



# **Second Follow-up Policy Monitoring Review of Willacy County's Indigent Defense Systems**

**July 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 (FDA) through policy reviews.<sup>1</sup> In this second follow-up review, TIDC interviewed local defense attorneys and reviewed FY2021 case file records. TIDC found that defendants regularly request counsel at the Article 15.17 hearing. However, there are gaps in ruling on those requests in a timely manner. TIDC thanks Willacy County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its finding within two years.<sup>2</sup>

### Background

In June 2012, TIDC issued a grant evaluation of Willacy County's Public Defender Office. The grant evaluation made three conclusions regarding Fair Defense Act provisions:

- Requests for counsel were not always documented on the magistrate warning form.
- Magistrate warnings were not always timely.
- Attorney appointments were made through a blanket order. The County needed to document the date of the appointment so that the timeliness of counsel appointments could be determined.

In December 2013, TIDC issued a limited scope policy monitoring report to ensure the grant evaluation conclusions were addressed. The policy monitoring report found that all three conclusions were still pending. Willacy County responded by putting in place a rotation system among magistrates, so a judge would always be available to provide timely warnings to arrestees. The County also stated that orders appointing counsel would be made for each defendant determined to be indigent.

In November 2017, TIDC issued a follow-up report. This report found that magistrate warnings were now timely, but some magistrate warnings did not document whether defendants requested counsel. The County developed a method for Texas Rio Grande Legal Aid (TRLA) to screen defendants for indigence and to note the date on which counsel was appointed or indigence denied. TIDC found those appointments were not always timely.

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

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

## Current Review

TIDC’s policy monitoring rules require follow-up reviews when reports include noncompliance findings.<sup>3</sup> Staff member Joel Lieurance conducted a second follow-up review of Willacy County, with a site visit on September 14 and 15, 2022. TIDC examined whether Willacy County successfully addressed the findings and recommendations from the November 2017 report. The review focused on two core requirements of the Fair Defense Act:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

TIDC examined felony and misdemeanor case files. TIDC met with the court administrator for the 197<sup>th</sup> District Court and with TRLA staff.

**Table 1: History of Monitoring Findings**

FDA Core Requirement	Description and Initial Year of Finding	Status after 2023 Review	
		Satisfied	Pending
1. Magistrate Warnings	Article 15.17 hearings must be held within 48 hours of arrest. (2013)	✓ (2017)	
1. Magistrate Warnings	Magistrates must ask each arrestee if counsel is requested. (2013)	✓ (2023)	
1. Magistrate Warnings	Reasonable assistance with financial forms must be provided to defendants contemporaneously with, or immediately after, the Article 15.17 hearing. (2023)		✓
4. Prompt Appointment	There must be a method to document when appointments of counsel / denials of indigence are made. (2013)	✓ (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)		✓

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

## **Program Assessment**

### ***Description of Local Counsel Appointment Procedures***

After arrest in Willacy County, defendants go before a magistrate at the Article 15.17 hearing. When TIDC conducted its 2013 review, Willacy County did not have a schedule to rotate magistrates who presided over the hearings. Instead, each magistrate went to the jail and presided over hearings for defendants arrested in their precinct. If a magistrate was unavailable, the hearing would not have been timely. Now, Article 15.17 hearings are conducted on a rotating basis and are timely.

Magistrates ask defendants if they want to request appointed counsel, and most felony and misdemeanor defendants request an attorney. The request is noted on the Article 15.17 form. Magistrates send the forms to TRLA in varying ways: one judge emails the forms; another faxes them; and two other judges send the forms after TRLA requests them for individual defendants (after TRLA identifies the client at the jail). Some of these methods do not allow for transmission of the form within 24 hours of the defendant requesting counsel.

TRLA has been designated with authority to appoint itself as counsel for defendants. If a defendant is found to be indigent, TRLA checks whether there is a conflict in representing the defendant, and if there are no conflicts, appoints itself to the defendant. If there is a conflict, TRLA notifies the relevant court, and that court appoints counsel from the local appointment list.

A TRLA investigator screens for indigence all defendants who remain in the jail. TRLA receives jail lists twice a week, and the investigator schedules phone interviews for those defendants wishing to request counsel. This screening is not necessarily based on counsel requests noted on the Article 15.17 form because TRLA does not always receive the forms in a timely manner.

