



**Policy Monitoring Review of
Van Zandt County's Indigent Defense
Systems**

July 2023



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

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Executive Summary

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act (FDA) through policy reviews.¹ TIDC observed court, interviewed officials, and reviewed FY2021 data from Van Zandt County. TIDC made five findings of noncompliance.

- a. Untimely transmission of counsel requests to the appointing court.
- b. Inconsistent methods for assisting defendants in applying for counsel.
- c. Untimely rulings on requests for counsel in felony cases.
- d. Untimely rulings on requests for counsel in misdemeanor cases.
- e. Waivers of defendants' right to counsel while requests for counsel were pending.

TIDC thanks Van Zandt 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 Van Zandt County for a 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 member William R. "Bill" Cox made on-site visits to the County on October 12, 2022, and from April 3 to 5, 2023. TIDC examined FY2021 data, including felony, misdemeanor, and juvenile case files; the local indigent defense plans; 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, felony dockets, and misdemeanor dockets.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

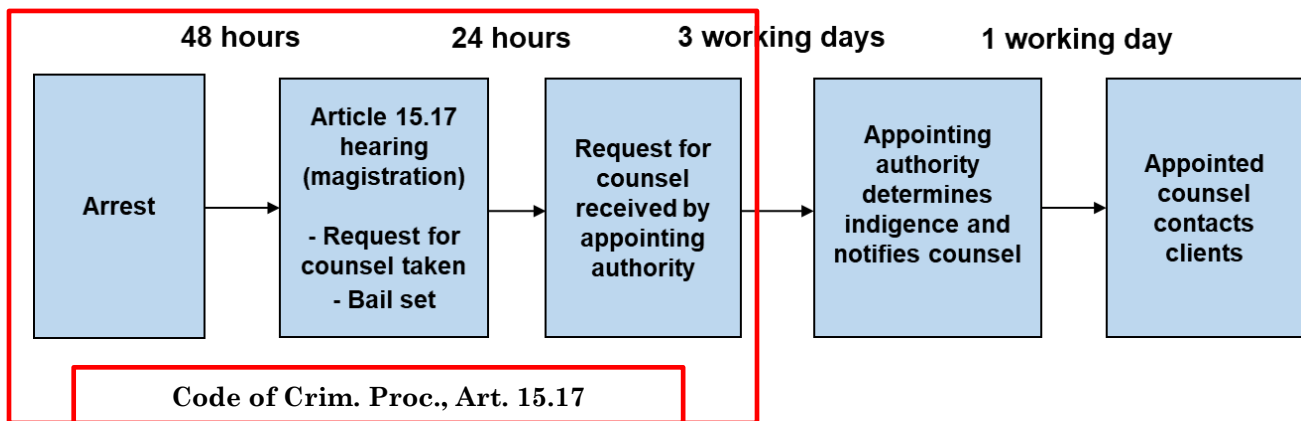
² 1 TEX. ADMIN. CODE § 174.28(c)(2).

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, 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 Van Zandt County, defendants who are in jail are promptly brought before a magistrate. The magistrate makes probable cause determinations, sets bail, and explains that defendants have a right to counsel. If a defendant requests counsel, the magistrate provides the defendant with a copy of the affidavit of indigence and tells the person that jail staff can help with completing the affidavit.

1.a. 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

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>.

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

magistrations 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 96 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 in 99% of 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:	96	
0 days	30	
1 day	63	
2 days	2	
Timely Hearings	95	
More than 2 days	1	1%

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.⁹ According to reports submitted by justice courts to the Office of Court Administration (OCA), about 64% of misdemeanor defendants requested counsel and 71% of felony defendants requested counsel in FY2021. This is an indication that arrested persons understand their right to counsel at the Article 15.17 hearing and regularly request counsel.

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.¹⁰ TIDC observed magistrates providing detainees who requested appointed counsel a copy of the indigence affidavit and instructing them that jail staff could assist in completing the form. From TIDC’s file review, requests made at the Article 15.17 hearing were not always ruled upon by the appointing authority. This is an indication that indigence affidavits are not always completed for defendants who request counsel at the Article 15.17 hearing.

An informal process is in place for jail staff to assist with affidavits of indigence. However, there are no formal procedures to track if completed affidavits are received

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

from people who requested an appointed attorney. The County must provide a consistent method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing. A consistent method may include a checklist noting (1) the date a person requested counsel at the 15.17 hearing; (2) whether the person completed the affidavit at that time; and (3) whether the forms were successfully sent to the courts.

