



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

November 2025



209 W. 14th Street, Room 202 (Price Daniel Building)
Austin, Texas 78701
Phone: 512.936.6994; Fax: 512.463.5724
www.tidc.texas.gov

Chair:

Honorable Missy Medary	Corpus Christi, Presiding Judge, 5th Administrative Judicial Region of Texas
------------------------	---

Ex Officio Members:

Honorable Jimmy Blacklock	Austin, Chief Justice, Supreme Court of Texas
Honorable Brandon Creighton	Conroe, State Senator
Honorable Emily Miskel	McKinney, Justice, Fifth Court of Appeals
Honorable Joe Moody	El Paso, State Representative
Honorable David Schenck	Presiding Judge, Court of Criminal Appeals
Honorable John Smithee	Amarillo, State Representative

Members Appointed by the Governor:

Mr. Alex Bunin	Houston, Chief Public Defender, Harris County Public Defender's Office
Mr. Jim Bethke	San Antonio, Executive Director, Bexar County Managed Assigned Counsel Program
Mr. Jay Blass Cohen	Houston, Attorney, Blass Law PLLC
Honorable Valerie Covey	Georgetown, Williamson County Commissioner
Honorable Richard Evans	Bandera, Bandera County Judge
Honorable J.R. Woolley, Jr.	Waller, Waller County Justice of the Peace, Pct. 2

Staff Directors and Managers:

Scott Ehlers	Executive Director
Wesley Shackelford	Deputy Director
Edwin Colfax	Grant Program Manager
William R. Cox	Director of Public Defense Improvement
Sarah Gammell	Research Director
Crystal Leff-Pinon	Director of Family Protection Representation

Mission: Protecting the right to counsel, improving public defense.

Contents

Executive Summary.....	4
Background and Current Review	4
Program Assessment	5
Requirement 1: Conduct Prompt and Accurate Article 15.17 Proceedings.....	5
Requirement 2: Determine Indigence According to Standards Directed by the Indigent Defense Plan	9
Requirement 4: Appoint Counsel Promptly	11
Conclusion	14
Summary of Findings and Recommendations	15
Appendix: Monitoring Review Checklist	17

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 Starr County. TIDC made nine findings of noncompliance:

- a. Some defendants were unable to request counsel at the Article 15.17 hearing.
- b. Lack of method to transmit counsel requests to the appointing authority within 24 hours of the request being made.
- c. Magistrates did not use the magistrate's warning form adopted in the Starr County Indigent Defense Plan.
- d. Trial courts do not use the affidavit of indigence adopted in the Starr County Indigent Defense Plan.
- e. Magistrates did not always submit accurate monthly court activity reports to the Office of Court Administration.
- f. Untimely rulings on requests for counsel in felony cases.
- g. Untimely rulings on requests for counsel in misdemeanor cases.
- h. Defendants were directed to speak with the prosecutor before the court explained the procedures for requesting counsel.
- i. Uncounseled plea waiver language did not match Article 1.051(g) of the Code of Criminal Procedure.

TIDC thanks Starr 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 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. The Office made significant strides towards assisting in the timeliness and access to appointed counsel; however, since our last review, the Regional Public Defender Office is no longer operating as it closed its doors towards the end of 2023.

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>.

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

- 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 on-site visits to Starr County between February 18 and 21, 2025, and on June 10, 2025. TIDC examined FY2024 felony and misdemeanor case files, magistrate warning forms, and local indigent defense plans. TIDC met with local officials and observed felony and misdemeanor dockets. 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

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

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

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

REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

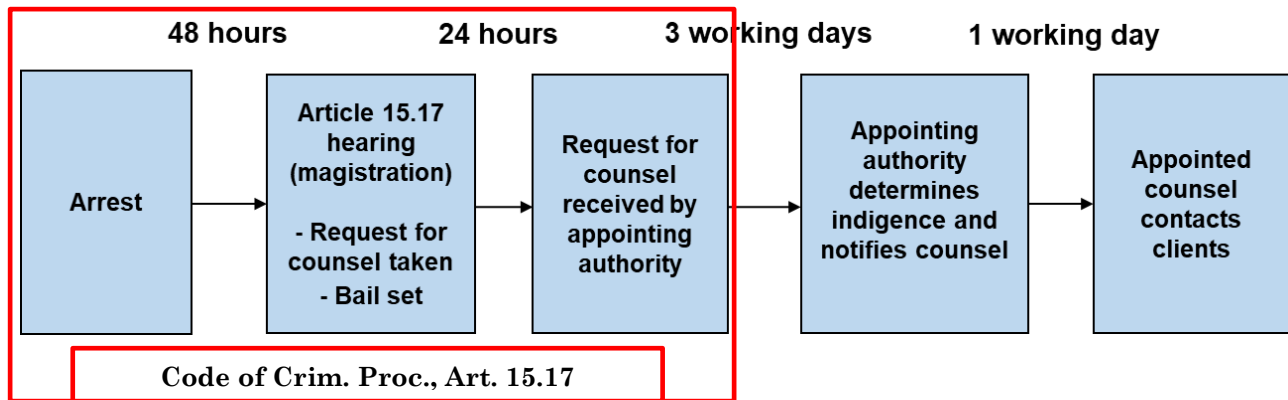
⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

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>.

