



Limited Scope Policy Monitoring Review of Duval County's Indigent Defense Systems

November 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 (FDA) through policy reviews.¹ TIDC observed court, interviewed officials, and reviewed FY2024 data from Duval County. TIDC made seven findings of noncompliance:

- a. Magistrates did not always ask and record whether defendants requested appointed counsel.
- b. Lack of method to transmit counsel requests to the appointing authority within 24 hours of the request being made.
- c. Magistrates did not always submit accurate monthly court activity reports to the Office of Court Administration.
- d. Untimely rulings on requests for counsel in felony cases.
- e. Untimely rulings on requests for counsel in misdemeanor cases.
- f. Defendants were directed to speak with the prosecutor before the court explained the procedures for requesting counsel.
- g. Defendants with pending counsel requests entered uncounseled pleas.

TIDC thanks Duval County officials and staff for their assistance in completing this review. TIDC stands 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 and Current Review

In November 2020, TIDC issued a grant evaluation that examined the effectiveness of the Starr County Regional Public Defender Office (which included Jim Hogg, Duval, and Starr Counties) and whether the Office met its grant objectives.³ The evaluation found the Office met the objectives stated in the grant application. However, the evaluation also found that defendants faced barriers to access appointed counsel. First, at the Article 15.17 hearing, defendants were not always asked if they wanted to request counsel. Second, counsel was not generally appointed until the first trial court appearance.

Based on these findings, TIDC is now conducting a limited scope review to examine whether defendants have timely access to appointed counsel. This review covers the three FDA core requirements listed below.⁴

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

³ The grant evaluation is available at <https://www.tidc.texas.gov/media/u4qkv2gz/starr-county-regional-public-defender-grant-evaluation.pdf>.

⁴ This review did not cover the three requirements shown below.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

- REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS
- REQUIREMENT 2: DETERMINE INDIGENCE ACCORDING TO STANDARDS DIRECTED BY THE INDIGENT DEFENSE PLAN
- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

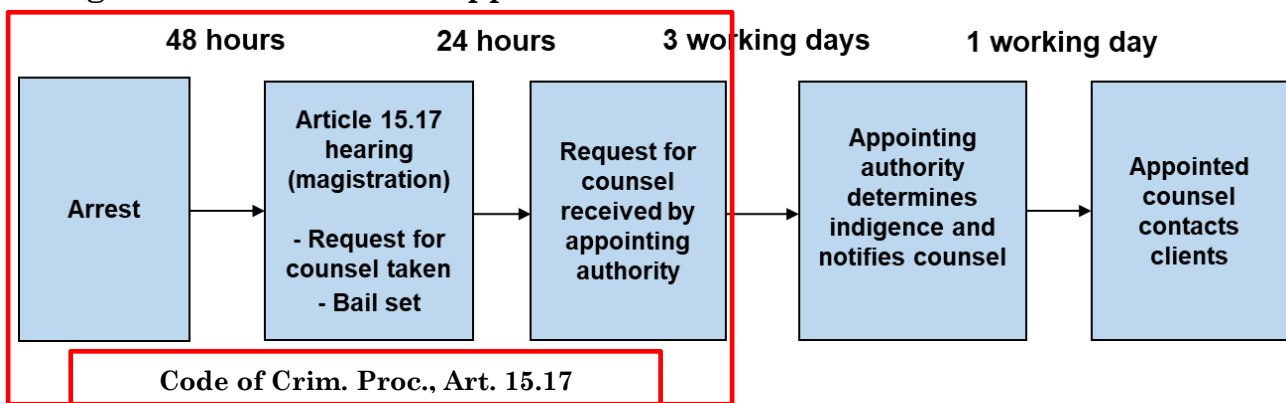
TIDC staff members Cody Huffman and Joel Lieurance made an on-site visit to Duval County between June 11 and 12, 2025. TIDC examined FY2024 felony and misdemeanor case files, magistrate warning forms, and local indigent defense plans. Staff observed a misdemeanor docket. The County must respond to this report's findings and recommendations.

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.⁵ 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.⁶ Magistrates 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



REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

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>.

Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁹ 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.¹⁰ To determine the timeliness of Article 15.17 warnings, TIDC staff examined 31 sample case files in which staff could determine the time from arrest until the Article 15.17 hearing. Article 15.17 hearings occurred within two days of arrest for all sample cases.¹¹ This percentage exceeds TIDC's presumed threshold for timeliness (98% timely).

