



Follow-up Policy Review of Travis County's Indigent Defense Systems

September 2023



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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 In this follow-up review, TIDC observed court, interviewed officials, and reviewed FY2021 data from Travis County. TIDC finds that Travis County has addressed all five findings made in the initial report.

TIDC thanks Travis County officials and staff for their assistance in completing this review. Travis County does not need to respond to the report.

Background

In 2019, TIDC issued its initial policy review of Travis County. The report made five findings covering:

- the reporting of counsel request data by magistrates;
- the ability of cite-and-release defendants to request counsel when they received magistrate warnings at the trial court;
- the timely appointment of counsel in felony cases;
- the timely appointment of counsel in misdemeanor cases; and
- the ability of misdemeanor defendants to request counsel prior to speaking with a prosecutor.

Travis County responded by noting the justice courts and municipal courts had put in place procedures to report counsel requests as part of their monthly Judicial Council Monthly Court Activity Reports. Concerning cite-and-release defendants, Travis County implemented a new form, which contained a space to mark whether a defendant requested appointed counsel. As to timely appointment of counsel, the courts formerly waited to appoint counsel until the initial trial court appearance for defendants who made bail shortly after arrest. They changed this practice to appoint counsel for all qualifying defendants within one working day of the request. To ensure that unrepresented defendants can request appointed counsel prior to speaking with a prosecutor, Travis County posts instructions on each court floor, instructing defendants to ask court staff for an Indigence Screening Referral if they want to be considered for court-appointed counsel.

September 2023 Follow-up Review

TIDC's Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.² Staff members Olivia Lee, William R. "Bill" Cox, and Joel Lieurance conducted the second follow-up review. The purpose of

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(d)(3).

this review was to verify that the March 2019 report findings were addressed. The review consisted of docket observations as well as interviews and data queries. TIDC relied on the following items in preparing this report: felony and misdemeanor cases filed in FY2021 (October 2020 – September 2021); misdemeanor dockets; magistrate warning dockets; interviews with Travis County officials and staff; Indigent Defense Expense Report (IDER) data; Judicial Council Monthly Court Activity Report data; and the local indigent defense plans.

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status after Sept. 2023 Review	
		Satisfied	Pending
1. Prompt Magistration	When cite-and-release defendants first appear before trial courts, the court must mark whether the defendant requested counsel. (2019)	✓ (2023)	
1. Prompt Magistration	Justice courts and municipal courts must report monthly court activity report data as required by Title 1 Tex. Admin. Code § 171.7–8. (2019)	✓ (2023)	
4. Prompt Appointment	Travis County must promptly rule upon all felony requests for counsel. (2019)	✓ (2023)	
4. Prompt Appointment	Travis County must promptly rule upon all misdemeanor requests for counsel. (2019)	✓ (2023)	
4. Prompt Appointment	Trial courts must explain the procedures for requesting appointed counsel prior to encouraging the defendant to speak with the prosecutor. (2019)	✓ (2023)	

Program Assessment

TIDC compared the core requirements of the Fair Defense Act (FDA) with the County's performance for each finding listed in the 2019 report. This review covered the following core FDA requirements:

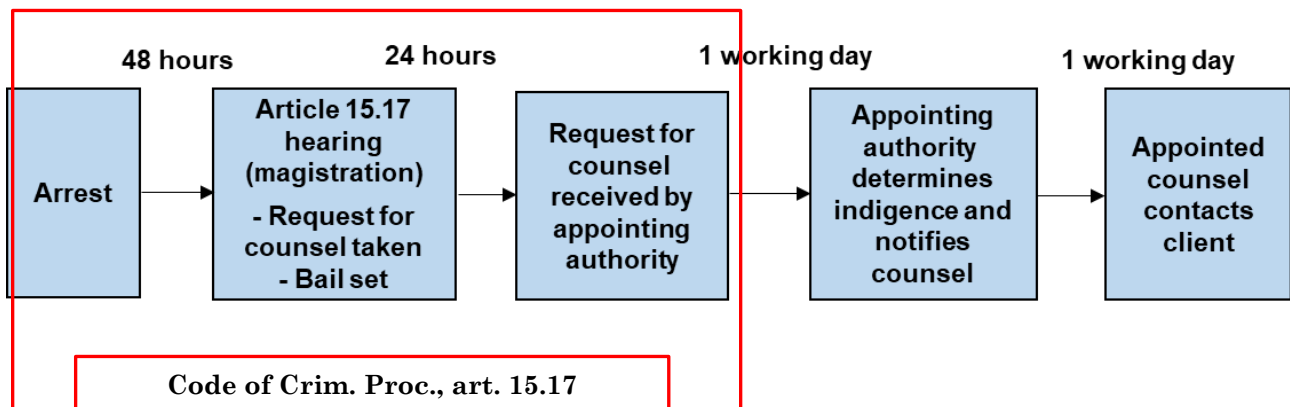
REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

