



Policy Monitoring Review of Denton County's Indigent Defense Systems

January 2026



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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 FY2023 data from Denton County. TIDC made six findings of noncompliance.

- a. Untimely transmission of counsel requests to the appointing court.
- b. Untimely rulings on requests for counsel in felony cases.
- c. Untimely rulings on requests for counsel in misdemeanor cases.
- d. Waivers of counsel in misdemeanor cases while defendants had pending counsel requests.
- e. Untimely counsel appointments for juveniles at the initial detention hearing.
- f. Untimely counsel appointments or order to retain counsel when juveniles have been released from custody.

TIDC thanks Denton 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 finding within two years.²

Background

TIDC selected Denton County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. This review covers all six FDA core requirements listed below:

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

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

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

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

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

TIDC staff members Kenitra Brown, Natalie Corvington, Ashley De La Garza, Sarah Gammell, Crystal Leff-Pinon, and Joel Lieurance made on-site visits to the County between July 24 and July 26, 2024, and on September 15, 2024, to conduct the review. TIDC utilized various approaches to obtain relevant information including: data from felony, misdemeanor, and juvenile cases filed in FY2023; the

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

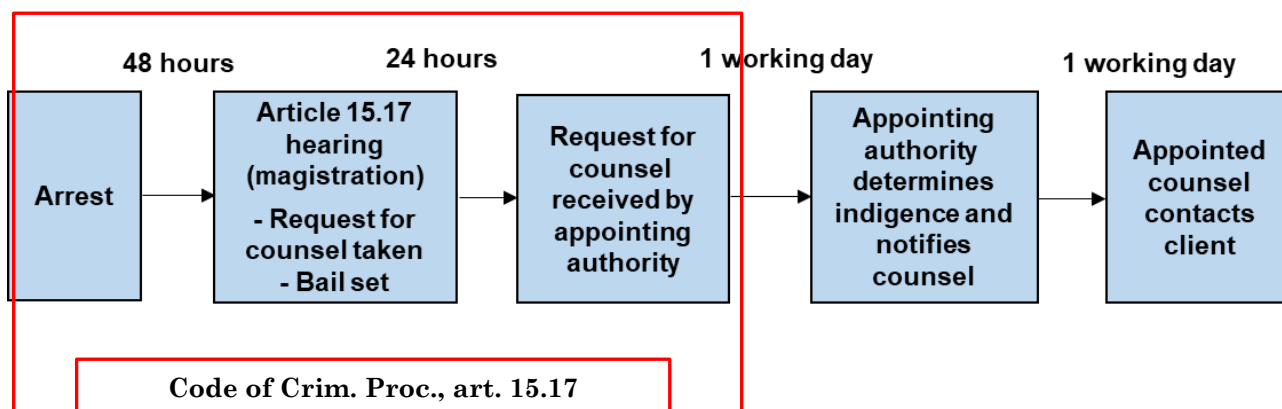
local indigent defense plans; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, Office of Indigent Defense staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings, as well as felony, misdemeanor, and juvenile dockets. TIDC also conducted a survey of criminal defense attorneys as part of this report’s quality supplement.

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.³ At this hearing, the magistrate must inform the person of the right to counsel, ask if the person wants to request appointed 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



Local Practices for Conducting Magistrate Warnings

In Denton County, 32 police agencies arrest defendants who are booked into either the Denton County Jail or one of several municipal jails scattered across the County. After book-in, all defendants are supposed to complete affidavits of indigence.

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>.

Defendants booked into municipal jails are transferred to the County Jail after the Article 15.17 hearing. Denton County magistrates (associate judges for Denton County) conduct Article 15.17 hearings in person at the County Jail and by videoconference for most municipalities. Municipal judges in the Cities of Denton and Frisco also conduct Article 15.17 hearings, with judges who are not associate judges for Denton County. Magistrates make probable cause determinations, set bail, and explain that defendants have the right to counsel. If a defendant requests counsel, the magistrate warning form and affidavit of indigence are supposed to be transmitted to the Office of Indigent Defense. There are some gaps in this process, and the Office of Indigent Defense frequently must re-inquire about affidavits of indigence from defendants who are later transferred to the Denton County Jail.