Table 1: Timeliness of Article 15.17 Hearings

	Sample Size	Percent
Article 15.17 hearing occurs x days after arrest:	31	
0 days	16	
1 day	9	
2 days	6	
Timely Hearings	31	100%
More than 2 days	0	0%

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.¹² Based on sample cases in which TIDC could match magistrate warning forms, the rates of requesting counsel vary greatly between magistrates. Two magistrates had sample request rates greater than 50%, and one had a sample request rate of 0%. A sample request rate of 0% is an indication that defendants may not have the ability to request counsel at the Article 15.17 hearing.

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

¹⁰ 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. TIDC excluded cases in which it could not determine the timeliness of magistrate warnings.

¹¹ For misdemeanor offenses not involving a warrant, the time from arrest to the Article 15.17 hearing arguably should be construed to be 24 hours. Article 17.033 of the Code of Criminal Procedure states:

(a) Except as provided by Subsection (c), a person who is arrested without a warrant and who is detained in jail must be released on bond, in an amount not to exceed \$5,000, not later than the 24th hour after the person's arrest if the person was arrested for a misdemeanor and a magistrate has not determined whether probable cause exists to believe that the person committed the offense. If the person is unable to obtain a surety for the bond or unable to deposit money in the amount of the bond, the person must be released on personal bond.

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

Duval County magistrates must ask and record whether defendants want to request appointed counsel.

Table 2: Sample Article 15.17 Requests for Counsel

	Requests	Warnings	% Requests
JP1	6	8	75%
JP2	0	23	0%
JP4	4	5	80%
Total	10	36	28%

Judicial Council Monthly Court Activity Reports

As part of their Judicial Council Monthly Court Activity Reports, justices of the peace and municipal judges must report to the Office of Court Administration (OCA) the number of individuals who receive Article 15.17 warnings and the number who request counsel at the hearings.¹³ TIDC uses these reports as well as court observations and case file records to determine if magistrates inform arrestees of their right to counsel and if arrestees are able to invoke that right.

Based on magistrate forms collected for our file review, magistrates are not submitting accurate monthly data reports to OCA. Justices of the peace must create procedures to report the number of persons receiving magistrate warnings and the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

Table 3: Texas Judicial Council Monthly Court Activity Reports
FY2024 (October 2023 – September 2024)

	Monthly Reports Submitted	Misdemeanor Requests	Misdemeanor Warnings	Felony Requests	Felony Warnings
JP1	12	0	45	2	10
JP2	12	0	275	0	277
JP3	12	0	0	0	0
JP4	12	0	2	0	0
Total		0	322	2	287

Transmitting Forms to the Appointing Authority

Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the court or its designee who is authorized to appoint counsel.¹⁴ Based on interviews, there was some confusion as to how counsel requests are to be sent to the appointing authority. The lack of timeliness in counsel appointments indicates that there may be gaps in promptly sending counsel requests to the appointing authority.

¹³ 1 TEX. ADMIN. CODE § 171.7 – 8.

¹⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

Duval County must put in place procedures to ensure requests are transmitted to the appointing authority within 24 hours of the request being made. Under Article 15.17(a), the responsibility for ensuring timely transmittal falls on the magistrate.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1 AND RECOMMENDATION: One justice of the peace had a sample counsel request rate of 0%. This is an indication that defendants may not be able to request counsel at the Article 15.17 hearing. Duval County magistrates must ask and record whether defendants want to request appointed counsel.

FINDING 2 AND RECOMMENDATION: Counsel requests made at the Article 15.17 hearing are not sent to the trial courts within 24 hours of the request being made. As required by Article 15.17(a), the County must provide a method to ensure all counsel requests are sent to the appointing authority (trial court) within 24 hours of the request being made.

FINDING 3 AND RECOMMENDATION: Monthly court data reported to OCA was not accurate. Justices of the peace must report the number of persons receiving magistrate warnings and the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

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 presumptions for determining indigence are set in each county's indigent defense plans.

Indigence Standard in Adult Criminal Cases

For adult criminal cases in Duval County, a person is presumed indigent if:

1. At the time of requesting appointed counsel, the accused or accused's dependents are eligible to receive food stamps, Medicaid,

- Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
2. The accused's net household income does not exceed 125% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or
 3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.¹⁵

Local Practices

Based on court observation, TIDC finds that Duval County is in substantial compliance with Requirement 2.