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



Local Practices for Conducting Magistrate Warnings

In Starr County, arrested defendants are brought before justices of the peace and municipal judges who conduct Article 15.17 hearings. Judges make probable cause determinations and set bail. The Article 15.17 forms are not uniform. Each court has its own forms, and sometimes these are not consistent. Judges vary on whether they ask and record whether defendants wish to request counsel. If a defendant requests counsel, the request is part of the jail packet sent to the prosecutor's office. However, this paperwork does not get to the trial court judges within 24 hours of the request.

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 137 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 Starr 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:	137	
0 days	92	
1 day	43	
2 days	2	
Timely Hearings	137	100%
More than 2 days	0	0%

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.

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.¹¹ Some justices of the peace had sample magistrate warning forms that did not contain a place to mark whether a defendant requested counsel. Other justices of the peace and municipal judges did not mark whether defendants requested counsel, even though a space to mark a request was available. Only two justices of the peace marked that a defendant requested counsel on sample magistrate warning forms. As required by Article 15.17(e), for each person arrested on a jailable offense in Starr County, magistrates must ask and record whether a defendant wishes to request appointed counsel. This applies even if the defendant receives a personal bond.

Magistrates in Starr County use various magistrate warning forms. The County has adopted a form in its indigent defense plan.¹² The municipal courts in La Grulla and Roma currently use this form. Magistrates in Starr County must use the form adopted in its indigent defense plan. The courts may change this form but must include it in their indigent defense plan. Some of the forms do not have a place to mark whether the defendant requested counsel. Some forms have a place to mark the counsel request, but the magistrates do not mark whether the defendant requested counsel.

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. Some courts did not submit monthly court reports to OCA. Others did not submit accurate magistrate data totals. Justices of the peace and municipal courts in Starr County must create procedures to submit monthly reports to OCA. As part of the report, courts must submit the number of persons receiving magistrate warnings and the number of persons requesting counsel.

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

¹² The adopted magistrate warning form is available at <http://tidc.tamu.edu/IDPlanDocuments/Duval/Duval%20Jim%20Hogg%20Starr%20District%20and%20County%20Court%20Magistrates%20Warning%20Form.doc>.

¹³ 1 TEX. ADMIN. CODE § 171.7 – 8.

Table 2: Texas Judicial Council Monthly Court Activity Reports
FY2024 (October 2023 – September 2024)

	Monthly Reports Submitted	Misdemeanor Requests	Misdemeanor Warnings	Felony Requests	Felony Warnings
JP1	No reports	n/a	n/a	n/a	n/a
JP2	12	0	77	0	67
JP3	No reports	n/a	n/a	n/a	n/a
JP4	No reports	n/a	n/a	n/a	n/a
JP5	12	0	0	0	0
JP6	12	0	4	0	1
JP7	No reports	n/a	n/a	n/a	n/a
JP8	No reports	n/a	n/a	n/a	n/a
Rio Grande City Munic. Ct.	12	0	0	0	0
Roma Munic. Ct.	12	0	0	0	0
Total		0	81	0	68

Reasonable Assistance in Completing Forms for Requesting Counsel

At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel at the time of the hearing.¹⁴ It is unclear whether there is a standard affidavit of indigence; rather, based on court observations, an oral indigence examination is conducted by the trial courts. The County has an affidavit of indigence that was adopted as part of the indigent defense plan in 2009.¹⁵ The courts need to use this adopted form or adopt a different form for use by magistrates countywide.

Transmitting Forms to the Appointing Authority

Within 24 hours of a person requesting counsel, the magistrate is required under Article 15.17(a) to transmit the request to the court or its designee who is authorized to appoint counsel.¹⁶ Although these requests are sent to the prosecutors two or three weeks later as part of the jail packet, there is currently no established process for transmitting counsel requests directly to the trial courts. Under Article 15.17(a), magistrates are responsible for ensuring the timely transmission of this information.

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

¹⁵ The affidavit of indigent is available at <http://tidc.tamu.edu/IDPlanDocuments/Duval/Duval%20Jim%20Hogg%20Starr%20District%20and%20County%20Court%20Affidavit%20of%20Indigence.doc> .