Denton County reconfigured its pretrial system during 2022. Prior to that time, there was not a single point of contact to send counsel requests. If a defendant requested counsel at a municipal court Article 15.17 hearing, there was often confusion about where the request should be sent. This led to lost requests and delays in appointing counsel. Since the creation of the Office of Indigent Defense, the County has established a single point of contact to send counsel requests. Once it receives the request, the Office of Indigent Defense promptly appoints counsel or denies indigence. The Office has made notable progress since inception, but, as with any new process, breakdowns in the communication chain are still being discovered.

TIDC observed magistrate warnings conducted by a City of Frisco Municipal Judge and by a Denton County magistrate. On September 15, 2024, TIDC observed magistrate warnings in the City of Frisco. The municipal judge asked defendants, “Are you going to hire an attorney or are you going to request an attorney?” The question posed provides options for the defendant and elicits a response as to whether the defendant wants to request appointed counsel.

TIDC observed magistrate warnings conducted by a Denton County magistrate on July 24, 2024 at the Denton County Jail. The magistrate advised all defendants of their rights and then asked each defendant, “Are you going to bond out?” This was followed by, “Are you going to try to hire an attorney?” If the defendant verbally asked for clarification or indicated some confusion, the magistrate followed that question by, “Do you want to request appointed counsel?” The magistrate later repeated the procedure by videoconference for the cities of Carrollton and Flower Mound. The set of questions posed in this scenario allows defendants to request counsel, but some defendants may not understand this is the appropriate time to request counsel. Instead, they may say they want to try and retain counsel when they have no realistic ability to do so.

Article 15.17(e)(2) requires magistrates to ask arrestees whether they wish to request the appointment of counsel and to ensure that a record of the inquiry is made.

In practice, some magistrates deviate from the statutory language and use alternative phrasing. Adhering more closely to the language prescribed by the statute would improve the clarity of magistrate warnings and enhance arrestees' understanding of their right to request appointed counsel.

Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁷ 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.⁸ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 313 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, indicating the County is providing warnings in a timely manner (see Table 1).

Table 1: Timeliness of Article 15.17 Hearings

	Sample Size	Percent
Article 15.17 hearing occurs x days after arrest:	313	
0 days	159	
1 day	146	
2 days	8	
Timely Hearings	313	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.⁹ From TIDC's case file review, 48% of sample felony cases and 37% of sample misdemeanor cases included a request for counsel made at the Article 15.17 hearing.¹⁰

⁷ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁸ 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.

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

¹⁰ Municipal courts are required to submit monthly activity reports to the Office of Court Administration (OCA). According to FY2023 reports, 34% of felony defendants and 31% of misdemeanor defendants requested counsel before municipal magistrates. These totals do not include defendants whose Article 15.17 hearings occurred before a Denton County magistrate.

Reasonable Assistance in Completing Forms for Requesting Counsel

Defendants are given affidavits of indigence upon book-in at either a municipal jail or the Denton County Jail. If defendants have trouble completing them, they may ask jail staff or municipal court staff for assistance.

Transmitting Forms to the Appointing Authority

Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the entity authorized to appoint counsel.¹¹ Prior to the creation of the Office of Indigent Defense, municipal courts did not have a single point of contact for sending counsel requests. Many requests were lost. Since the creation of the Office, the County has attempted to work with municipalities at ensuring all counsel requests are promptly sent to the Office of Indigent Defense. However, TIDC's misdemeanor case sample contained 34 cases in which requests were not sent to the Office.¹²

The County improved its procedures for sending counsel requests to the appointing authority with the creation of the Office of Indigent Defense. However, this did not eliminate lost counsel requests. Denton County must continue to work with municipalities toward establishing a seamless attorney application process.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires requests for counsel and associated paperwork be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

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

¹¹ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹² The Office of Indigent Defense was created in late 2021. It expanded its operations to appoint counsel for all courts by September 2022. TIDC found 34 sample requests that were not received by the Office. Several of these occurred before the Office's full expansion (September 2022), but some occurred after that date.

