



Policy Monitoring Review of Potter County's Indigent Defense Systems

September 2025



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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 Potter County. TIDC made 2 findings of noncompliance.

- a. Untimely rulings on requests for counsel in felony cases.
- b. Untimely rulings on requests for counsel in misdemeanor cases.

TIDC thanks Potter County officials and staff for their assistance in completing this review.

Background

TIDC selected Potter County for a review through its annual county selection process, which seeks to cycle through counties around the state. This review covers the six FDA core requirements.

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 Wesley Shackelford, Ashley De La Garza, and William R. “Bill” Cox conducted the review. TIDC examined FY2023 data, including felony, misdemeanor, and juvenile case files; the local indigent defense plan; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, county staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings as well as felony, misdemeanor, and juvenile dockets.

Program Assessment

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

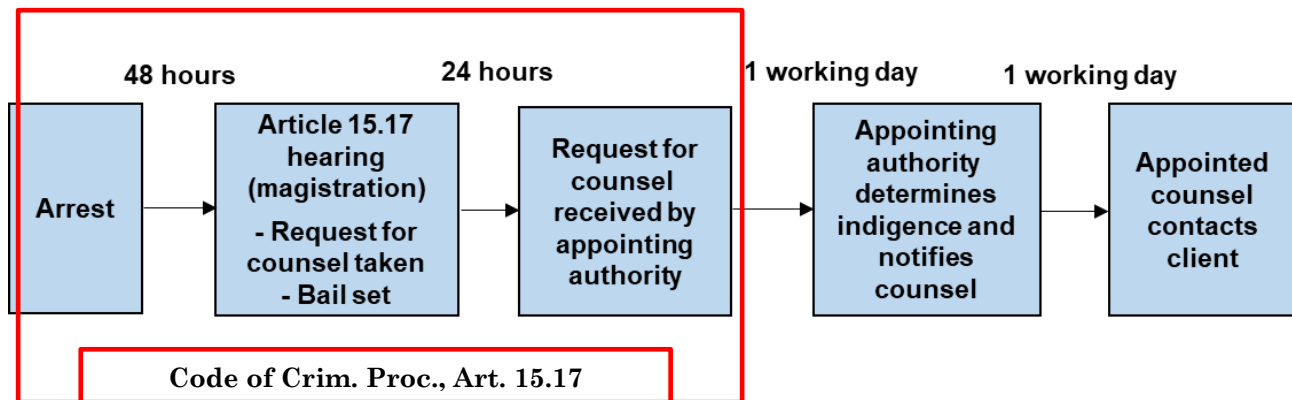
Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.² At this hearing, the magistrate must inform the person of the right to counsel, inform the person of the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² TEX. CODE CRIM. PROC. ART. 15.17(a).

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

Figure1a: Timeline for Appointment of Counsel in Adult Criminal Cases



Local Practices for Conducting Magistrate Warnings

In Potter County, jailed defendants are promptly brought before a magistrate at the Potter County Detention Center. The magistrate makes probable cause determinations, sets bail, and explains that defendants have a right to counsel. Potter-Armstrong Public Defender attorneys represent defendants at magistration, advocating for them on probable cause, amount of bond, and release conditions. Prior to the hearing, the attorneys also assist defendants wishing to request counsel with completing indigence affidavits. Requests for counsel and indigence applications for misdemeanor and felony cases are forwarded to the managed assigned counsel program (MAC).

1.a. Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁶ TIDC presumes a county substantially complies with the prompt magistration requirement if at least 98% of Article 15.17 hearings are conducted within 48 hours.⁷ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 114 sample case files in which staff could determine the time from arrest until the Article 15.17 hearing. The sample reflects 100% of the Article 15.17 hearings occurring

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

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

⁵ TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁷ 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

within two days of arrest, indicating the County is providing warnings in a timely manner (see Table 1).

Table 1: Timeliness of Article 15.17 Hearings

	Sample Size	Percent
Cases where time from arrest to magistration was available	114	
0 days	23	20.2%
1 day	89	78.1%
2 days	2	1.8%
Timely Hearings	114	100.0%
More than 2 days	0	0.0%
Untimely Hearings	0	0.0%

1.b. 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.⁸ According to reports submitted by justice courts to the Office of Court Administration (OCA), about 83% of misdemeanor defendants and 77% of felony defendants requested counsel at the Article 15.17 hearing during FY2023. This is an indication that arrested persons understand their right to counsel at the Article 15.17 hearing and regularly request counsel. Further, TIDC staff observed magistrates advising defendants of their right to counsel, asking if the person wanted to request counsel, and recording whether the person requested counsel during magistration at all three locations.