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.³ 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.⁴ Magistrates must transmit requests for counsel to the appointing authority within 24 hours.⁵ 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.⁶

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



Implications of Cite-and-Release Requirements on Local Practices

Under Article 14.06(c) of the Code of Criminal Procedure, law enforcement is not required to place persons arrested for certain misdemeanor offenses in detention, but may instead give a citation, directing the person to appear before a magistrate. Once the person appears before the magistrate, Article 14.06(a) requires the

³ TEX. CODE CRIM. PROC. ART. 15.17(a).

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

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

⁶ TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

magistrate to provide the warnings described in Article 15.17.⁷ Article 15.17(e) requires the magistrate to ask and record whether the person requested the appointment of counsel.

During the 2019 review, TIDC found the magistrate warning form used for cite-and-release defendants did not contain a space to document requests for counsel. In its response to the report, Travis County stated the courts had adopted a new cite-and-release magistrate warning form that contained a space to record whether the defendant requested counsel. In the current review, TIDC found that cite-and-release defendants must report to the magistrate court, or a warrant is issued. When they appear before the magistrate, the magistrate records whether counsel is requested. Travis County has successfully addressed this finding.

Monthly Court Activity Reports

Justice courts and municipal courts must submit monthly magistrate warning data to the Office of Court Administration as part of their Judicial Council Monthly Court Activity Reports. In the previous report, TIDC found these courts were not reporting counsel requests made at the Article 15.17 hearing. For the period from October 2020 through September 2021, both the Travis County Justice Courts and the City of Austin Municipal Courts reported requests for counsel made at the Article 15.17 hearing. See Table 2 below. Travis County has successfully addressed this finding.

Table 2: Requests for Counsel Made at Article 15.17 Hearings

Oct. 2020 – Sept. 2021	Felony Warnings	Felony Requests	Misdemeanor Warnings	Misdemeanor Requests
Travis County Justice Courts	1180	981	619	493
City of Austin Municipal Courts	16,453	7,448	18,681	7,809

⁷ TEX. CODE CRIM. PROC. ART. 14.06(a) states:

Except as otherwise provided by this article, in each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall take the person arrested or have him taken without unnecessary delay, but not later than 48 hours after the person is arrested, before the magistrate who may have ordered the arrest, before some magistrate of the county where the arrest was made without an order, or, to provide more expeditiously to the person arrested the warnings described by Article 15.17 of this Code, before a magistrate in any other county of this state. The magistrate shall immediately perform the duties described in Article 15.17 of this Code.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings.

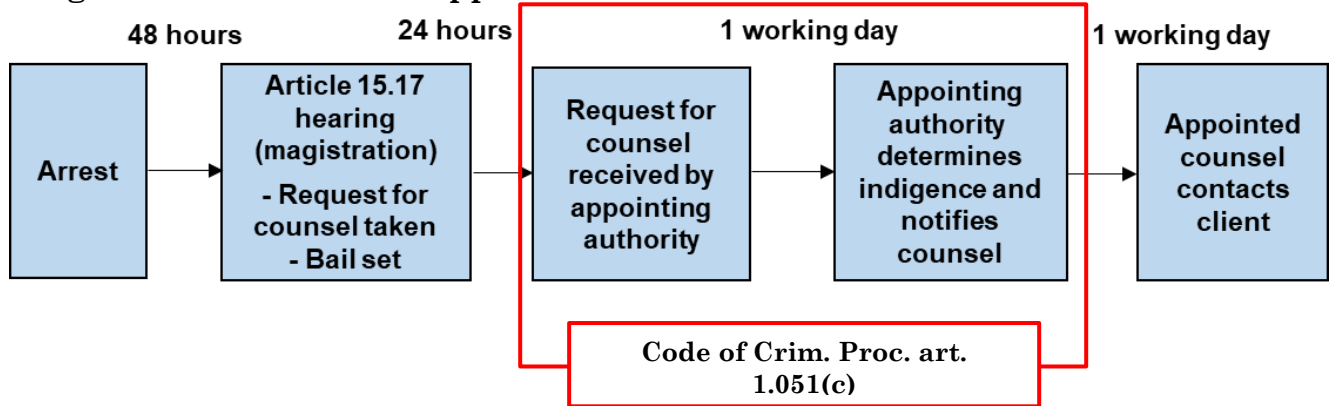
FINDING 1: Article 15.17(e) requires a record to be made of the magistrate asking whether the person wants to request appointment of counsel and whether the person requested appointment of counsel. The magistrate warning form used for cite-and-release arrestees does not contain a space to mark a request for counsel. Travis County must adjust its procedures to include requests for counsel at the Article 15.17 hearing for cite-and-release arrestees. *Successfully Addressed.*