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 Denton County, the county courts' indigent defense plan lists multiple tests to qualify as indigent.¹³ Defendants who meet any of the following three conditions are presumed indigent:

- The defendant is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
- The defendant's net household income is less than 125% of the Federal Poverty Guidelines; or
- The defendant resides in a correctional institution or public mental health facility.

A defendant may still qualify as indigent if unable to retain counsel without substantial hardship. The posting of bail may not be considered in determining indigence.

Indigence Standard in Juvenile Cases

For juvenile delinquency cases in Denton County, the test concerns the financial capabilities of the person responsible for the youth.¹⁴ Youths qualify as indigent if the responsible person has household income less than 100% of the Federal Poverty Guidelines and liquid assets less than \$15,000. A youth may still qualify as indigent if the responsible person is unable to retain counsel without substantial hardship.

Local Practices

Denton County determines indigence for criminal defendants who request counsel at the Article 15.17 hearing based on whether the defendant meets at least one of the three conditions previously listed. Defendants frequently are initially denied indigence, but struggle with retaining counsel. They may later re-request counsel at the Office of Indigent Defense. However, for these later requests,

¹³ The county courts indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=73>.

¹⁴ The juvenile indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=438>.

defendants must show that they attempted to retain counsel by obtaining three price quotes. They must also provide documentation regarding the following: pay stubs; bank statements; public benefits eligibility; lease / mortgage agreement; and court-ordered child support. These requirements may serve as impediments to defendants who are not financially able to employ counsel from receiving counsel, as well as increasing the number of uncounseled defendants. Denton County should consider reviewing its indigency application processes to determine if they are inadvertently resulting in indigent defendants not being appointed counsel.

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds that Denton County is in substantial compliance with Requirement 2 for both adult and juvenile cases.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

Determination of Indigence

Requirement satisfied. No findings.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

Under Article 26.04(d) of the Code of Criminal Procedure, private attorneys wishing to take court appointments must apply to be on an appointment list. The list must contain objective qualifications, including a minimum annual continuing legal education (CLE) requirement of at least six hours per year in criminal or juvenile law.¹⁵ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.¹⁶

Felony and Misdemeanor Cases

For both the felony and misdemeanor appointment lists, attorneys must obtain at least ten criminal CLE hours annually or be Board Certified in Criminal Law.

Table 2a: Qualifications for Denton County Adult Appointment Lists

List	CLE Hours	Experience	Specific Experience
Misdemeanor	10 criminal	6 months	At least 30% of time practicing criminal law in Texas; Handled at least 5 contested criminal trials and lead counsel in at least 2 cases.
SJF / 3 rd Degree Felony	10 criminal	2 years	Board certified in criminal law or lead counsel or 2 nd chair on 5 criminal jury trials
1 st / 2 nd Degree Felony	10 criminal	3 years	Board certified in criminal law or lead counsel on 3 felony jury trials.
Appeals	10 criminal	2 years	Board certified in criminal law or appellate law; filed at least 4 appellate briefs on criminal matters.

¹⁵ 1 TEX. ADMIN. CODE §§ 174.1–4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

¹⁶ TEX. CODE CRIM. PROC. ART. 26.04(d).

Denton County has established a mentoring program to assist attorneys in gaining the necessary experience to be included on appointment lists, which is to be applauded. Mentee attorneys are appointed to sit as second chair to a mentor. The mentor is required to be present with the mentee for all court appearances, hearings, trials, and interactions with the defendant.

Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually or be Board Certified in Juvenile Law.