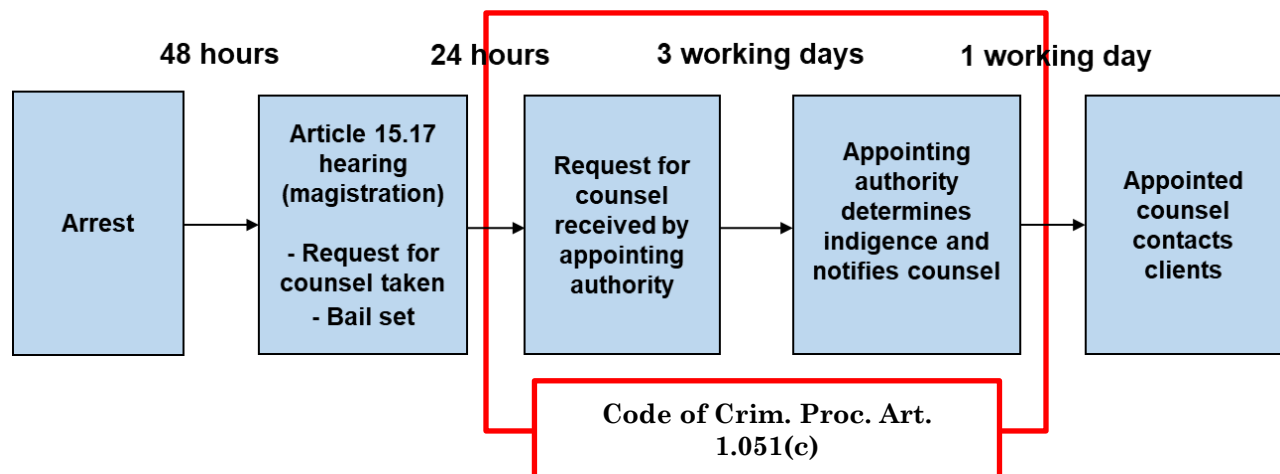
<u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2</u> Determination of Indigence Requirement satisfied. No findings.

Requirement 4: Appoint Counsel Promptly

Adult Cases

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.

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



¹⁵ The Duval County Adult Indigent Defense Plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=236>.

Local Procedures for Determining Indigence and Appointing Counsel

In Duval County, defendants can request counsel at the Article 15.17 hearing or later at the trial court. As noted earlier, there appear to be gaps in sending counsel requests to the appointing authority.

Timeliness of Appointments in Felony Cases

TIDC examined 50 sample felony cases filed in FY2024 (Oct. 2023 – Sept. 2024). The courts made timely appointments in 24 of 30 cases in which counsel was requested (**80% timely**). Timely appointments appeared to be made when the defendant first requested counsel in the trial court. Late appointments appeared to occur when the defendant first requested counsel at the Article 15.17 hearing. The sample timeliness 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.

Table 4: Times to Appointment in Felony Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	50		
Total cases with a counsel request		30	
Appointment/denial of indigence occurred in:			
0 workdays		6	
1 – 3 workdays + 24-hour transfer		18	
Total timely appointments/denials		24	80%
4 - 7 workdays + 24-hour transfer		4	
More than 7 workdays + 24-hour transfer		2	
No ruling on request		0	
Total untimely appointments/denials		6	20%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 66 sample misdemeanor cases filed in FY2024 (Oct. 2023 – Sept. 2024). The court made timely appointments of counsel in 0 of 8 cases in which counsel was requested (**0% timely**). The sample timeliness 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.

Table 5: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined in which TIDC could match magistrate warning forms	66		
Total cases with a counsel request		8	
Appointment/denial of indigence occurred in:			
0 work days		0	
1 – 3 work days + 24-hour transfer		0	
Total timely appointments/denials		0	0%
4 - 7 work days + 24-hour transfer		0	
More than 7 work days + 24-hour transfer		1	
No ruling on request		7	
Total untimely appointments/denials		8	100%

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).¹⁶

From TIDC's court observation, defendants were asked at the arraignment docket if they had a lawyer or would like to meet with the prosecutor. The procedures for requesting counsel were not explained prior to this question, and defendants were not given an opportunity to first request counsel. Under Article 1.051(f-2), unrepresented defendants may only be directed to speak with the prosecutor after the court explains the procedures for requesting counsel, the court rules on all pending counsel requests, and the defendant waives the right to counsel for purposes of speaking with the