FINDING 2: Per Title 1 Tex. Admin. Code § 171.7 – 8, justices of the peace and municipal court judges are required to report requests for counsel as part of their Judicial Council Monthly Court Activity Reports. Neither Travis County justices of the peace nor City of Austin municipal judges enter the number of persons requesting counsel at the Article 15.17 hearing. These courts must create procedures to report this data. *Successfully Addressed.*

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



Timeliness of Appointment in Felony Cases

To assess the timeliness of Travis County’s appointment procedures in felony cases, TIDC examined the time from counsel request to appointment or denial of indigence. Under TIDC’s monitoring rules, a county is presumed in compliance with the prompt appointment requirement if at least 90% of requests in the monitor’s sample are ruled upon timely.⁸ TIDC examined 172 cases (filed between April 2021 and September 2021) and found 125 of 138 sample indigence determinations were

⁸ 1 TEX. ADMIN. CODE § 174.28.

timely (91% timely). This percentage meets TIDC’s 90% timely threshold for presuming a jurisdiction’s procedures ensure the prompt appointment of counsel.

Table 3: Times to Appointment in Felony Cases

Travis Felony Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	172		
Total cases with a counsel request in which time to appointment / denial could be determined		138	
Appointment / denial of indigence occurred in:			
0 work days		76	
1 work day + 24 hour transfer		49	
Timely appointments (0 – 1 work days)		125	91%
2 work days + 24 hour transfer		3	
More than 2 work days		8	
No ruling		2	
Late appointments (more than 1 work day) or no ruling on request		13	9%

Timeliness of Appointment in Misdemeanor Cases

To assess the timeliness of Travis County’s appointment procedures in misdemeanor cases, TIDC staff examined the time from counsel request to appointment or denial of indigence. Under TIDC’s monitoring rules, a county is presumed in compliance with the prompt appointment requirement if at least 90% of indigence determinations in the monitor’s sample are timely.⁹ TIDC examined 237 cases (filed between April 2021 and September 2021) and found 165 of 177 sample indigence determinations were timely (93% timely). This percentage meets TIDC’s 90% timely threshold for presuming a jurisdiction’s procedures ensure the prompt appointment of counsel.

⁹ 1 TEX. ADMIN. CODE § 174.28.

Table 4: Times to Appointment in Misdemeanor Cases

Travis Misd. Appointment Sample Data	Sample Size	Number from sample	Percent
Number of case files examined	237		
Total cases with a counsel request in which time to appointment / denial could be determined		177	
Appointment / denial of indigence occurred in:			
0 work days		103	
1 work day + 24 hour transfer		62	
Timely appointments (0 – 1 work days)		165	93%
2 work days + 24 hour transfer		2	
More than 2 work days		8	
No ruling		2	
Late appointments (more than 1 work day) or no ruling on request		12	7%

Waivers of Counsel in Misdemeanor Cases

During the 2019 review, TIDC identified misdemeanor cases in which defendants requested counsel, there was no ruling on the request, and defendants later waived counsel to enter a pro se plea. In the current review, there were no pro se pleas or any cases involving waivers of counsel in our sample.

During the 2019 review, TIDC also observed defendants who were encouraged to sign a waiver and speak with the prosecutor before being told the procedures for requesting counsel. In the current review, TIDC did not observe any instances in which defendants were encouraged to sign a waiver and speak with the prosecutor. TIDC finds that Travis County has addressed the issues with waivers of counsel.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Prompt Appointment

FINDING 3 (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in felony cases fell below TIDC’s 90% timely threshold for presuming a jurisdiction’s appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in felony cases. *Successfully Addressed.*

FINDING 4 (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within one working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. The sample of attorney appointments in misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s appointment timeline in misdemeanor cases. ***Successfully Addressed.***

FINDING 5 (misdemeanor cases): TIDC interviews, case file reviews, and court observation indicate that courts hearing misdemeanor cases may be directing or encouraging defendants to communicate with attorneys representing the state before denying requests for counsel. Travis County should clarify whether it has processes in place to ensure compliance with Article 1.051(f-2). ***Successfully Addressed.***

Conclusion

TIDC finds that Travis County has successfully addressed the findings made in the 2019 policy monitoring report. The County does not need to respond to this report. TIDC commends Travis County officials for their commitment to improving local indigent defense practices.