



Third Follow-up Review of Gaines County's Indigent Defense Systems

August 2024



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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 In this third follow-up review, TIDC interviewed local officials and staff, observed felony court proceedings, and examined FY2023 case file records. TIDC is pleased to report that Gaines County has now successfully addressed all pending findings.

TIDC thanks Gaines County officials and staff for their assistance in conducting this review and commends their efforts in effectively resolving these long-standing compliance issues.

Background

TIDC has conducted three prior monitoring reviews of Gaines County and issued reports with findings in 2013, 2017, and 2020. In 2013, TIDC selected Gaines County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. This review evaluated compliance with the six core requirements of the Fair Defense Act.² TIDC issued a joint fiscal and policy report in June 2013 and made nine findings.³ The County response detailed remedial actions for each finding that included reminding local officials of their responsibilities under Article 15.17; promulgating a new waiver of counsel form; requiring judicial approval of itemized fee vouchers submitted by contract counsel; and redesignating the District Court as the entity responsible for monitoring contract counsel’s caseloads.

A follow-up report was issued in May 2017 that found four findings from the prior report were satisfied, but five issues initially identified remained pending.⁴ The County’s response set forth several curative measures to address the remaining findings. These measures prioritized processes and procedures addressing provision of assistance to individuals requesting counsel; timeliness of counsel request transmission and determinations of indigence; and situations in which a defendant’s request for counsel did not receive a ruling prior to the court accepting his waiver of counsel.

In June 2020, TIDC issued a second follow-up report identifying five findings from the initial report issued in 2013 that remained pending.⁵ Gaines County’s response clarified that magistrate judges misunderstood the scope of Article 15.17(a) and detailed continuing updates to their transmittal and documentation processes. Regarding the Article 15.17 assistance requirement, the County explained that judges conducting Article 15.17 Hearings had not fully understood the requirement that, at the time of hearing, the magistrate must either personally provide assistance in completing the necessary counsel

¹ TEX. GOV’T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28.

³ See Table 1.

⁴ *Id.*

⁵ *Id.*

request forms or ensure that aid is readily available. All magistrates expressed their willingness to help defendants complete the necessary forms and they were working together to update their Article 15.17 and request for counsel forms to capture relevant data such as the date assistance was offered and the name of the person providing assistance.⁶ Procedures for transmitting counsel requests were streamlined and tracking functionality was improved allowing counsel requests to be monitored as they moved through the system to ensure timely indigence determinations and that all counsel requests received a ruling before a waiver of counsel is accepted.

Table 1: History of Monitoring Findings for Gaines County

FDA Core Requirement	Description and Initial Year of Finding	Status After 2024 Review	
		Satisfied	Pending
1. Prompt Magistration	Gaines County must ensure that each defendant requesting counsel is aided in completing the necessary forms at the time of the Article 15.17 hearing. (2013)	✓ (2024)	
1. Prompt Magistration	All counsel requests shall be transmitted to the appointing authority within 24 hours of receipt. (2013)	✓ (2024)	
4. Prompt Appointment	The 106th District Court must implement procedures to ensure that indigence determinations in felony cases occur within statutory deadlines. (2013)	✓ (2024)	
4. Prompt Appointment	Gaines County must ensure timely determinations of indigence in misdemeanor cases. (2013)	✓ (2024)	
4. Prompt Appointment	Procedures ensuring the court rules upon requests for counsel prior to granting any waiver of counsel must be implemented. The procedure must clearly state that the court may not allow the defendant to speak with the prosecutor until the court advises the defendant of the right to counsel and explains the process for requesting counsel under Article 1.051(f-1)(1). (2013)	✓ (2024)	
4. Prompt Appointment	<i>Pro se</i> pleas must include written waivers of counsel as required by Article 1.051(f). (2013)	✓ (2017)	
4. Prompt Appointment	The county court must follow its indigent defense plan procedures and Article 1.051(f-2) when explaining the procedures for requesting counsel to unrepresented defendants. (2013)	✓ (2017)	
5. Attorney Selection Process	The parties to the contract for felony defense services must follow the terms of the contract according to the contract's caseload limitations. Excessive caseloads could compromise the quality of representation provided for indigent clients. (2013)	✓ (2017)	
5. Attorney Selection Process	The County must ensure that procedures are in place to meet the requirements of 1 TAC § 174.25 and Article 26.05(c) so that itemized fee vouchers are submitted and approved by the appointing authority prior to payment by the financial officer. (2013)	✓ (2017)	

⁶ See Appendix

Current Review

TIDC's policy monitoring rules require follow-up reviews of counties when previous reports included noncompliance findings.⁷ TIDC staff members Joel Lieurance and Natasha George visited Gaines County on March 21 and March 22, 2024. TIDC staff examined felony and misdemeanor case files, interviewed local officials, and observed a felony docket. This report addresses five unresolved issues related to two core Fair Defense Act (FDA) requirements:⁸

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

For this review, TIDC examined data from FY2023 (October 2022 – September 2023), including felony and misdemeanor case files, observed a felony docket, and spoke with County officials and staff regarding procedures for providing assistance to defendants requesting appointed counsel; receiving counsel requests from defendants, whether in custody or appearing unrepresented; transmitting requests for counsel to the appointing judges; timely determining indigence; and accepting waivers of counsel.

