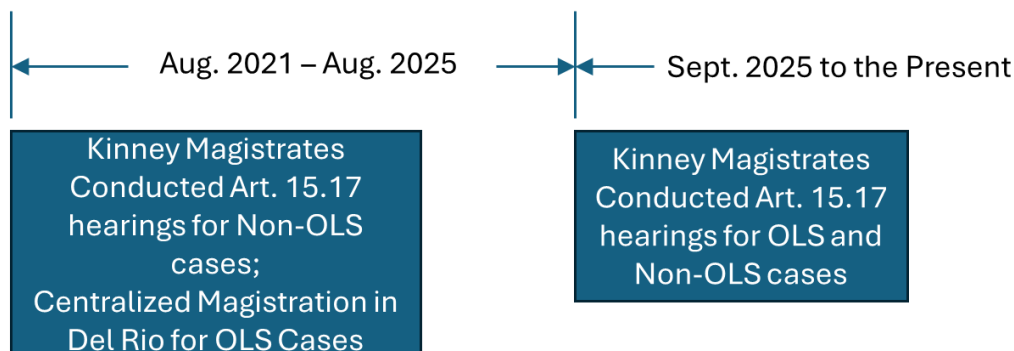
⁵ TEX. CODE CRIM. PROC. art. 15.17(a).

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>.

During the period from August 20, 2021, to August 31, 2025, Kinney County magistrates conducted Article 15.17 hearings for matters unrelated to OLS. Since September 1, 2025, all Article 15.17 hearings have been conducted by Kinney County magistrates.

Figure 2: Timeline for Kinney County Magistrates



Addressing 2022 Report Findings

TIDC's 2022 report found that when defendants requested counsel at the Article 15.17 hearing, local magistrates did not provide reasonable assistance with financial affidavits. These requests were not routed to the trial courts.

For the current review, TIDC examined magistrate warning forms for hearings conducted by the Kinney County Justice of the Peace. When defendants requested counsel, completed affidavits were kept alongside the magistrate warning forms. These completed affidavits are proof that magistrates ensured assistance with the forms. TIDC finds that Kinney County has addressed the finding that magistrates did not ensure assistance with financial forms.

TIDC examined magistrate warning forms for hearings occurring between September 8 and September 14, 2025. TIDC then asked the County Judge and District Judge whether they had received counsel requests from those defendants who requested counsel. Five counsel requests were related to OLS, and three were not. The trial courts received all three non-OLS counsel requests. The five OLS-related requests were sent to the Lone Star Defenders Office. Since that week, OLS requests have now been sent to the trial courts. Based on the week's sample, TIDC finds that Kinney County has addressed the requirement that requests be promptly sent to the appointing authority.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct Prompt and Accurate Article 15.17 Proceedings

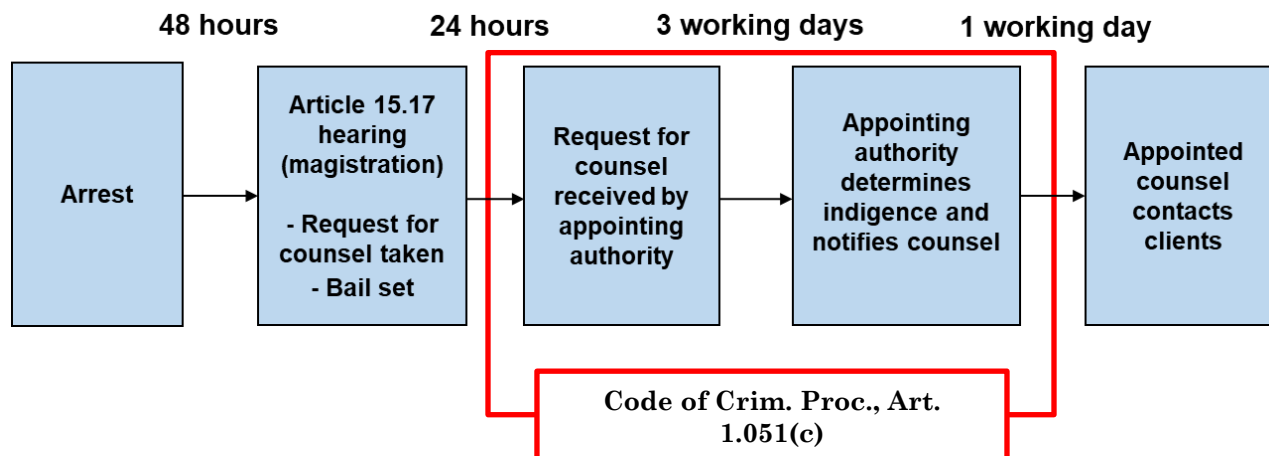
2022 FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires that magistrates ensure reasonable assistance in completing the forms necessary for requesting counsel at the time of the hearing. This review found that arrestees were not provided with the forms, nor with assistance in completing them at the time of the Article 15.17 hearing. Kinney County must ensure that, whenever a request for counsel is made at the Article 15.17 hearing, magistrates provide arrestees with the form and reasonable assistance in completing financial paperwork. *Successfully Addressed.*