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.¹¹ For persons arrested on out-of-county warrants, the magistrate must transmit the request to the warrant-issuing county.¹² In Van Zandt County, Sheriff's Department staff has begun emailing completed affidavits to the indigent defense coordinator. Staff noted that prior to the Sheriff implementing this procedure in 2022, they had challenges receiving copies of magistration forms and indigence applications.

As noted previously, there are no consistent methods to ensure all persons requesting counsel complete financial affidavits, as well as having their requests and associated financial forms sent to the courts within 24 hours of the request being made. The County must provide a consistent method to ensure requests are sent to the appointing authority within 24 hours of the request being made such as the checklist.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings

FINDING 1: At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel. The County must provide a method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing.

FINDING 2: Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a method 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:

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

¹² TEX. CODE CRIM. PROC. ART. 15.18 (a-1).

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.¹³ Some defendants may not meet the presumption set in the local indigence plan, but still not have the financial ability to employ counsel.

2.a. Indigence Standard in Adult Criminal Cases

For adult criminal cases in Van Zandt County, a person is presumed indigent if:¹⁴

1. At the time of requesting appointed counsel, the accused is 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 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register.
3. The difference between the accused's monthly net household income and reasonable expenses is less than \$800.00, if accused of a felony offense, or \$400.00, if charged with a misdemeanor, or the net difference does not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.
4. 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 and the value of the accused non-exempt assets does not exceed \$2,500, or, does not exceed \$5,000 for individuals whose household includes a person who is 60 years of age or older, disabled, or institutionalized.
5. The accused is unable to retain private counsel without substantial hardship to the accused or the accused dependents.

The posting of bail or ability to post bail may not be considered in determining whether the person is indigent.

¹³ TEX. CODE CRIM. PROC. ART. 1.051(b).

¹⁴ The Van Zandt County District Court Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=375> and the County Court Indigent Defense Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=615>.

2.b. Indigence Standard in Juvenile Cases

The standard of indigence in juvenile cases is the same as in adult criminal cases, except the net difference between monthly net household income and reasonably necessary expenses to qualify for appointed counsel is \$500.00, and the standard is based on the person responsible for the youth.¹⁵

2.c. Local Practices

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds that Van Zandt 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.¹⁶ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.¹⁷

3.a. Felony and Misdemeanor Cases

For both the felony and misdemeanor appointment lists, attorneys must obtain at least six criminal CLE hours annually.¹⁸ Court staff noted they had difficulties attracting attorneys wishing to accept appointments in felony cases, which led the District Court to begin using contract attorneys in March 2022.

The Code of Criminal Procedure authorizes counties to establish a countywide alternative program for appointing counsel for indigent defendants with the authorization of two-thirds of the judges hearing those cases.¹⁹ In 2022, the 294th

¹⁵ The Van Zandt Juvenile Board Plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=131>.

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

¹⁷ TEX. CODE CRIM. PROC. ART. 26.04(d).

¹⁸ The indigent defense plans list a minimum of 6 criminal / 6 juvenile CLE hours per year, and each list permits up to 8 hours of CLE credit above the requirement to carry forward to the following year.

¹⁹ TEX. CODE CRIM. PROC. ART. 26.04(g).

District Court updated its indigent defense plan reflecting that it had established a contract program. Under that program, annual caseloads for the contract attorneys are limited to 200 felony cases or felony motions to revoke probation.²⁰

Table 2a: Qualifications for Van Zandt County Adult Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
Misdemeanor	6 criminal	1, unless waiver approved	n/a
State Jail/ 3 rd Degree Felony	6 criminal	3	n/a
2 nd Degree Felony	6 criminal	4	n/a
1 st Degree Felony	6 criminal	5	County Court plan: 2 criminal jury trials as 1 st or 2 nd chair tried to a verdict; at least 1 of which must be a felony ²¹ District Court plan: 2 criminal felony jury trials as 1 st or 2 nd chair tried to a verdict
Capital Felony	n/a	n/a	1 st or 2 nd chair approved by the Administrative Region's Selection Committee
Appeals	6 criminal	n/a	Board certified in criminal law; or personally authored and filed at least 3 briefs or post-conviction writs of habeas corpus; or submit writing sample for approval; or worked as appellate court briefing clerk for at least 1 year.

²⁰ TIDC's caseload guidelines recommend a maximum of 174 state jail felonies, 144 third degree felonies, 105 second degree felonies, 77 first degree felonies, or a blended total of 125 felony cases per year. TIDC Caseload Guidelines can be found online at <https://tidc.texas.gov/media/8d85e69fd4fb841/guidelines-for-indigent-defense-caseloads-01222015.pdf>.

²¹ With the exception of capital murder cases, Van Zandt County Court at Law #1 has concurrent criminal case jurisdiction with the district court. TEX. LOC'L GOV'T. CODE § 25.2362.