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.⁹ At this hearing, the magistrate must inform the person of the right to counsel, the procedures for requesting counsel, and ensure that each person requesting counsel is provided reasonable assistance in completing the necessary forms.¹⁰ Magistrates must then transmit requests for counsel to the appointing authority within 24 hours.¹¹ 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.¹²

⁷ 1 TEX. ADMIN. CODE § 174.28(d)(3).

⁸ 1 TEX. ADMIN. CODE § 174.28.

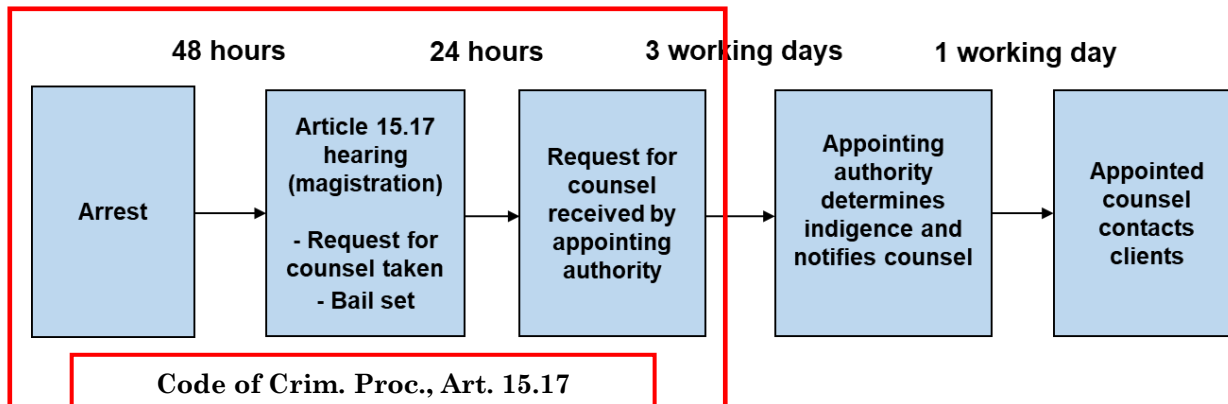
⁹ TEX. CODE CRIM. PROC. ART. 15.17(a).

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

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

¹² 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. Article 15.17 Hearing Timelines in Adult Criminal Cases



Gaines County’s Article 15.17 Procedures

After arrest in Gaines County, defendants are booked in at the jail and go before a magistrate for the Article 15.17 hearing. The magistrates conducting these hearings include two justices of the peace and the county judge. Hearings are held in person at the jail. Each magistrate determines whether there is probable cause to detain the individual, sets bail, and asks whether the defendant would like to request counsel.

TIDC reviewed case files and interviewed judges and staff to assess the effectiveness of procedures for taking counsel requests and transmitting them to the appointing authority. If a defendant requests counsel, magistrates mark the request on the warning form and personally assist the defendant with completing the affidavit. Each defendant requesting counsel must immediately complete the affidavit of indigence. Upon completion, it is scanned and emailed to the district and county clerk’s offices. The Justices of the Peace, clerks, and magistration checklist included in each file confirmed that magistrates personally assisted individuals with completing requests for counsel and transmission of these requests occurred promptly.¹³ TIDC finds that Gaines County has successfully addressed the findings pertaining to reasonable assistance and timely transmission of counsel requests.

Findings and Recommendations for Requirement 1

Conduct prompt and accurate magistration proceedings.

2020 Finding 1 and Recommendation: Gaines County must ensure that each defendant requesting counsel is aided in completing the necessary forms at the time of the Article 15.17 hearing. ***Successfully addressed.***

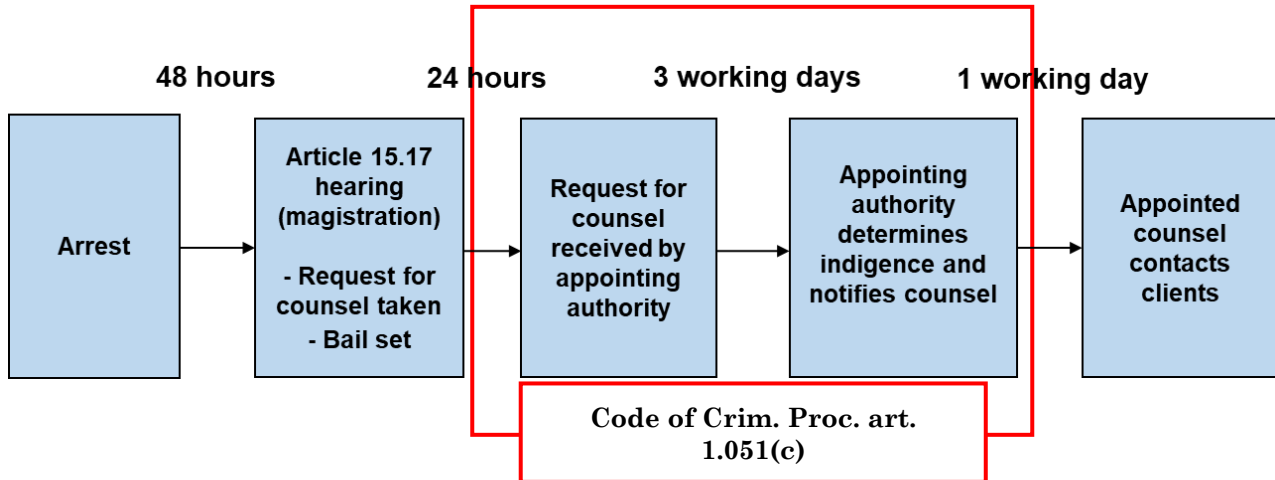
2020 Finding 2 and Recommendation: All counsel requests shall be transmitted to the appointing authority within 24 hours of the request. ***Successfully addressed.***