Table 2b: Qualifications for Denton County Juvenile Appointment Lists

List	CLE Hours	Experience	Specific Experience
CINS or Delinquent Conduct (commitment to TJJD not an option)	6 juvenile	6 months	Observed or participated in at least 10 detention hearings, 5 agreed adjudication / disposition hearings, and 2 contested adjudications / modification hearings.
Transfer to Criminal Court (certification as an adult)	6 juvenile	6 months	Board Certified in Juvenile law or have been lead counsel in 2 contested juvenile transfer cases.
Appeals	6 juvenile	6 months	Board Certified or have been lead counsel in 2 appeals.
Determinate Sentencing (commitment to TJJD authorized)	6 juvenile	6 months	Board Certified or have been lead counsel in 2 contested determinate sentencing cases.

Assessment

TIDC reviewed appointment lists and CLE records. TIDC found that the County has procedures for managing appointment lists and ensuring that all attorneys on the lists meet their annual CLE requirement.

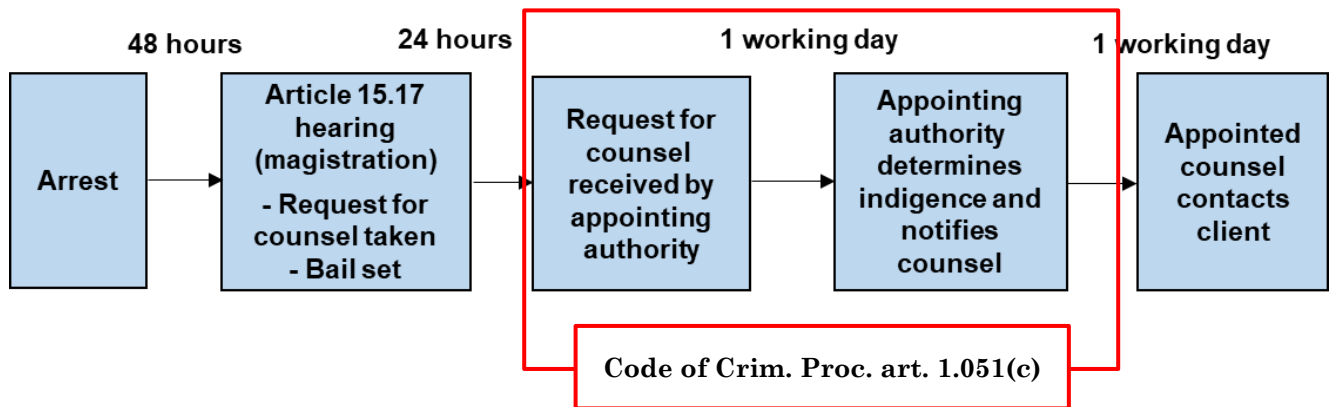
<u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3</u> Establish Minimum Attorney Qualifications Requirement satisfied. No findings.
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REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

Under Article 1.051(c)(2) 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



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. TIDC examined cases filed in FY2023 (October 2022 to September 2023).

Denton County created the Office of Indigent Defense to centralize the appointment process. This centralization improved on previous methods for handling counsel requests. Prior to the creation of the Office, the County received counsel requests from defendants who originally requested counsel at municipal jails through bi-weekly jail reports. If a defendant made bail before being transferred to the County, as often happens in misdemeanor cases, the County would never have received a counsel request. The County is now attempting to have this paperwork sent directly from municipalities to the Office of Indigent Defense. Many of the events from TIDC's case samples occurred prior to the creation of the Office of Indigent Defense.

Timeliness of Appointment in Felony Cases

TIDC examined 144 sample felony cases filed in FY2023. The courts made timely appointments or denials of indigence in 80 of 97 cases in which counsel was requested (**83% timely**). This 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)(2)'s timeline in felony cases.

Table 3: Times to Appointment in Felony Cases

	Sample Size	Number from sample	Percent
Number of case files examined	144		
Total cases with a counsel request		97	
Appointment / denial of indigence occurred in:			
0 work days		48	
1 work day + 24 hour transfer		32	
Total timely appointments / denials		80	83%
2 – 3 work days + 24 hour transfer		9	
4 – 7 work days + 24 hour transfer		4	
More than 7 work days + 24 hour transfer		3	
No ruling on request		1	
Total untimely appointments / denials		17	17%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 246 sample misdemeanor cases filed in FY2023. The courts made timely appointments or denials of indigence in 89 of 131 cases in which counsel was requested (**68% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel.¹⁷ The County must implement practices that satisfy Article 1.051(c)(1)’s timeline in misdemeanor cases. Based on TIDC’s file review, the primary cause of late misdemeanor determinations of indigence occurred because counsel requests made by bonding defendants were frequently lost before being sent to the Office of Indigent Defense.