1.c. 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.⁹ In Potter County, public defender attorneys meet with each defendant prior to magistration and provide assistance completing the indigence form which is used by magistrates to consider the defendants' financial circumstances in setting bail and determining eligibility for appointed counsel.

1.d. 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.¹⁰ For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.¹¹ In Potter County, the Managed Assigned Counsel (MAC) program is the

⁸ TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

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

¹⁰ TEX. CODE CRIM. PROC. ART. 15.17(a).

¹¹ TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

designated appointing authority. MAC staff review the indigence affidavits, and if the defendant qualifies for appointed counsel, the attorney is appointed from the applicable rotational list in the Odyssey system. MAC staff highlighted an issue with misdemeanor cases. While felony cases have a “shell” case in which the attorney can be selected and appointed in Odyssey, misdemeanor cases do not, delaying the appointment process. TIDC discussed the issue with the MAC advisory board chair and members of the Potter County judiciary who indicated they would implement the necessary changes in Odyssey to facilitate misdemeanor appointments following the Fair Defense Act’s timelines.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

Requirement satisfied. No findings.

**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 standards for determining indigence are set in each county’s indigent defense plans. The statutory test for indigence is whether the defendant is financially able to employ counsel.¹² Under Potter County’s indigent defense plan, some defendants may not meet the local presumptive standard set in the plan, but still not have the financial ability to employ counsel. These defendants can qualify as indigent due to substantial hardship.

2.a. Indigence Standard in Adult Criminal Cases

For adult criminal cases in Potter 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,

¹² TEX. CODE CRIM. PROC. ART. 1.051(b).

Temporary Assistance for Needy Families, Supplemental Security Income, or public housing.

2. The accused's net household income does not exceed 200% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services.
3. The accused's net household income is more than 200% of the Poverty Guidelines but less than the Living Wage Calculator as set out by the Massachusetts Institute of Technology, however the accused must reimburse the county for the actual cost of the appointed attorney.
4. The accused is currently serving a sentence in a correctional institution of 60 days or more, 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.¹³

The plan further directs the accused's posting of bail, ability to post bail, or financial resources available to relatives or friends may not be considered in determining whether a person is indigent.

If a defendant does not meet the above indigence presumptions, counsel may be appointed for those unable to obtain private counsel without substantial financial hardship on the family (e.g. large medical bills or complex criminal case) with judicial approval. There are also exceptions to appoint counsel in the interest of justice for misdemeanor defendants currently on probation for a felony offense, facing or potentially facing immigration issues as a result of the criminal cases, defendants under the age of 21 charged with a misdemeanor theft, or defendants who are unable to speak or understand the English language.

2.b. Indigence Standard in Juvenile Cases

The standard of indigence in juvenile cases is similar to adult criminal cases, with the threshold for qualification set to 125% of the Federal Poverty Guidelines. The standard is also based on the person responsible for the youth.¹⁴

2.c. Local Practices

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

¹³ The Armstrong and Potter County Adult Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=642>

¹⁴ The Armstrong and Potter County Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=644>.

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

3.a. Felony and Misdemeanor Cases

For both the felony and misdemeanor appointment lists, attorneys must obtain at least six criminal CLE hours annually.¹⁷ Approval for inclusion on the felony and misdemeanor appointment lists is by the Director of the MAC program. The County has also created a Mental Health Panel to represent mentally ill or intellectually disabled defendants. These attorneys must complete at least eight hours of CLE focused on mental health issues and be approved by a majority of the judges hearing criminal cases.

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).

¹⁷ The indigent defense plans list a minimum of 6 criminal / juvenile CLE hours per year.

Table 2a: Qualifications for Potter County Adult Appointment Lists

List	CLE Hours	# Years Experience	# of Jury Trials or # of App. Briefs
Misdemeanor	6 criminal	n/a	n/a
State Jail and 3 rd Degree Felony	6 criminal	n/a	1 felony jury trials as lead or 2 nd chair or 2 Class A or B misdemeanor jury trials; or the attorney is serving as counsel on the Criminal Justice Act panel for the United States District Court for the Northern District of Texas
2 nd Degree and 1 st Degree Felony	6 criminal	2	2 felony jury trials as lead or 2 nd chair; or the attorney is serving as counsel on the Criminal Justice Act panel for the United States District Court for the Northern District of Texas
Death Penalty Capital Felony	6 criminal	n/a	1 st chair must be approved by Administrative Region's Selection Committee; 2 nd chair must be approved by Administrative Region's Selection Committee
Appeals	6 criminal	n/a	Board certified in criminal law by the Texas Board of Legal Specialization; or submitted an appellate writing sample approved by a majority of the judges; or worked as a briefing clerk for an appellate court for a year or more

3.b. Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually.