3.b. Juvenile Cases

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

Table 2b: Qualifications for Van Zandt County Juvenile Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
CINS or Delinquent Conduct (commitment to TJJD not an option)	6 juvenile	n/a	Observed or participated in at least 1 stipulated adjudication, disposition, and detention hearing
Delinquent Conduct (commitment to TJJD authorized)	6 juvenile	2	Observed or participated in at least 1 stipulated adjudication, disposition, and detention hearing
Determinate Sentence or Proceedings for Discretionary Transfer to Criminal Court have been initiated	6 juvenile	3	Participated in at least 1 criminal or juvenile case and tried at least 1 criminal or juvenile case as lead counsel

Assessment

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

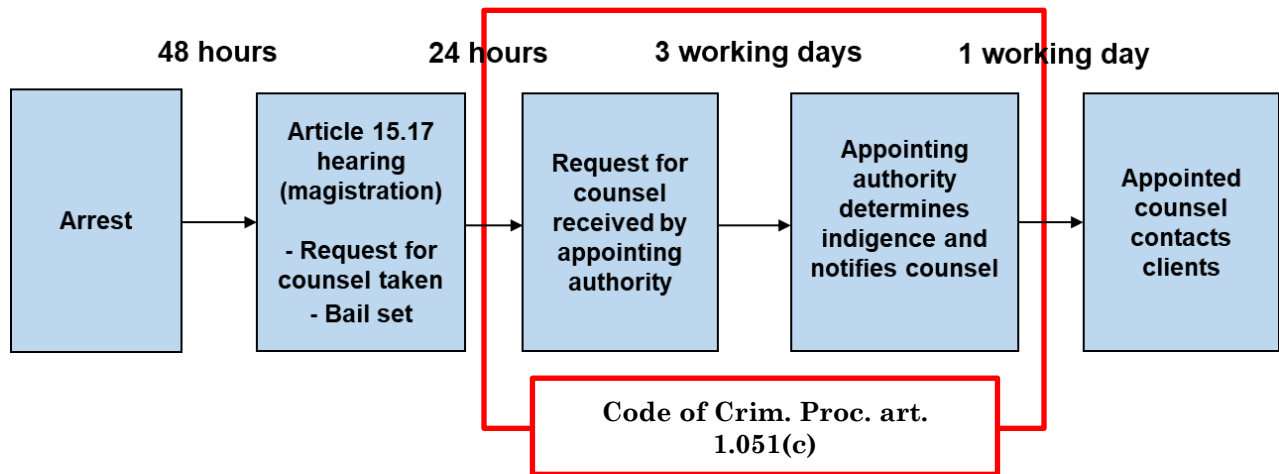
<p><u>FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3</u></p> <p>Establish Minimum Attorney Qualifications</p> <p>Requirement satisfied. No findings.</p>
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REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

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: 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 FY2021 (October 2020 to September 2021).

4.a. Timeliness of Appointment in Felony Cases

TIDC examined 39 sample felony cases filed in FY2021.²² The courts made timely appointments of counsel in 4 of 28 cases in which counsel was requested (**14.3% 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)(1)’s timeline in felony cases. If the courts received all counsel requests and supporting documents within 24 hours, the felony courts would likely be able to meet TIDC’s timeliness threshold.

²² TIDC examined 59 felony case files but excluded cases in which it could not find magistrate warning forms.

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	39		
Total cases with a counsel request		28	
Appointment / denial of indigence occurred in:			
0 workdays		2	
1 – 3 workdays + 24-hour transfer		2	
Total timely appointments / denials		4	14.3%
4 – 6 workdays + 24hour transfer		4	
More than 6 work days + 24 hour transfer		20	
No ruling on request		0	
Total untimely appointments / denials		24	85.7%

4.b. Timeliness of Appointments in Misdemeanor Cases

TIDC examined 72 sample misdemeanor cases filed in FY2021.²³ The courts made timely appointments of counsel in 19 of 47 cases in which counsel was requested (**40.4% 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)(1)’s timeline in misdemeanor cases. If the courts received all counsel requests and supporting documents within 24 hours, the misdemeanor courts would likely be able to meet TIDC’s timeliness threshold.

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	72		
Total cases with a counsel request		47	
Appointment / denial of indigence occurred in:			
0 workdays		4	
1 – 3 workdays + 24-hour transfer		15	
Total timely appointments / denials		19	40.4%
4 – 6 workdays + 24-hour transfer		5	
More than 6 workdays + 24-hour transfer		19	
No ruling on request		4	
Total untimely appointments / denials		28	59.6%

²³ TIDC examined 110 misdemeanor case files but excluded cases in which it could not find magistrate warning forms.