Table 4: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from sample	Percent
Number of case files examined	246		
Total cases with a counsel request		131	
Appointment / denial of indigence occurred in:			
0 work days		58	
1 work day + 24-hour transfer		31	
Total timely appointments / denials		89	68%
2 – 3 work days + 24 hour transfer		6	
4 – 7 work days + 24-hour transfer		8	
More than 7 work days + 24-hour transfer		14	
No ruling on request		14	
Total untimely appointments / denials		42	32%

¹⁷ In several cases, defendants requested counsel at the municipal level, but the requests never made it to the Office of Indigent Defense, and so were not ruled upon. The Office has since closed many of those gaps.

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. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid. If a defendant enters an uncounseled plea, the defendant must sign a written waiver that substantially conforms to the language of Article 1.051(g).

TIDC's case file examination contained several samples in which the court did not rule on requests for counsel. In one of these sample cases, a misdemeanor defendant requested counsel 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)). Denton 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).

Denton County's pretrial procedures have improved with the creation of the Office of Indigent Defense, but requests from several misdemeanor defendants are still not getting to the Office. Denton County should continue to close this gap of lost requests so that defendants with pending requests do not enter uncounseled pleas.

Juvenile Cases

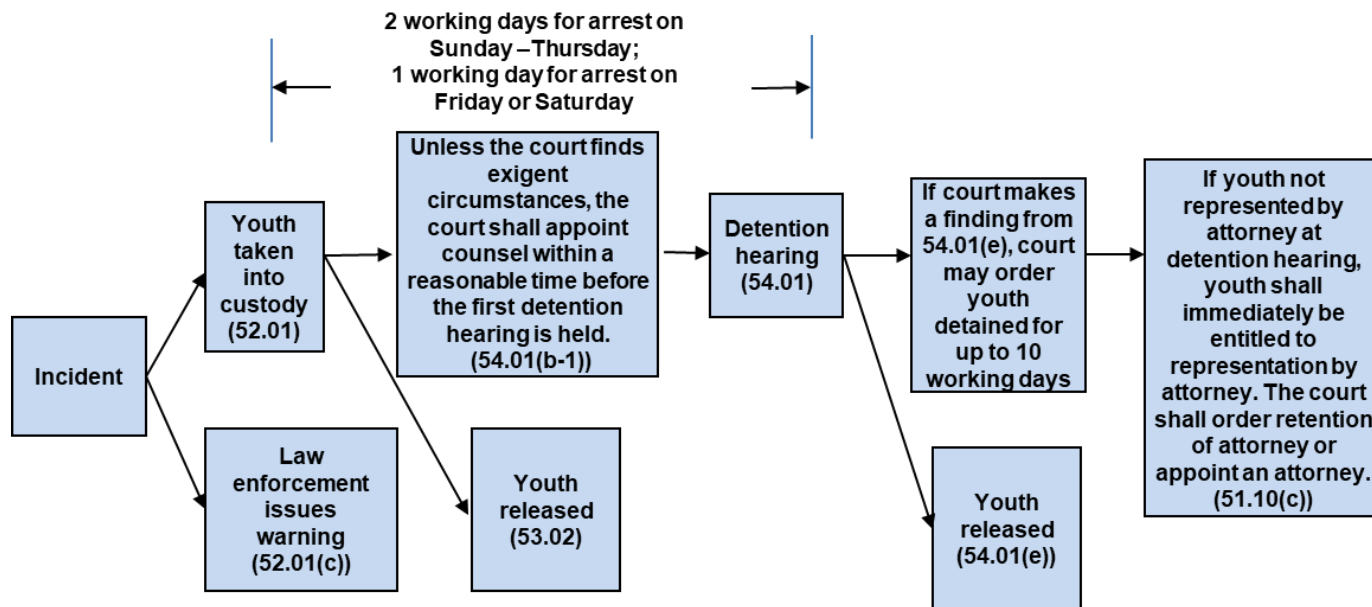
The courts must appoint counsel for youths alleged to have engaged in delinquent conduct when the youth is brought to a detention hearing and when the youth is served with a copy of the petition alleging misconduct.¹⁸ Under Section 54.01(b-1) of the Family Code, unless the court finds the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing. When a petition is filed, Section 51.101(c) of the Family Code, directs the court to determine whether a youth's family is indigent upon the filing of the petition. Section 51.101(d) requires the court to