Table 2b: Qualifications for Taylor County Juvenile Appointment Lists

List	CLE Hours	# Years Experience	# of Jury Trials or # of App. Briefs
CINS or Delinquent Conduct (commitment to TJJD not an option); and indeterminate commitment to TJJD is not possible	6 juvenile	1	2 stipulated juvenile adjudications; 2 contested juvenile adjudications; 2 juvenile dispositions; 2 detention hearings; and participated in at least one criminal or juvenile trial
Delinquent Conduct (commitment to TJJD not an option); and indeterminate commitment to TJJD is possible	6 juvenile	3	Above requirements and participated in 5 criminal or juvenile cases at least 1 of which was tried to a jury verdict
Determinate Sentence Proceedings; Discretionary Transfer to Crim. Court	6 juvenile	5	Above requirements and participated in 5 criminal or juvenile cases at least 3 of which were tried to a jury verdict; tried at least 3 criminal or juvenile cases as lead counsel

Assessment

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

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications

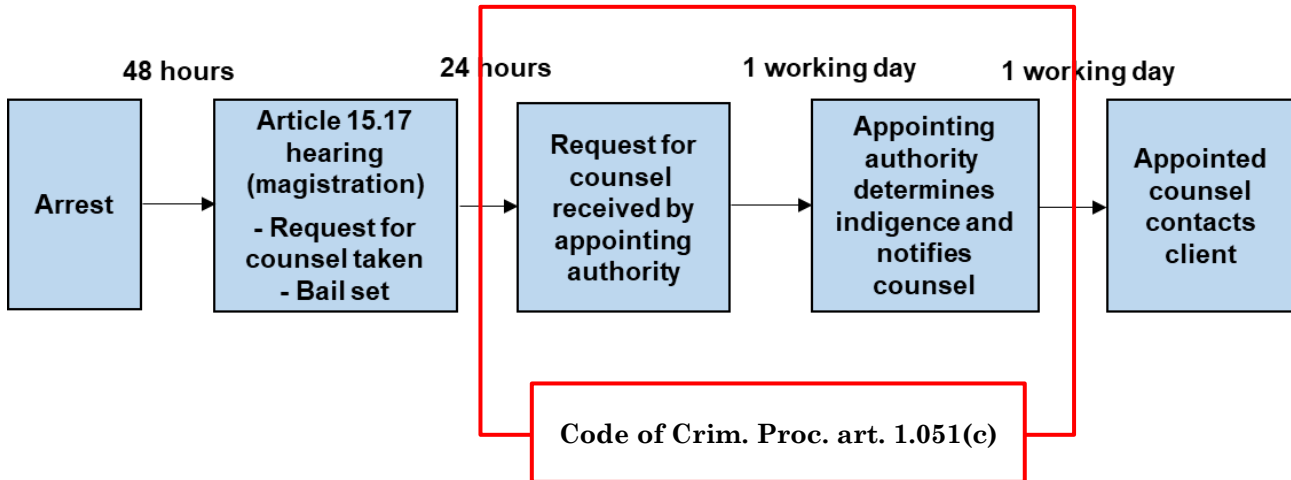
Requirement satisfied. No findings.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

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: Appointment of Counsel Timeline 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 during FY2023 (October 2022 to September 2023).

4.a. Timeliness of Appointment in Felony Cases

TIDC examined 116 sample felony cases filed in FY2023.¹⁸ The MAC made timely appointments of counsel in 67 of 80 cases in which counsel was requested (**84% timely**). The 84% 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.

¹⁸ TIDC examined 117 felony case files but excluded cases in which it could not reliably determine the time to ruling on counsel requests.

Table 3: Times to Appointment in Felony Cases

	Sample Size	Number from sample	Percent
Number of case files examined in which TIDC could match magistrate warning forms	116		
Total cases with a counsel request		80	
Appointment / denial of indigence occurred in:			
0 work days		13	
1 -3 work days + 24 hour transfer		54	
Total timely appointments / denials		67	84%
4-6 work days + 24 hour transfer		1	
More than 6 work days + 24 hour transfer		12	
No ruling on request		0	
Total untimely appointments / denials		13	16%