¹⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistrature proceedings

FINDING 1 AND RECOMMENDATION: Magistrates do not always ask and record whether defendants wish to request appointed counsel. As required by Article 15.17(e), magistrates must ask and record whether defendants want to request counsel. To facilitate this, the County should adopt a common form for all magistrates to use.

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 courts) within 24 hours of the request being made.

FINDING 3 AND RECOMMENDATION: The Starr County Adult Indigent Defense Plan has adopted a standard magistrate warning form, but several magistrates do not use this form. Magistrates must use the adopted magistrate warning form.

FINDING 4 AND RECOMMENDATION: The Starr County trial courts do not appear to use the adopted affidavit of indigence. The courts must use the adopted form.

FINDING 5 AND RECOMMENDATION: Some courts did not submit monthly court reports to OCA. Others did not submit accurate magistrate data totals. Justices of the peace and municipal courts in Starr County must create procedures to submit monthly reports to OCA. As part of the report, courts must submit the number of persons receiving magistrate warnings and the number of persons requesting counsel.

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 Starr 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.¹⁷

Local Practices

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

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

Determination of Indigence

Requirement satisfied. No findings.

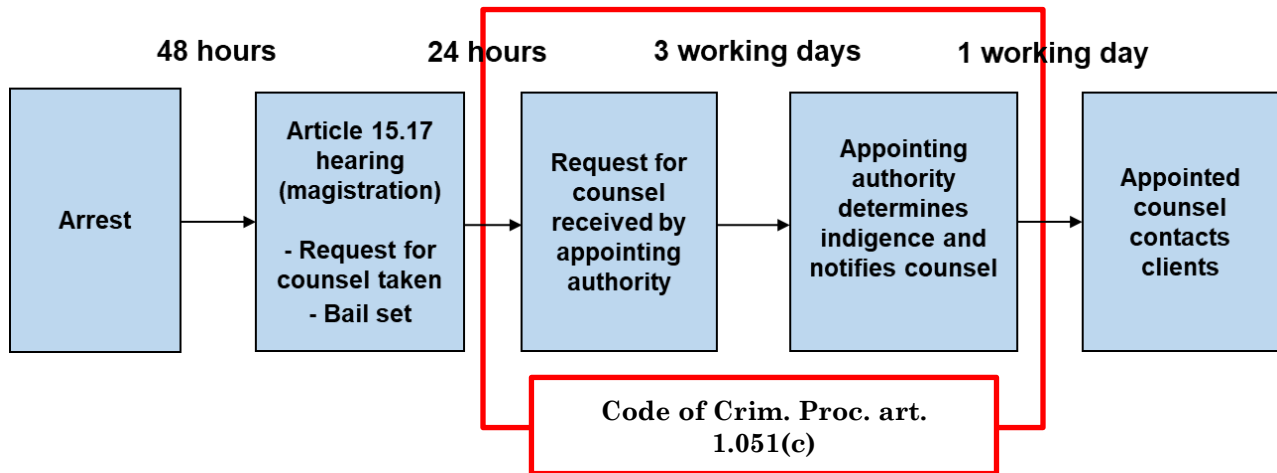
¹⁷ The Starr County Adult Indigent Defense Plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=236>.

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



Local Procedures for Determining Indigence and Appointing Counsel

In Starr County, defendants can request counsel in court. If a defendant remains in jail for an extended period of time, and a court becomes aware of the situation, the court appoints counsel for the defendant.

Defendants were generally unable to effectively request counsel at the Article 15.17 hearing. If defendants were able to request counsel at the Article 15.17 hearing, and the courts were to rule on those requests, the courts would need to appoint many more attorneys. With the Starr County Regional Public Defender Office no longer in operation, the 381st District Court relies on roughly five to seven attorneys who take appointed felony cases, and the County Court at Law has about ten attorneys who take appointed misdemeanor cases. In order to achieve timely appointments of counsel required by Article 1.051(c-1), the courts will need to have both the availability of attorneys willing to take appointments and the funds to pay those attorneys.