¹⁸ TEX. FAM. CODE § 51.10(f).

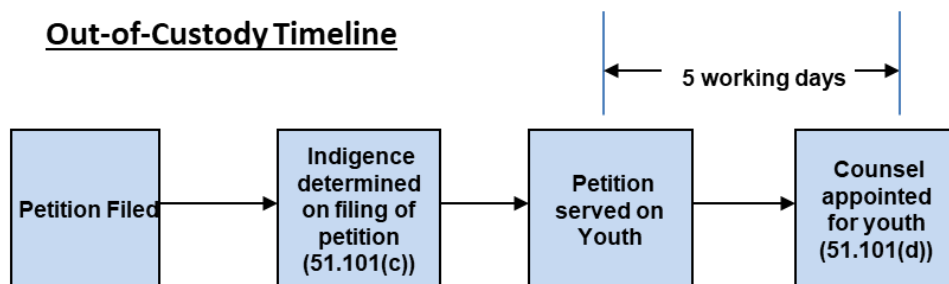
appoint counsel, for those found to be indigent, within five working days of service of the petition on the juvenile.¹⁹

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases

In-Custody Timeline



Out-of-Custody Timeline



¹⁹ If the person responsible for the youth fails to retain counsel, under Section 51.10(b) of the Family Code, the youth’s right to representation by an attorney shall not be waived in

- (1) a hearing to consider transfer to criminal court as required by Section 54.02;
- (2) an adjudication hearing as required by Section 54.03;
- (3) a disposition hearing as required by Section 54.04;
- (4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section 54.05(f); or
- (5) hearings required by Chapter 55.

Juvenile Detention Hearings

To assess the timeliness of the County's appointment procedures in juvenile cases, TIDC staff examined 60 cases filed in FY2023 (October 2022 – September 2023). Section 54.01(b-1) of the Family Code requires counsel be appointed prior to the initial detention hearing unless appointment is not feasible due to exigent circumstances.²⁰ Of the 60 sample cases, 40 involved detention hearings. Counsel was present for the initial detention hearing in 6 sample cases (**15% timely**). Denton County must put in place procedures to ensure that counsel is present for the initial detention hearing.

The County may need to overcome logistical issues to ensure prompt counsel appointments for initial detention hearings. Detention hearings come with very little notice, and there may not be time for a financial screening. Even if the youth's family could have retained counsel, the short notice can mean that counsel must be appointed because the family has not retained counsel in time for the hearing.

When an appointment is made, the appointed attorney will not have advance notice of the hearing, and so must be available to immediately come to court and represent the client. Some possibilities to meet this statutory requirement include: 1) the establishment of a juvenile public defender office; 2) the creation of a juvenile contract system; or 3) the use of attorneys-of-the-day. If the County wishes to create a juvenile public defender office, it may apply to TIDC for improvement grant funds.

Appointment After Service of the Petition

Under Section 51.101(c) and (d) of the Family Code, once a petition is served on the youth, the court has five working days to appoint counsel or order the retention of counsel for the youth. Of 60 sample cases, 59 involved service of the petition on the youth. Counsel was timely appointed for 48 of these cases (**81% timely**). Denton County must put in place procedures to ensure that counsel is present for defendants within five working days of the petition being served on the juvenile.