4.b. Timeliness of Appointments in Misdemeanor Cases

TIDC examined 125 sample misdemeanor cases filed in FY2023.¹⁹ The MAC made timely appointments of counsel in 13 of 21 cases in which counsel was requested (**62% timely**). It should be noted that Potter's misdemeanor case management system's configuration did not allow the MAC to appoint counsel in misdemeanor cases for unfilled cases. Potter County officials indicated to TIDC staff that the system's configuration would be updated so the MAC would be able to appoint counsel for both filed and unfilled cases. The 62% 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

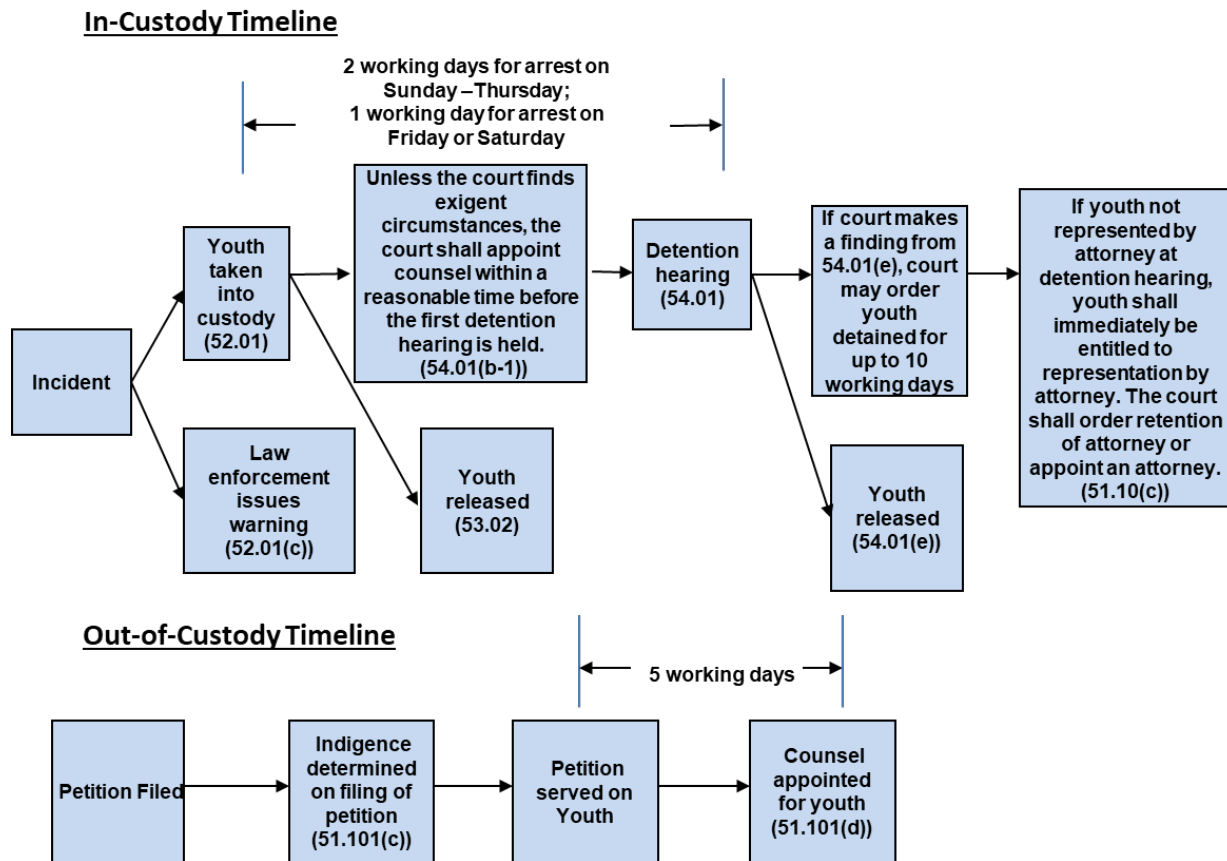
	Sample Size	Number from sample	Percent
Number of case files examined	125		
Total cases with a counsel request		21	
Appointment / denial of indigence occurred in:			
0 work days		3	
1-3 work days + 24 hour transfer		10	
Total timely appointments / denials		13	62%
4 - 6 work days + 24 hour transfer		0	
More than 6 work days + 24 hour transfer		4	
No ruling on request		4	
Total untimely appointments / denials		8	38%

¹⁹ TIDC examined 125 misdemeanor case files but excluded cases in which it could not reliably determine the time to ruling on counsel requests.

4.c. Juvenile Cases

Counsel must be appointed 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.²⁰ 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. Under Subsections 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.²¹

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



²⁰ TEX. FAM. CODE § 51.10(f).

²¹ 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.