¹³ Although TIDC’s case sample revealed a few instances in which the process did not function as intended, two officials assumed office in January 2023 and these procedural failures occurred early in FY2023. See Appendix.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request.

Figure 1b: Appointment of Counsel Timeline in Adult Criminal Cases



The first opportunity for most defendants to request counsel occurs at the Article 15.17 hearing when a defendant appears before a magistrate and is informed of the charges against him or her. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the defendant has the first opportunity to request counsel at the initial appearance in the trial court.

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request until appointment of counsel or denial of indigence. Under TIDC’s monitoring rules, a county is presumed to promptly appoint counsel if at least 90% of indigence determinations in the monitor’s sample are timely.¹⁴

Timeliness of Appointments in Felony Cases

TIDC examined 50 felony cases filed in FY2023 (October 2022 – September 2023) to determine the timeliness of felony appointments. From this sample, TIDC found 39 cases with counsel requests. Counsel was appointed in a timely manner in 95% of those cases. This percentage meets TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. This finding is considered satisfied.

¹⁴ 1 TEX. ADMIN. CODE § 174.28.

Table 2: Times from Request to Appointment in Felony Cases

	Number from Sample	Percent of Sample
Total records examined	50	
Requests for counsel	39	
Request for counsel ruled upon in 'x' workdays		
0 workdays	31	
1 to 3 workdays + 24 hours allowed to transmit a request	6	
Timely Rulings on Requests	37	95%
Between 4 and 7 workdays	2	
More than 7 workdays	0	
No ruling on request	0	
Untimely / No Rulings on Requests	2	5%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 79 misdemeanor cases filed in FY2023 (October 2022 – September 2023) to determine the timeliness of misdemeanor appointments. From this sample, TIDC found 40 cases with counsel requests. Counsel was appointed in a timely manner in 90% of those cases. This percentage meets TIDC's 90% threshold for presuming a jurisdiction's practices ensure timely appointment of counsel. This finding is considered satisfied.

Table 3: Times from Request to Appointment in Misdemeanor Cases

	Number from Sample	Percent of Sample
Total records examined	79	
Requests for counsel	40	
Request for counsel ruled upon in 'x' workdays		
0 workdays	16	
1 to 3 workdays + 24 hours allowed to transmit a request	20	
Timely Rulings on Requests	36	90%
Between 4 and 7 workdays	0	
More than 7 workdays	0	
No ruling on request	4	
Untimely / No Rulings on Requests	4	10%

Waivers of Counsel in Misdemeanor Cases

Article 1.051 of the Code of Criminal Procedure addresses waivers of counsel, allowing 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).¹⁵

TIDC finds that Gaines County has implemented a system to effectively track and rule on all misdemeanor requests, but this system was not fully functional at the beginning of FY2023. Based on the documentation provided, TIDC finds that prior findings regarding misdemeanor waivers of counsel have been addressed. *See: Appendix.*

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

2020 Finding 3 and Recommendations (felonies): The 106th District Court must implement procedures to ensure that determinations of indigence in felony cases occur within statutory deadlines. *Successfully addressed.*

2020 Finding 4 and Recommendations (misdemeanors): Gaines County must implement procedures to ensure timely determinations of indigence in misdemeanor cases. *Successfully addressed.*

2020 Finding 5 and Recommendations: Procedures ensuring the court rules upon requests for counsel prior to granting any waiver of counsel must be implemented. The procedure must clearly state that the court may not allow the defendant to communicate with the prosecutor until the court advises the defendant of the right to counsel and explains the process for requesting counsel in accordance with Article 1.051(f-1)(1). *Successfully addressed.*

Conclusion

TIDC finds that Gaines County has successfully addressed the findings made in the 2020 policy report. Gaines County does not need to respond to this report. TIDC thanks Gaines County officials and staff for their assistance in completing this review and commends the entire County team for their diligent reform efforts to comply with the Fair Defense Act.

¹⁵ The waiver language of Article 1.051(g) states:

“I have been advised this _____ day of _____, 2____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially 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)”

Appendix: Gaines County Appointment of Counsel Checklist

Gaines County can now track each step of the counsel request process. TIDC believes this is a model procedure to ensure all requests are ruled upon. See below for how a sample counsel request was tracked.