²⁰ TEX. FAM. CODE §54.01(b-1) states:

Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.

Table 5: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	60		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		40	
Cases with attorney present at initial hearing		6	15%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which petition filed	59		
Counsel appointed within 5 working days of service		24	
Indigence denied or counsel retained within 5 working days of service ²¹		24	
Total cases with timely presence of counsel		48	81%
Cases where counsel not present in a timely fashion		11	19%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly.

FINDING 2 (FELONY CASES) AND RECOMMENDATION: Denton County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), district courts must rule on all requests for counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 3 (MISDEMEANOR CASES) AND RECOMMENDATION: Denton County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), statutory county courts must rule on all requests for counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 4 (MISDEMEANOR CASES) AND RECOMMENDATION: 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)). Denton 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).

FINDING 5 (JUVENILE CASES) AND RECOMMENDATION: The County does not have processes in place to ensure counsel is appointed for youths prior to the initial detention hearing. As required by Section 54.01 of the Family Code, the County must ensure counsel is present for youths prior to the initial detention hearing.

²¹ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

FINDING 6 (JUVENILE CASES) AND RECOMMENDATION: For cases in which the juvenile is not detained, the County’s juvenile appointment process did not meet TIDC’s threshold for appointment of counsel (90% timely). Section 51.101(d) of the Family Code requires the appointment of counsel within five working days of petition service on the juvenile. The County must implement procedures that ensure timely appointments of counsel in cases in which a petition is served on the juvenile.

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

Article 26.04(b)(6) of the Code of Criminal Procedure requires that local procedures for appointing counsel ensure appointments are allocated among qualified attorneys in a fair, neutral, and nondiscriminatory manner.

In assigned counsel systems, TIDC presumes a jurisdiction has a fair, neutral, and nondiscriminatory appointment system if the top 10% of attorneys receiving cases of a given case level receive no more than three times their respective share of appointments.²² If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome a finding about the distribution of appointments by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

Procedure

Prior to 2022, each court made its own appointments and attempted to follow a rotational system of appointment. In 2022, Denton County moved to a centralized appointment system, with the Office of Indigent Defense making appointments for all criminal courts. This centralized appointment system allows for uniform indigence determinations and a true rotational attorney selection system.

Assessment

TIDC analyzed the distribution of attorney appointments by offense level (felony, misdemeanor, juvenile) during FY2023. Based on this analysis, all appointment levels had distributions in which the top ten percent of attorneys received less than three times their respective share of appointments, indicating all levels are in compliance.

²² 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

Table 6: Share of Cases Paid to Top 10% of Attorneys

Level	Attorneys Eligible for Appointment from List	Top 10% Attorneys ²³	Respective Share of Cases ²⁴ [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	44	4	9.1%	14.9%	1.6
Misdemeanor	39	4	10.3%	16.7%	1.6
Juvenile	16	2	12.5%	24.7%	2.0

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data must include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. Financial data reports must include attorney-level information. The fiscal monitor reviewed the accuracy of these reports.

Under the Texas Office of Court Administration's (OCA) Administrative Rules, municipal courts and justice courts who conduct Article 15.17 hearings are required to submit monthly reports to OCA.²⁵ TIDC found these reports to be reasonably accurate.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

Requirement satisfied. No findings.

²³ The number "Top 10% Attorneys" is equal to the number of Attorneys on List for Entire Year multiplied by 0.10, rounded to the nearest whole number.

²⁴ The percent "Respective Share of Cases" is equal to the number of Top 10% Attorneys divided by the number of Attorneys on List for Entire Year.

²⁵ 1 TEX. ADMIN. CODE § 171.7 – 8.

Conclusion

TIDC thanks Denton 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.²⁶ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²⁶ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

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

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires requests for counsel and associated paperwork be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

FINDING 2 (FELONY CASES) AND RECOMMENDATION: Denton County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), district courts must rule on all requests for counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 3 (MISDEMEANOR CASES) AND RECOMMENDATION: Denton County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), statutory county courts must rule on all requests for counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 4 (MISDEMEANOR CASES) AND RECOMMENDATION: 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)). Denton 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).