2022 FINDING 2 AND RECOMMENDATION: Article 15.17(a) requires that magistrates transmit the request and accompanying forms to the courts within 24 hours of the request being made. TIDC found procedures were not in place to ensure requests were transmitted to the appointing authority within 24 hours of the request being made. Kinney County must ensure that whenever a request for counsel is made at the Article 15.17 hearing, the request and financial paperwork are sent to the courts within 24 hours of the request being made. *Successfully Addressed.*

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*, appointments of counsel cannot be delayed for defendants making bail.

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.

Timeliness of Appointments in Misdemeanor Cases

To assess the timeliness of local appointment procedures, TIDC examined misdemeanor magistrate warning forms for Article 15.17 hearings conducted by the Justice of the Peace between January 2023 and July 2024. TIDC then attempted to match those warnings with cases filed in the Kinney County Clerk’s Office. From this file review, TIDC found that 17 of the magistrate warnings were later filed in the Clerk’s Office. The County Court made timely appointments in 1 of 14 cases in which counsel was requested (**7% timely**). This falls below TIDC’s 90% threshold for presuming a county has practices in place to ensure timely appointment of counsel. Counsel was ultimately appointed for all sample defendants because the County Court typically waits until the case is filed to appoint counsel. While misdemeanor cases are filed more quickly than during TIDC’s 2022 review, the case filings can still take weeks or months, beyond the threshold for timely appointments under Article 1.051(c)(1).

Table 2: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	17		
Total cases with a counsel request		14	
Appointment/denial of indigence occurred in:			
0 workdays		1	
1 – 3 workdays + 24-hour transfer		0	
Total timely appointments/denials		1	7%
4 - 7 workdays + 24-hour transfer		1	
More than 7 workdays + 24-hour transfer		11	
No ruling on request		1	
Total untimely appointments/denials		13	93%

Waivers of Counsel

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. Article 1.051(f-2) requires the court to 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).

All sample defendants had counsel. No sample defendant entered an uncounseled plea. TIDC finds that Kinney County has addressed the 2022 finding concerning covering waivers of counsel.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

2022 FINDING AND RECOMMENDATION 3: 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. TIDC's case file examination revealed that this time frame was not met. Kinney County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases. ***Issue Pending.***

2022 FINDING AND RECOMMENDATION 4: The absence of a ruling on a pending request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver of counsel (Art. 1.051(f-2)). Two sample cases (filed before OLS began on July 19) involved defendants who requested counsel but later entered uncounseled pleas without having the requests ruled upon. Kinney 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.***

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

Justice courts must report the number of Article 15.17 hearings and the number of counsel requests to OCA as part of their Judicial Council Monthly Court Activity Reports.⁸ TIDC uses these reports, as well as court observations and case file records, to review whether magistrates inform arrestees of their right to counsel and if arrestees are able to invoke that right. TIDC's 2022 report found that the Justice Court reported fewer requests for counsel to OCA than were actually submitted by defendants. For the current review (examining FY2024 data), TIDC found that the Justice Court reported giving 27 misdemeanor magistrate warnings and receiving 18 counsel requests. Based on TIDC's file examination, this total appears accurate. TIDC finds that Kinney County has addressed past issues regarding the submission of accurate magistrate warning data to OCA.

⁸ 1 TEX. ADMIN. CODE § 171.7.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6
Texas Judicial Council Monthly Court Activity Reports

2022 FINDING AND RECOMMENDATION 5: Title 1, Rule 171.7 of the Texas Administrative Code requires justice courts to report to OCA the number of persons who request counsel at Article 15.17 hearings. Totals reported to OCA did not match totals found in TIDC's examination of magistrate warning forms. The Kinney County Justice Court must report the number of persons requesting counsel to OCA to ensure complete and accurate Texas judicial data. *Successfully Addressed.*

Conclusion

TIDC enjoyed meeting with Kinney 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 remaining issue identified in this report.

Pending Findings and Recommendations

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

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

2026 FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires that magistrates ensure reasonable assistance in completing the forms necessary for requesting counsel at the time of the hearing. This review found that arrestees were not provided with the forms, nor with assistance in completing them at the time of the Article 15.17 hearing. Kinney County must ensure that, whenever a request for counsel is made at the Article 15.17 hearing, magistrates provide arrestees with the form and reasonable assistance in completing financial paperwork. *Issue Pending.*