



**Third Follow-up Policy Monitoring
Review of Dawson County's Indigent
Defense Systems**

October 2024



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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Administrative Judicial Region of Texas

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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 third follow-up review, TIDC examined FY2023 misdemeanor case file records and spoke with local officials. TIDC found that the two previous report findings, dealing with prompt attorney appointments in misdemeanor cases, remain pending.

TIDC thanks Dawson County officials and staff for their assistance in completing this review. TIDC staff stands ready to provide assistance to remedy these issues. TIDC will conduct a second follow-up review within two years.²

Background

In 2013, TIDC conducted an initial review of Dawson County. The review assessed Dawson County's compliance with six core requirements of the Fair Defense Act and made five findings. The findings covered issues of minimum attorney qualifications, timely appointment of counsel, and a felony defense contract. TIDC conducted a follow-up review in 2017 and found that the County addressed findings involving minimum attorney qualifications and the felony defense contract, but findings dealing with timely appointment of counsel in misdemeanor cases remained. TIDC conducted a second follow-up review in 2020 and found the same two misdemeanor findings remained. In response, the county judge, magistrates, and the sheriff's office met and developed procedures to ensure that all misdemeanor counsel requests are promptly sent to the county judge's office.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status after the 2024 Review	
		Satisfied	Pending
3. Minimum Attorney Qualifications	Dawson County must implement procedures to track CLE hours of attorneys on the juvenile appointment list. (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. (2013)		✓
4. Prompt Appointment	Local procedures did not ensure requests for counsel were ruled upon prior to waivers of counsel. (2013)		✓
5. Attorney Selection Process	The parties to the contract for felony defense services must follow the terms of the contract according to the contract’s caseload limitations. (2013)	✓ (2017)	
5. Attorney Selection Process	The County must ensure procedures are in place to make indigent defense payments only after itemized fee vouchers are submitted and approved by the appointing authority. (2013)	✓ (2017)	

Current Review

TIDC’s policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.³ TIDC staff members Natasha George and Joel Lieurance visited Dawson County on March 20 and August 9, 2024, to examine misdemeanor case files, including magistrate forms, and to interview local officials. This review focuses on a single policy monitoring core requirement, the prompt appointment of counsel.

Program Assessment

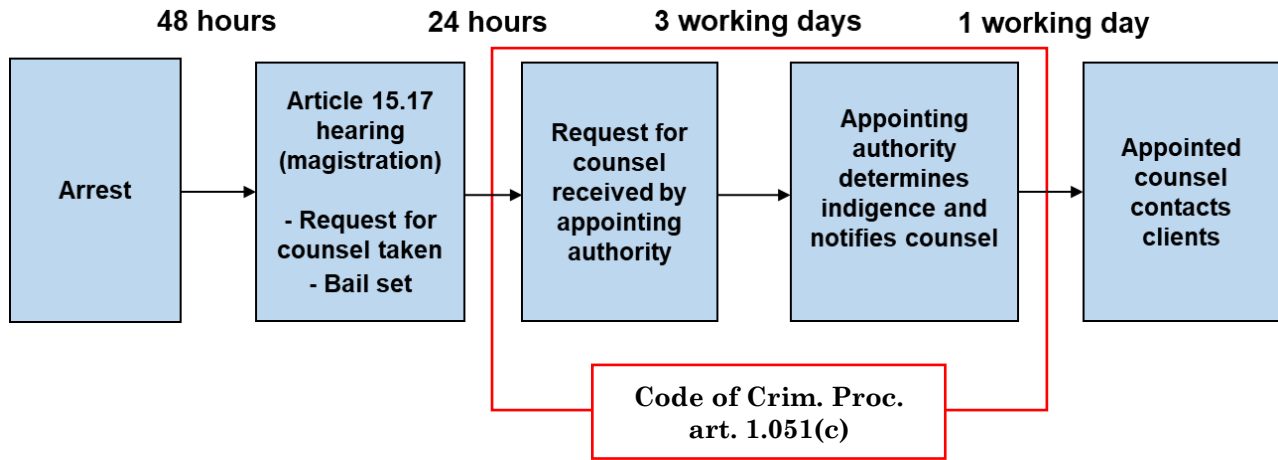
Requirement 4: Appoint counsel promptly.

