



Follow-up Policy Monitoring Review of Tarrant County's Indigent Defense System

May 2025



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Honorable Missy Medary	Corpus Christi, Presiding Judge, 5th Administrative Judicial Region of Texas
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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 through policy reviews.¹ In this follow-up review, TIDC observed first appearance docket proceedings, spoke with staff from the Tarrant County Indigent Defense Coordinator's Office, watched interviews with the staff and defendants, and spoke with local officials. TIDC has found that the County has remedied the previous report finding that the County's indigency determination processes did not comply with Article 26.04(m).

TIDC thanks Tarrant County officials and staff for their assistance in completing this review. TIDC staff remains ready to provide any additional technical assistance for public defense issues in Tarrant County.

Background

In June 2020, TIDC issued a policy monitoring review of Tarrant County's counsel appointment procedures. The report assessed Tarrant County's compliance with six core requirements of the Fair Defense Act and made one finding, regarding the courts' use or consideration of improper sources of income to determine indigence for adult (misdemeanor) criminal defendants.

Tarrant County responded to the finding by narrowing the income considerations of an adult criminal defendant to their own income, and if applicable, to the spousal income that may be available to the defendant.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

Current Review

TIDC’s policy monitoring rules require follow-up reviews of counties where the report included noncompliance findings.² TIDC staff Kenitra Brown, Ashley De La Garza, and Sarah Gammell conducted the follow-up review, with site visits on July 25 and 26, 2024, to observe initial appearance dockets, review indigent defense appointment processes, interview local officials, and watch indigence determination interviews. This review focuses on a single policy monitoring core requirement, the determination of indigence.

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status after the 2025 Review	
		Satisfied	Pending
2. Determination of Indigence	Indigence determinations must comply with Article 26.04(m) and <i>Abdnor v. State</i> . Indigence determinations may not consider the income of persons who are not legally bound to pay for the defendant’s legal expenses.	✓ (2025)	

Program Assessment

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.

During TIDC’s 2020 review of Tarrant County’s indigence determination practices and procedures, staff noted that all defendants requesting appointed counsel were interviewed by a financial screener from the Office of Attorney Appointments, who used the MIT Calculator for indigency eligibility, which were

² 1 TEX. ADMIN. CODE § 174.28(d)(3).

then reviewed by a judge if the person did not qualify for counsel. At a later visit during the review, TIDC staff observed and confirmed that misdemeanor courts had begun to have a judge examine the indigence determinations. The judge requested and considered the financial resources of non-spousal household members and incorrectly stated the standard for indigency.

Tarrant County's Current Determination of Indigency Procedures

In response to TIDC's initial report, Tarrant County adjusted its indigent defense plan to narrow the indigency determination factors to the defendant's income and any spousal income, if applicable. The indigency determination standard is now the same for both misdemeanor and felony defendants.³

For adult criminal cases in Tarrant County, a person is indigent if he or she has a household income at or below 125% of the latest poverty guidelines as established by the United States Department of Health and Human Services, and whose liquid assets do not exceed \$15,000.

A defendant whose household income exceeds 125% of the latest poverty guideline may still qualify for a court-appointed attorney if the court or its designee determines special circumstances exist. In determining whether special circumstances exist, the court or its designee may consider unusual, excessive, or extraordinary medical expenses, the age or physical infirmity of household members, or other expenses. The court or its designee may also consider the complexity of the case, the estimated cost of presenting a legal defense, the fees charged by lawyers in the community for providing defense services in similar cases, whether the defendant has retained counsel in related legal matters (e.g., administrative license revocation, forfeiture, etc.), any efforts the defendant has made to retain an attorney, and any other factor impacting the ability of the defendant to retain private counsel.

Tarrant County has centralized its appointment procedure to the Office of Attorney Appointments. The Office is responsible for interviewing all defendants who request an appointed attorney. Defendants who are booked in to Tarrant County Jail are first interviewed in the jail, and the financial information they provide is entered into a standard affidavit available on the TechShare platform. Defendants who bond out before they are interviewed, or are not booked in to the county jail, are asked at their first appearance if they plan to hire an attorney or if they want to request the appointment of an attorney. Defendants who indicate they will retain an attorney are given instructions about their assigned courtroom and upcoming court dates.

³ The Tarrant County Indigent Defense County Court Plan is available here: <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=130>.

The Tarrant County Indigent Defense District Court Plan is available here: <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=117>.

Defendants who request an attorney are interviewed by a financial screener who enters information about their financial resources into an affidavit on TechShare. The TechShare platform uses a calculator to automatically assess whether defendants are indigent and eligible for an appointed attorney. The screeners also use this interview to add, update, or edit any previously provided contact information and information on their affidavit of indigency, and to provide notes about other expenses or circumstances that may affect a defendant's ability to retain an attorney. If a defendant does not automatically qualify for an attorney, the affidavit and notes are submitted to a courtroom magistrate, who may either affirm the denial or review the provided notes and re-interview the defendant to determine whether an attorney should be appointed in the interest of justice. Defendants who do not qualify for an appointed attorney, or who indicated they would hire an attorney and could not afford one, must report their (change of) circumstances to the court with jurisdiction over their case before they may be reassessed by the Office of Court Appointments. All courts are directed to send defendants back to the Office of Attorney Appointments to fill out or amend their affidavits to determine if they qualify or if they should be appointed an attorney in the interest of justice. Defendants may also access the Affidavit of Indigency online, and those requests are usually reviewed within 24 hours of receipt on business days, or within 48 hours after a weekend.⁴

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 2

Determination of Indigence

2020 FINDING AND RECOMMENDATION 2: Indigence determinations must comply with Article 26.04(m) and *Abdnor v. State*. Indigence determinations may not consider the income of persons who are not legally bound to pay for the defendant's legal expenses. ***Successfully Addressed.***

Conclusion

TIDC thanks Tarrant County officials and staff for their assistance in completing this review. Tarrant County has successfully addressed the previous finding. The County does not need to respond to this report. TIDC commends Tarrant County officials for their commitment to improving local indigent defense practices and stands ready to provide any additional assistance to further those practices in the future.

⁴ Tarrant County's Affidavit of Indigence can be found online here: <https://www.tarrantcountytexas.gov/en/criminal-courts/office-of-attorney-appointments/affidavit-of-indigence.html>.