¹⁶ The waiver language from Article 1.051(g) states:

"I have been advised this _____ day of _____, 20____, 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)"

prosecutor. TIDC has a model check-in form that explains the defendant's options and asks for the defendant's counsel choice.¹⁷

TIDC's case file examination contained seven samples in which the court did not rule on requests for counsel. In four of these sample cases, misdemeanor defendants requested counsel at the Article 15.17 hearing and later entered an uncounseled plea without the request being ruled upon. 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)). Duval 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).

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 4 (FELONY CASES) AND RECOMMENDATION: Duval County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the court or its designee must appoint counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 5 (MISDEMEANOR CASES) AND RECOMMENDATION: Duval County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the court or its designee must appoint counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 6 (MISDEMEANOR CASES) AND RECOMMENDATION: Unrepresented defendants were directed to speak with the prosecutor before the court explained the procedures for requesting counsel. As required by Article 1.051(f-2), the court must first explain the procedures for requesting counsel, rule on any pending request, and allow the defendant to waive counsel for purposes of speaking with the prosecutor.

FINDING 7 (MISDEMEANOR CASES) AND RECOMMENDATION: The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

Conclusion

TIDC thanks Duval County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance findings

¹⁷ The model check-in form is available at <https://www.tidc.texas.gov/media/kkgembze/model-waiver-to-speak-with-the-prosecutor.docx>.

within two years.¹⁸ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

Summary of Findings and Recommendations

Duval County must respond in writing about how it will address the report's findings.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

FINDING 1 AND RECOMMENDATION: One justice of the peace had a sample counsel request rate of 0%. This is an indication that defendants may not be able to request counsel at the Article 15.17 hearing. Duval County magistrates must ask and record whether defendants want to request appointed counsel.

FINDING 2 AND RECOMMENDATION: Counsel requests made at the Article 15.17 hearing are not sent to the trial courts within 24 hours of the request being made. As required by Article 15.17(a), the County must provide a method to ensure all counsel requests are sent to the appointing authority (trial court) within 24 hours of the request being made.

FINDING 3 AND RECOMMENDATION: Monthly court data reported to OCA was not accurate. Justices of the peace must report the number of persons receiving magistrate warnings and the number of persons requesting counsel to OCA in order to ensure complete and accurate Texas Judicial Council Monthly Court Activity Reports.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

FINDING 4 (FELONY CASES) AND RECOMMENDATION: Duval County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the court or its designee must appoint counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 5 (MISDEMEANOR CASES) AND RECOMMENDATION: Duval County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the court or its designee must appoint counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 6 (MISDEMEANOR CASES) AND RECOMMENDATION: The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

¹⁸ 1 TEX. ADMIN. CODE § 174.28(c)(2).

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.¹⁹
 - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 no later than 24 hours after arrest if a magistrate has not determined probable cause by that time.²⁰
- ☐ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.²¹
- ☒ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.²²
- ☒ 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.²³
- ☐ 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 250,000.²⁴

NOT APPLICABLE.

- ☐ 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.²⁵

¹⁹ TEX. CODE CRIM. PROC. ART. 14.06(a).

²⁰ TEX. CODE CRIM. PROC. ART. 17.033.

²¹ TEX. CODE CRIM. PROC. ART. 15.17(a).

²² *Id.*

²³ TEX. CODE CRIM. PROC. ART. 15.17(e).

²⁴ 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).

²⁵ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked requests for counsel are not transmitted to the appointing authority within 24 hours.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.²⁶
- ☒ State the financial standard(s) to determine whether a defendant is indigent.²⁷
- ☒ List factors the court will consider when determining whether a defendant is indigent.²⁸

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 250,000.²⁹
- ☐ 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.³⁰
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.³¹

²⁶ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

²⁷ TEX. CODE CRIM. PROC. ART. 26.04(l).

²⁸ TEX. CODE CRIM. PROC. ART. 26.04(m).

²⁹ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because detained defendants do not always receive timely appointment of counsel.

³⁰ 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, [the Article 15.17 hearing] marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”). This box is not checked because some defendants who promptly make bail do not receive timely counsel appointment.

³¹ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because defendants with pending counsel requests entered uncounseled pleas.