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.⁴

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

⁴ Under *Rothgery v. Gillespie County*, 554 U.S. 191, 198 (2008), “a criminal defendant’s initial appearance before a judicial officer, where he learns the charge against him and his liberty is

Figure: 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 promptly appoint counsel if at least 90% of indigence determinations in the monitor’s sample are timely.⁵

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 85 sample misdemeanor cases filed from FY2023 (October 2022 – September 2023). From this sample, TIDC found 21 cases with counsel requests. Counsel was appointed in a timely manner in 86% of those cases. This is less than TIDC’s threshold (90% timely) for presuming a jurisdiction’s procedures ensure timely appointment of counsel. Dawson County must implement practices that ensure timely appointment of counsel in misdemeanor cases.

subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.” Since *Rothgery*, appointments of counsel can no longer be delayed because a defendant makes bail.

⁵ 1 TEX. ADMIN. CODE § 174.28.

Table 2: Time to Appointment in Misdemeanor Cases

	Sample Size	Number from sample	Percent
Number of case files examined	85		
Total cases with a counsel request		21	
Appointment / denial of indigence occurred in:			
0 work days		13	
1 – 3 work days + 24 hour transfer		5	
Total timely appointments / denials		18	86%
More than 3 work days + 24 hour transfer		0	
No ruling on request		3	
Total untimely appointments / denials		3	14%

Dawson County’s procedures for making timely misdemeanor appointments has greatly improved. In TIDC’s 2020 review, just over 30% of misdemeanor counsel requests were ruled upon in a timely manner, and the percentage has increased to just under 90% of sample cases.

One gap in the appointment process appears to remain. When defendants have both felony and misdemeanor charges, sample counsel requests were sent to the district court but not to the county court. The county judge has since met with the sheriff’s office, and counsel requests from defendants having both felony and misdemeanor charges will now be sent to him as well as the district court judge.

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, which must conform to the language of Article 1.051(g).⁶

⁶ The waiver language of Article 1.051(g) states:

"I have been advised this _____ day of _____, 2___, 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

The court hearing misdemeanor cases failed to rule on a defendant's request for counsel in three sample misdemeanor cases. In two cases, the defendant later entered an uncounseled plea. The absence of a ruling on a pending counsel request raises the possibility of several statutory violations, including untimeliness (Art. 1.051(c)) and invalid waiver (Art. 1.051(f-2)). Dawson 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

Prompt Appointment of Counsel

2020 FINDING AND RECOMMENDATION 1: Dawson County must implement procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be transmitted to the appointing authority so that all requests can be ruled upon.

Issue Pending.

2020 FINDING AND RECOMMENDATION 2: As required by Article 1.051(f-2), Dawson County must rule upon all requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon all requests for counsel, the courts must ensure procedures are in place to: (1) receive all requests and (2) appoint counsel or document the denial of indigence.

Issue Pending.

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)".

Conclusion

TIDC thanks Dawson County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance findings within two years.⁷ TIDC stands ready to provide assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

Findings and Recommendations from the 2024 Review

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

Core Requirement 4. Appoint counsel promptly.

2024 Finding and Recommendation 1: Dawson County must implement procedures to ensure timely determinations of indigence in misdemeanor cases. Specifically, all requests for counsel must be transmitted to the appointing authority so that all requests can be ruled upon. *Issue pending.*

2024 Finding and Recommendation 2: As required by Article 1.051(f-2), Dawson County must rule upon all requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. In order to rule upon all requests for counsel, the courts must ensure procedures are in place to: (1) receive all requests and (2) appoint counsel or document the denial of indigence. *Issue pending.*

⁷ 1 TEX. ADMIN. CODE § 174.28(c)(2).