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).

TIDC's case file examination contained four samples in which the court did not rule on requests for counsel. In one of these sample cases, a misdemeanor defendant requested counsel at the Article 15.17 hearing 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)). Van Zandt 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).

4.d. 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.²⁴ 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.²⁵

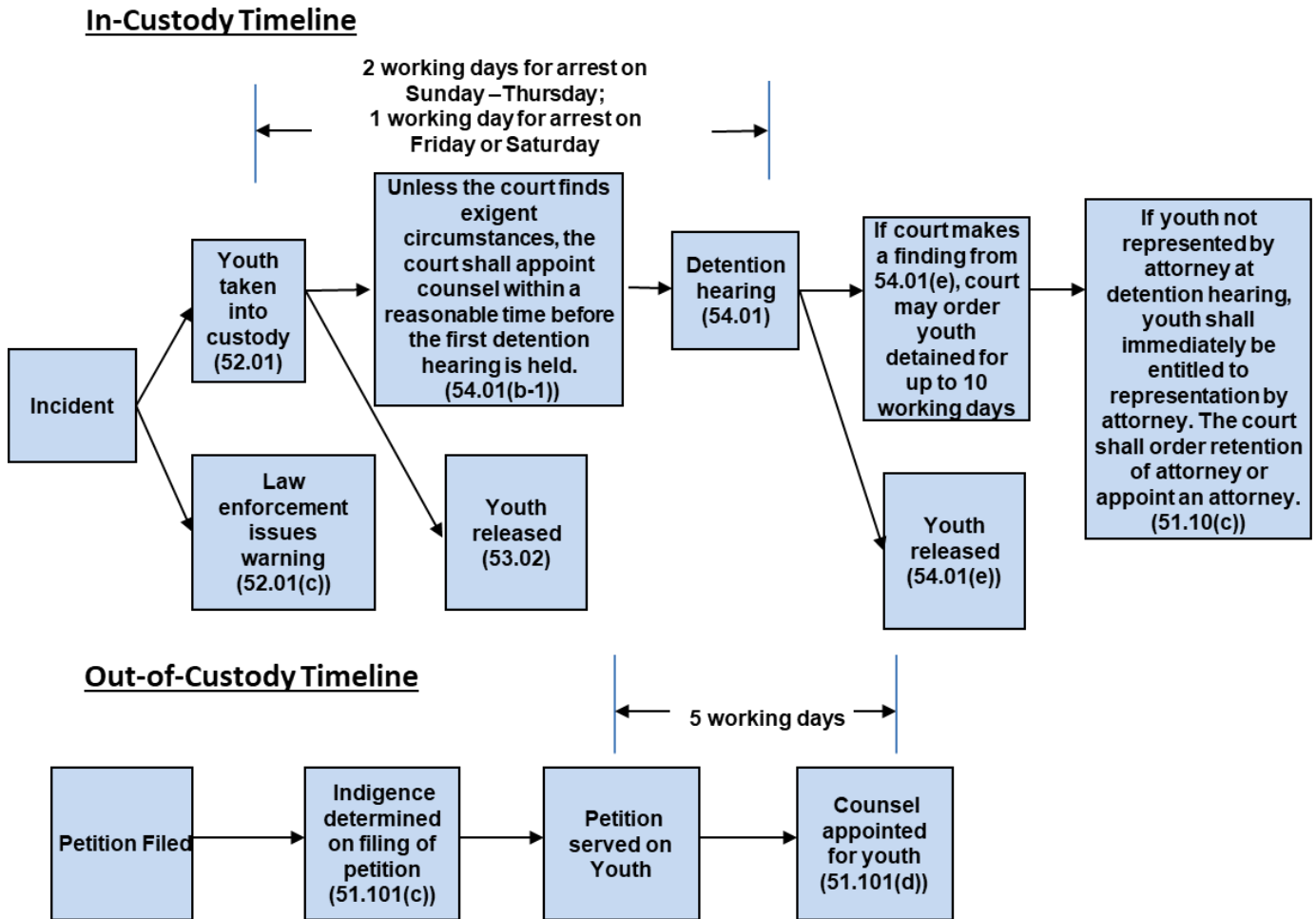
²⁴ TEX. FAM. CODE § 51.10(f).

²⁵ 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.