FINDING 5 (JUVENILE CASES) AND RECOMMENDATION: The County does not have processes in place to ensure counsel is appointed for youths prior to the initial detention hearing. As required by Section 54.01 of the Family Code, the County must ensure counsel is present for youths prior to the initial detention hearing.

FINDING 6 (JUVENILE CASES) AND RECOMMENDATION: For cases in which the juvenile is not detained, the County's juvenile appointment process did not meet TIDC's threshold for appointment of counsel (90% timely). Section 51.101(d) of the Family Code requires the appointment of counsel within five working days of petition service on the juvenile. The County must implement procedures that ensure timely appointments of counsel in cases in which a petition is served on the juvenile.

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.²⁷
 - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.²⁸
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.²⁹
- ☒ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³⁰
- ☒ 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.³¹
- ☐ 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 250,000.³²
- ☐ 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.³³

²⁷ TEX. CODE CRIM. PROC. ART. 14.06(a).

²⁸ TEX. CODE CRIM. PROC. ART. 17.033.

²⁹ TEX. CODE CRIM. PROC. ART. 15.17(a).

³⁰ *Id.*

³¹ TEX. CODE CRIM. PROC. ART. 15.17(e).

³² *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).

³³ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because there are gaps in sending counsel requests for some misdemeanor defendants who make bail before being transferred to the County Jail.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³⁴
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁵
- ☒ List factors the court will consider when determining whether a defendant is indigent.³⁶

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.³⁷
 - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal / juvenile law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.³⁸
 - Standards must require attorneys to submit the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county annually by October 15. The report must be made on a form prescribed by the Texas Indigent Defense Commission for the prior 12 months that begins on October 1 and ends on September 30.³⁹

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY (JUVENILES).

- ☐ Unless the court finds that the appointment of counsel is not feasible due to exigent circumstances, the court shall appoint counsel within a reasonable time before the first detention hearing is held to represent the child at that hearing.⁴⁰
- ☐ If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.⁴¹

³⁴ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³⁵ TEX. CODE CRIM. PROC. ART. 26.04(l).

³⁶ TEX. CODE CRIM. PROC. ART. 26.04(m).

³⁷ TEX. CODE CRIM. PROC. ART. 26.04(d).

³⁸ 1 TEX. ADMIN. CODE § 174.1–.4.

³⁹ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

⁴⁰ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c). This box is not checked because some youths were not represented at the initial detention hearing.

⁴¹ TEX. FAM. CODE § 51.101(d). This box is not checked because some youths did not receive an appointment or order to retain within five working days of the petition service.

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 250,000.⁴²
- ☐ 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.⁴³
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁴⁴

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

- ☒ Rotational method: The court must appoint an attorney from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.⁴⁵
- ☐ Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.⁴⁶

NOT APPLICABLE.

- ☐ Alternative appointment method:⁴⁷
 - The local processes must be established by a vote of two-thirds of the judges.
 - The plan must be approved by the presiding judge of the administrative judicial region.
 - The courts must allocate appointments reasonably and impartially among qualified attorneys.

NOT APPLICABLE.

⁴² TEX. CODE CRIM. PROC. ART. 1.051(c).

⁴³ 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 several defendants who made bail did not receive timely appointments.

⁴⁴ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because one sample defendant entered and uncounseled plea while having a pending counsel request.

⁴⁵ TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴⁶ TEX. CODE CRIM. PROC. ART. 26.044.

⁴⁷ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

REQUIREMENT 6: STATUTORY DATA REPORTING

- ☒ The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:⁴⁸
 - In each district, statutory county, and appellate court;
 - In cases for which a private attorney is appointed for an indigent defendant;
 - In cases for which a public defender is appointed for an indigent defendant;
 - In cases for which counsel is appointed for an indigent juvenile; and
 - For investigation expenses, expert witness expenses, or other litigation expenses.

⁴⁸ TEX. GOV'T CODE § 79.036(a-1). 1 Tex. Admin. Code § 171.7 – 8.