Under Section 51.10(e), the court may appoint counsel and order the person responsible for the youth to pay a reasonable attorney's fee set by the court.

Juvenile Detention Hearings

To assess the timeliness of the County's appointment procedures in juvenile cases, TIDC examined 97 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.²² Of the 97 sample cases, 45 involved detention hearings. Counsel was present for the initial detention hearing in all 45 cases (**100% timely**), which exceeds TIDC's 90% threshold.

Appointment After Service of the Petition

Under Subsections 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 97 sample cases, 28 involved service of the petition on the youth. Counsel was timely appointed for 27 of these cases (**96% timely**), which exceeds TIDC's 90% threshold.

Table 5: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	97		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		45	
Cases with attorney present at initial hearing		45	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	28		
Counsel appointed within 5 working days of service		27	
Indigence denied or counsel retained within 5 working days of service ²³		0	
Total cases with timely presence of counsel		27	96%
Cases where counsel not present in a timely fashion		1	4%

²² 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.

²³ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 3 (FELONY CASES): Potter 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 or their designee must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 4 (MISDEMEANOR CASES): Potter 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 or their designee must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

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 at a given level receive no more than three times their respective share of appointments.²⁴ If a county can track appointments by list, this analysis is made according to each appointment list. A county can overcome the presumption by providing evidence as to why the system is fair, neutral, and nondiscriminatory.

Assessment

TIDC examined the distribution of cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists (see Table 6). The distributions fell within TIDC's presumed threshold. TIDC finds Potter County is in substantial compliance with Requirement 5.

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

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

Level	Attorneys on List ²⁵	Top 10% Attorneys ²⁶	Respective Share of Cases ²⁷ [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	29	3	10.3%	23.0%	2.2
Misdemeanor	30	3	10.0%	18.9%	1.9
Juvenile	17	2	11.8%	18.5%	1.6

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 TIDC. 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. Since FY2014, financial data reports must include attorney-level information.

Data reported by the Potter County Auditor is consistent with summary case file data examined by TIDC.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

Requirement satisfied. No findings.

²⁵ TIDC considered an attorney to be on the appointment list if the attorney was on any court lists for the offense level.

²⁶ 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.

²⁷ 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.

Conclusion

TIDC thanks Potter 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.²⁸ TIDC stands ready to provide technical and financial assistance as Potter County continues to innovate its indigent defense program.

Summary of Findings and Recommendations

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

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

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

FINDING 2 (MISDEMEANOR CASES) AND RECOMMENDATION: Potter County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the County courts or their designee must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

²⁸ 1 TEX. ADMIN. CODE § 174.28(c)(2).

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.²⁹
 - 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.³⁰
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³¹
- ☒ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³²
- ☒ 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.³³
- ☐ 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 250,000.³⁴ (Not Applicable: The MAC, not the magistrate is authorized to appoint counsel.)
- ☒ 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.³⁵

²⁹ TEX. CODE CRIM. PROC. ART. 14.06(a).

³⁰ TEX. CODE CRIM. PROC. ART. 17.033.

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

³² TEX. CODE CRIM. PROC. ART. 15.17(a).

³³ TEX. CODE CRIM. PROC. ART. 15.17(e).

³⁴ 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).

³⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³⁶
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁷
- ☒ List factors the court will consider when determining whether a defendant is indigent.³⁸

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.³⁹
 - 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.⁴⁰
 - Standards must require attorneys to submit by October 15 each year the percentage of the attorney's practice time dedicated to indigent defense based on criminal and juvenile appointments accepted in this county. 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 30.⁴¹

³⁶ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

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

³⁸ TEX. CODE CRIM. PROC. ART. 26.04(m).

³⁹ TEX. CODE CRIM. PROC. ART. 26.04(d).

⁴⁰ 1 TEX. ADMIN. CODE § 174.1–.4.

⁴¹ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

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.⁴²
- ☒ 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.⁴³

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 250,000.⁴⁴
- ☐ 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.⁴⁵
- ☒ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.

⁴² TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

⁴³ TEX. FAM. CODE § 51.101(d).

⁴⁴ TEX. CODE CRIM. PROC. ART. 1.051(c).

⁴⁵ 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, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.”). This box is not checked because the timeliness of felony and misdemeanor appointments fell below TIDC's 90% timeliness threshold.

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.⁴⁶
- ☒ 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.⁴⁷
- ☐ Alternative appointment method:⁴⁸
 - 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: The County does not operate an alternative appointment program.

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:
 - 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.

⁴⁶ TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴⁷ TEX. CODE CRIM. PROC. ART. 26.044.

⁴⁸ TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).