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



Juvenile Detention Hearings

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC staff examined 14 cases filed in FY2021 (October 2020 – September 2021). 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.²⁶ Of the 14 sample cases, 8 involved detention hearings. Counsel was present for the initial detention hearing in all 8 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

²⁶ 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.

of counsel for the youth. Of 14 sample cases, 6 involved service of the petition on the youth. Counsel was timely appointed for all 6 of these cases (**100% 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	14		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		8	
Cases with attorney present at initial hearing		8	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	6		
Counsel appointed within 5 working days of service		6	
Indigence denied or counsel retained within 5 working days of service ²⁷		0	
Total cases with timely presence of counsel		6	100%
Cases where counsel not present in a timely fashion		0	0%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 3 (FELONY CASES): Van Zandt 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 three working days. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline.

FINDING 4 (MISDEMEANOR CASES): Van Zandt 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 three working days. The County must implement practices that satisfy Article 1.051(c)(1)’s timeline.

FINDING 5 (MISDEMEANOR CASES): The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant’s waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant’s waiver of the right to retain counsel.

²⁷ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

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.²⁸ 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 FY2021 cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists (see Table 6). The distributions for felony, misdemeanor, and juvenile cases fell within TIDC’s presumed threshold.

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

Level	Attorneys on List ²⁹	Top 10% Attorneys ³⁰	Respective Share of Cases ³¹ [Column A]	Actual Share of Cases [Column B]	Top 10% Received ‘x’ Times Their Respective Share [Col. B] / [Col. A]
Felony	23	2	8.7%	21.9%	2.52
Misdemeanor	24	2	8.3%	23.4%	2.82
Juvenile	6	1	16.7%	46.9%	2.81

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

Requirement satisfied. No findings.

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

²⁹ TIDC considered an attorney to be on the appointment list if the attorney was on any court lists for the offense level.

³⁰ 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.

³¹ Respective Share of Cases is equal to the number of Top 10% Attorneys divided by the number of Attorneys on List for Entire Year.

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

Data reported by the Van Zandt 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.

Conclusion

TIDC thanks Van Zandt County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance finding within two years.³² TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

Summary of Findings and Recommendations

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

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.

FINDING 1: At the Article 15.17 hearing, a magistrate must ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel. The County must provide a method to ensure reasonable assistance in completing affidavits of indigence is provided at the time of the Article 15.17 hearing.

FINDING 2: Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a method to ensure requests are sent to the appointing authority within 24 hours of the request

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

FINDING 3 (FELONY CASES): Van Zandt 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 three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 4 (MISDEMEANOR CASES): Van Zandt 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 three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 5 (MISDEMEANOR CASES): The County does not have processes in place to ensure all misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel. As required by Article 1.051(f-2), the court must rule upon a request for counsel prior to a defendant's waiver of the right to retain counsel.

³² 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.³³
 - 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.³⁴
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³⁵
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³⁶
- 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.³⁷
- 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 250,000.³⁸
- 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.³⁹

³³ TEX. CODE CRIM. PROC. ART. 14.06(a).

³⁴ TEX. CODE CRIM. PROC. ART. 17.033.

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

³⁶ *Id.* This box is not checked because magistrates do not ensure the arrested person has reasonable assistance in completing the necessary forms for requesting counsel.

³⁷ TEX. CODE CRIM. PROC. ART. 15.17(e).

³⁸ *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).

³⁹ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because consistent methods are not in place to always transmit requests to courts within 24 hours of the request being made.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.⁴⁰
- ☒ State the financial standard(s) to determine whether a defendant is indigent.⁴¹
- ☒ List factors the court will consider when determining whether a defendant is indigent.⁴²

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.⁴³
 - 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.⁴⁴
 - 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 30.⁴⁵

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.⁴⁶
- ☒ 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.⁴⁷

⁴⁰ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

⁴¹ TEX. CODE CRIM. PROC. ART. 26.04(l).

⁴² TEX. CODE CRIM. PROC. ART. 26.04(m).

⁴³ TEX. CODE CRIM. PROC. ART. 26.04(d).

⁴⁴ 1 TEX. ADMIN. CODE § 174.1–.4.

⁴⁵ TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

⁴⁶ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

⁴⁷ TEX. FAM. CODE § 51.101(d).

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 250,000.⁴⁸
- 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.⁴⁹
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁵⁰

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.
- 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.⁵¹

NOT APPLICABLE: The County does not have a public defender.

⁴⁸ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because several detained defendants did not receive timely appointments.

⁴⁹ 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.

⁵⁰ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because one sample misdemeanor defendant requested counsel but entered an uncounseled plea before the request was ruled upon.

⁵¹ TEX. CODE CRIM. PROC. ART. 26.044.

☒ Alternative appointment method:⁵²

- 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.

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:⁵³
- 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.

⁵² TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

⁵³ TEX. GOV'T CODE § 79.036(a-1).