Timeliness of Appointments in Felony Cases

TIDC examined 70 sample felony cases filed in FY2024 (Oct. 2023 – Sept. 2024). The courts made timely appointments in 28 of 37 cases in which counsel was requested (**76% timely**). Late appointments appeared to occur when the court did not receive a defendant's request for counsel. The 76% 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 3: Times to Appointment in Felony Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	70		
Total cases with a counsel request		37	
Appointment/denial of indigence occurred in:			
0 workdays		28	
1 – 3 workdays + 24-hour transfer		0	
Total timely appointments / denials		28	76%
4 - 7 workdays + 24-hour transfer		0	
More than 7 workdays + 24-hour transfer		8	
No ruling on request		1	
Total untimely appointments/denials		9	24%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 100 sample misdemeanor cases filed in FY2024 (Oct. 2023 – Sept. 2024). The court made timely appointments of counsel in 2 of 12 cases in which counsel was requested (**17% timely**). Late appointments appeared to occur when the court did not receive a defendant’s request for counsel. 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 4: 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	100		
Total cases with a counsel request		12	
Appointment/denial of indigence occurred in:			
0 work days		2	
1 – 3 work days + 24-hour transfer		0	
Total timely appointments / denials		2	17%
4 - 7 work days + 24-hour transfer		0	
More than 7 work days + 24-hour transfer		1	
No ruling on request		9	
Total untimely appointments/denials		10	83%

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).¹⁸

From TIDC's court observation, defendants facing arraignment were first asked if they would like time to hire an attorney or would like to speak with the prosecutor. 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 prosecutor. TIDC has a model check-in form that explains the defendant's options and asks for the defendant's counsel choice.¹⁹

Additionally, from TIDC's file review, staff did not find any uncounseled plea waivers that matched the language from Article 1.051(g). For defendant's entering uncounseled pleas, the County must adopt language substantially conforming to Article 1.051(g). TIDC has a model form for defendants wishing to enter uncounseled pleas.²⁰

¹⁸ 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)"

¹⁹ The model check-in form is available at <https://www.tidc.texas.gov/media/kkgembze/model-waiver-to-speak-with-the-prosecutor.docx>.

²⁰ The model uncounseled plea waiver form is available at <https://www.tidc.texas.gov/media/kt2oz02b/model-waiver-to-plea.docx>.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 6 (FELONY CASES) AND RECOMMENDATION: Starr 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 7 (MISDEMEANOR CASES) AND RECOMMENDATION: Starr 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 8 (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 9 (MISDEMEANOR CASES) AND RECOMMENDATION: The uncounseled plea waiver does not closely match Article 1.051(g). The County must use language that substantially conforms to Article 1.051(g).

Conclusion

TIDC thanks Starr 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.²¹ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²¹ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

Starr 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: Magistrates do not always ask and record whether defendants wish to request appointed counsel. As required by Article 15.17(e), magistrates must ask and record whether defendants want to request counsel. To facilitate this, the County should adopt a common form for all magistrates to use.

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 courts) within 24 hours of the request being made.

FINDING 3 AND RECOMMENDATION: The Starr County Adult Indigent Defense Plan has adopted a standard magistrate warning form, but several magistrates do not use this form. Magistrates must use the adopted magistrate warning form.

FINDING 4 AND RECOMMENDATION: The Starr County trial courts do not appear to use the adopted affidavit of indigence. The courts must use the adopted form.

FINDING 5 AND RECOMMENDATION: Some courts did not submit monthly court reports to OCA. Others did not submit accurate magistrate data totals. Justices of the peace and municipal courts in Starr County must create procedures to submit monthly reports to OCA. As part of the report, courts must submit the number of persons receiving magistrate warnings and the number of persons requesting counsel.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

FINDING 6 (FELONY CASES) AND RECOMMENDATION: Starr 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 7 (MISDEMEANOR CASES) AND RECOMMENDATION: Starr 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 8 (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 9 (MISDEMEANOR CASES) AND RECOMMENDATION: The uncounseled plea waiver does not closely match Article 1.051(g). The County must use language that substantially conforms to Article 1.051(g).

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.²²
 - 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.²³
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.²⁴
- ☐ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.²⁵
- ☐ 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.²⁶
- ☐ 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.²⁷
- ☐ 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 250,000.²⁸ **NOT APPLICABLE.**

²² TEX. CODE CRIM. PROC. ART. 14.06(a).

²³ TEX. CODE CRIM. PROC. ART. 17.033.

²⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

²⁵ *Id.* This box is not checked because not all forms allow for defendants to request counsel at the Article 15.17 hearing.

²⁶ TEX. CODE CRIM. PROC. ART. 15.17(e). This box is not checked because magistrates do not always ask and record whether the defendant would like to request counsel.

²⁷ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because requests for counsel are not transmitted to the appointing authority within 24 hours.

²⁸ *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).

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.²⁹
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁰
- ☒ List factors the court will consider when determining whether a defendant is indigent.³¹

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 250,000.³²
- ☐ 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.³³
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.³⁴

²⁹ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³⁰ TEX. CODE CRIM. PROC. ART. 26.04(l).

³¹ TEX. CODE CRIM. PROC. ART. 26.04(m).

³² TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because detained defendants do not always receive timely appointment of counsel.

³³ 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.

³⁴ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because defendants are directed to speak with the prosecutor before being told of the procedures for requesting counsel.