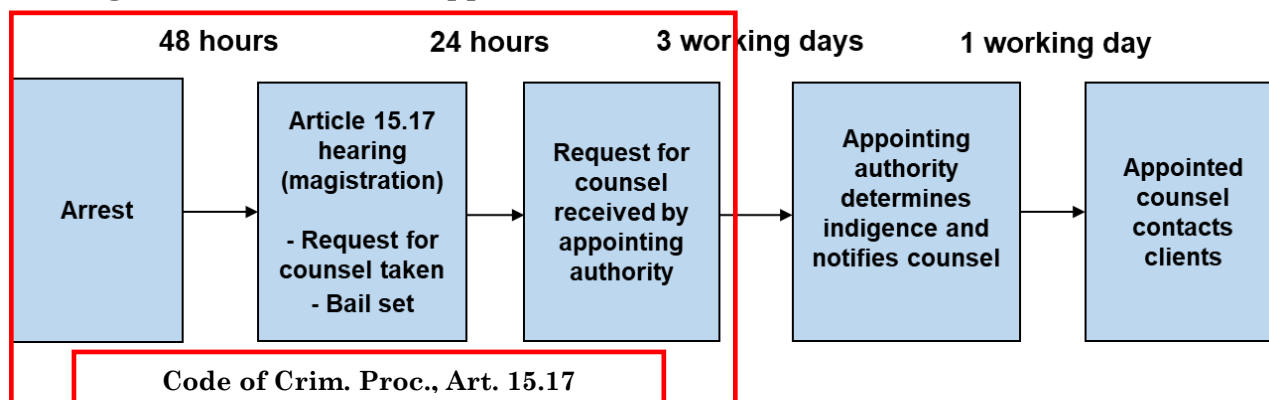
If a defendant makes bail, the defendant can call TRLA to complete the indigence screening. Most defendants do so after receiving notice of an upcoming felony and misdemeanor arraignment hearing. TRLA also mails intake forms to those defendants who do not call about appointed counsel. The investigator attends the arraignment and probation revocation dockets to screen defendants without counsel.

These procedures are effective at ensuring all defendants have counsel prior to case disposition. However, there are gaps in ensuring appointments meet statutory timelines.

## 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.<sup>4</sup> 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.<sup>5</sup> If the magistrate has authority to appoint counsel, the magistrate must appoint counsel according to the timelines set in Article 1.051.<sup>6</sup> If the magistrate does not have authority to appoint counsel, the magistrate must transmit requests for counsel to the appointing authority within 24 hours.<sup>7</sup> 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.<sup>8</sup>

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



### *The Ability of Arrestees to Request Counsel*

At the Article 15.17 hearing, the magistrate must inform the accused of the right to counsel, ask whether the accused wants to request counsel, and receive the accused's request for counsel.<sup>9</sup> The magistrate must make a record of each step of this exchange.<sup>10</sup> TIDC found that defendants regularly request counsel at the Article

<sup>4</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>5</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>6</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>7</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>8</sup> 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>.

<sup>9</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

<sup>10</sup> TEX. CODE CRIM. PROC. art. 15.17(e).

15.17 hearing. From TIDC's sample cases, about 91% of felony defendants and 74% of misdemeanor defendants requested counsel.

***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.<sup>11</sup> Counsel requests and associated financial paperwork must be sent to the appointing authority within 24 hours of the request being made.<sup>12</sup>

TRLA has been assigned the role of screening defendants to determine indigence. Screening does not occur near the time of the Article 15.17 hearing, and as a result, several sample defendants did not receive timely rulings on their counsel requests. If TRLA continues the role of screening defendants for indigence, a method must be put in place so that (1) notice of the request is promptly sent to TRLA, and (2) financial information can be gathered contemporaneously with, or immediately after, the Article 15.17 hearing.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings.**

**Finding 1 and Recommendation:** In accordance with Article 15.17(e), all magistrate warnings must contain a record as to whether the arrestee is requesting counsel. ***Successfully Addressed***

**Finding 2 and Recommendation:** Article 15.17(a) requires that financial information be gathered contemporaneously with magistrate warnings. A method to gather financial information from defendants must be put in place so this information is gathered contemporaneously with, or immediately after, the Article 15.17 hearing. ***New Finding***

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<sup>11</sup> TEX. CODE CRIM. PROC. art. 15.17(a).

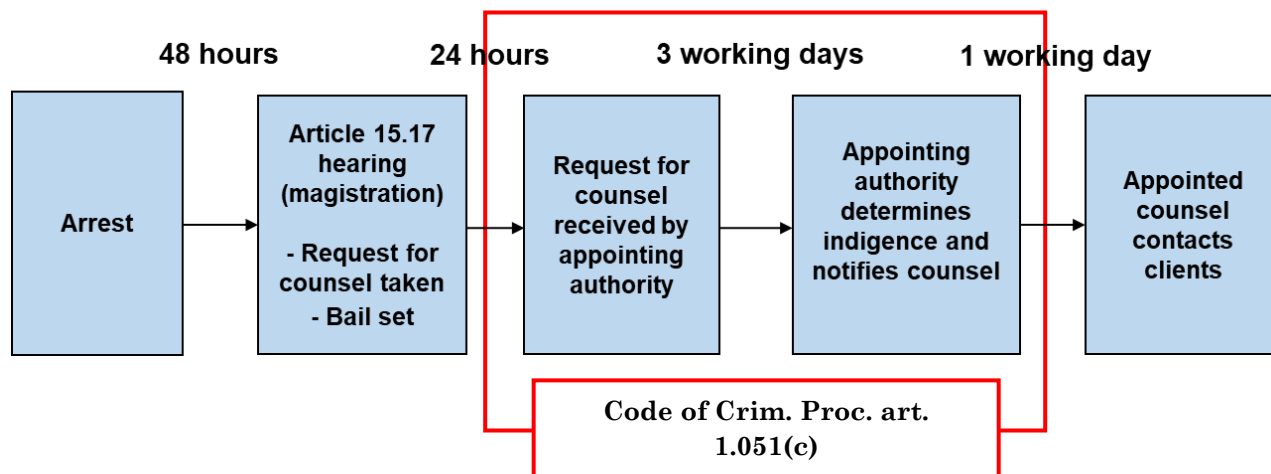
<sup>12</sup> TEX. CODE CRIM. PROC. art. 15.17(a).



## REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Under Article 1.051(c) 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**



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

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request until 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.<sup>13</sup>

TIDC's 2017 report noted that practices to screen defendants for indigence are in place, but the screening often occurs after the deadline for appointment of counsel or denial of indigence. Based on this report's case file review, there are still gaps in the timeliness of screening.

### ***Timeliness of Appointments in Felony Cases***

TIDC staff examined 35 sample felony cases filed in the second half of FY2021 (April 2021 – September 2021). From this sample, TIDC found 27 counsel requests. Counsel was appointed in a timely manner in 19% of cases with a request for counsel. This falls below TIDC's threshold for presuming a jurisdiction's procedures ensure

<sup>13</sup> 1 TEX. ADMIN. CODE § 174.28.

timely appointment of counsel. Willacy County must put in place procedures to ensure timely determinations of indigence in felony cases.

**Table 2: Times to Appointment in Felony Cases**

	Number from Sample	Percent of Sample
Total records examined	35	
Requests for counsel	27	
<b>Request for counsel ruled upon in 'x' workdays</b>		
0 workdays	1	
1 to 3 workdays + 24 hours allowed to transmit a request	4	
<b>Timely Rulings on Requests</b>	<b>5</b>	<b>19%</b>
Between 4 and 7 workdays	0	
More than 7 workdays	15	
No ruling on request <sup>14</sup>	7	
<b>Untimely / No Rulings on Requests</b>	<b>22</b>	<b>81%</b>

***Timeliness of Appointments in Misdemeanor Cases***

TIDC staff examined 57 sample misdemeanor cases filed in the second half of FY2021 (April 2021 – September 2021). From this sample, TIDC found 39 counsel requests. Counsel was appointed in a timely manner in 28% of cases with a request for counsel. This falls below TIDC’s threshold for presuming a jurisdiction’s procedures ensure timely appointment of counsel. Willacy County must put in place procedures to ensure timely determinations of indigence in misdemeanor cases.

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<sup>14</sup> Cases without a ruling on the request involved either cases still active or cases in which the defendant had retained counsel.

**Table 3: Times to Appointment in Misdemeanor Cases**

	Number from Sample	Percent of Sample
Total records examined	57	
Requests for counsel	39	
Request for counsel ruled upon in 'x' workdays		
0 workdays	10	
1 to 3 workdays + 24 hours allowed to transmit a request	1	
<b>Timely Rulings on Requests</b>	<b>11</b>	<b>28%</b>
Between 4 and 7 workdays	2	
More than 7 workdays	18	
No ruling on request <sup>15</sup>	8	
<b>Untimely / No Rulings on Requests</b>	<b>28</b>	<b>72%</b>

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

**Appoint Counsel Promptly.**

**Finding 3 and Recommendation:** 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 for transferring requests) of the request being made. TIDC's samples of felony and misdemeanor cases fell below TIDC's 90% timeliness threshold. Willacy County must put in place procedures to ensure timely determinations of indigence in felony and misdemeanor cases. *Issue Pending.*

**Conclusion**

TIDC thanks Willacy County officials and staff for their assistance in completing this review. TIDC will conduct a third follow-up review regarding its noncompliance findings within two years.<sup>16</sup> TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

<sup>15</sup> Cases without a ruling on the request involved either cases still active or cases in which the defendant had retained counsel.

<sup>16</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Findings and Recommendations from the 2023 Review**

Willacy County must provide a written response to each of the report's findings within 60 days after the report is received by the County. TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

### **Core Requirement 1. Conduct Prompt and Accurate Article 15.17 proceedings.**

**2023 Finding 1 and Recommendation:** Article 15.17(a) requires that financial information be gathered contemporaneously with magistrate warnings. A method to gather financial information from defendants must be put in place so this information is gathered contemporaneously with, or immediately after, the Article 15.17 hearing. *New Finding*

### **Core Requirement 4. Appoint Counsel Promptly.**

**2023 Finding 2 and Recommendation:** 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 for transferring requests) of the request being made. TIDC's samples of felony and misdemeanor cases fell below TIDC's 90% timeliness threshold. Willacy County must put in place procedures to ensure timely determinations of indigence in felony and misdemeanor cases. *Issue Pending.*