



Follow-up Review of Kendall County's Indigent Defense Systems

February 2024



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

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Mr. Jay Blass Cohen Houston, Attorney, Blass Law PLLC

Staff:

Scott Ehlers Executive Director
Wesley Shackelford Deputy Director
Christian Bowne Grant Specialist
Megan Bradburry Executive Assistant
Edwin Colfax Grant Program Manager
Natalie Corvington Senior Policy Analyst
William R. Cox Director of Public Defense Improvement
Ashley De La Garza Policy Analyst
Natasha George Senior Policy Analyst
Linda Gonzalez Senior Policy Analyst
Crystal Leff-Pinon Director of Family Protection Representation
Joel Lieurance Senior Policy Monitor
Kristin Meeks Senior Policy Analyst
Eric Schneider Grant Specialist
Debra Stewart Fiscal Analyst
Doriana Torres Grant Specialist
Sharon Whitfield Budget & Accounting Analyst

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 interviewed local officials and staff, observed felony, misdemeanor, and juvenile dockets, and examined FY2022 case file records. TIDC found that six previous report findings dealing with methods for conducting Article 15.17 hearings, maintaining proof of CLE compliance, and timely appointment of counsel have been addressed. One previous finding regarding the timely appointment of counsel for youth who are not in custody was not successfully addressed.

TIDC thanks Kendall County officials and staff for their assistance in completing this review. TIDC staff stand ready to provide technical and financial assistance to remedy these issues. TIDC will conduct a second follow-up review within two years.²

Background

TIDC conducted an initial monitoring review in 2018. The report made seven findings:

1. The Spanish language magistrate warning form did not contain a space to mark whether a defendant requested counsel.
2. Magistrates did not ensure assistance with affidavits of indigence and did not ensure counsel requests were sent to the trial courts within 24 hours.
3. The County did not maintain documentation showing whether attorneys on the appointment list met their required criminal and juvenile CLE hours.
4. Counsel appointments in felony cases were not timely.
5. Counsel appointments in misdemeanor cases were not timely.
6. Counsel appointments for youth at detention hearings was not timely.
7. Counsel appointments for youth out of custody were not timely.

Kendall County responded by adopting a new Spanish language magistrate warning form. The 451st District Judge worked to ensure magistrates received training on Article 15.17 procedures, so that the Court would promptly receive and rule on all counsel requests. To ensure proper documentation of attorney qualifications, the 451st District Judge stated that attorneys must annually submit an application verifying they meet the appointment list qualifications.

Additionally, Kendall County hired an indigent defense coordinator with assistance of a TIDC improvement grant. The coordinator acts to ensure all counsel requests are promptly ruled upon and maintains documentation showing attorneys annually meet the qualifications for appointment lists.

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

Table 1: History of Monitoring Findings for Kendall County

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status after 2024 Review	
		Satisfied	Pending
1. Prompt Magistration	The Spanish language magistrate warning form did not include a space to mark whether a defendant requested counsel. (2018)	✓ (2024)	
1. Prompt Magistration	Defendants who requested counsel at the Article 15.17 hearing did not receive assistance in completing affidavits of indigence. Those affidavits were not transmitted to the courts within 24 hours. (2018)	✓ (2024)	
3. Minimum Attorney Qualifications	The County did not track whether attorneys on the appointment list met their required criminal / juvenile CLE requirements.	✓ (2024)	
4. Prompt Appointment (felony cases)	The timeliness of felony counsel appointments did not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2018)	✓ (2024)	
4. Prompt Appointment (misdemeanor cases)	The timeliness of misdemeanor counsel appointments did not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2018)	✓ (2024)	
4. Prompt Appointment (juvenile cases)	The timeliness of juvenile counsel appointments for detained youth did not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2018)	✓ (2024)	
4. Prompt Appointment (juvenile cases)	The timeliness of juvenile counsel appointments when a petition was served did not meet TIDC's administrative threshold (90% of sample cases receive timely rulings). (2018)		✓

Current Review

TIDC's policy monitoring rules require follow-up reviews where the report included noncompliance findings.³ Staff members Ashley De La Garza and Joel Lieurance conducted the follow-up review of Kendall County with site visits between June 13 and 16, and on November 2 and 8, 2023. TIDC observed felony, misdemeanor, and juvenile dockets as well as Article 15.17 hearings. TIDC examined felony, misdemeanor, and juvenile case files and met with local officials and staff. This review encompasses the policy monitoring core requirements listed below:⁴

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Program Assessment

Requirement 1: Conduct Prompt and Accurate Article 15.17 Proceedings.

After arrest in Kendall County, defendants go before a magistrate for the Article 15.17 hearing. The magistrates conducting these hearings include four justices of the peace and a municipal judge. The hearings are conducted at the jail, where a magistrate determines whether there is probable cause to detain the individual, sets bail, and asks defendants whether they would like to request counsel. If a defendant requests counsel, the request is marked on the magistrate warning form.

Prior to the hearing, the indigent defense coordinator asks defendants if they would like to request counsel and completes affidavits of indigence for those seeking appointed counsel. If a defendant initially does not request counsel but asks for counsel later, jail staff notify the indigent defense coordinator, and she interviews the defendant. The indigent defense coordinator works from Monday through Friday. Defendants who request counsel during the weekend are given affidavits of indigence and are told to contact the indigent defense coordinator.

TIDC's 2018 review found that the Spanish language magistrate warning form did not have a space to mark whether a defendant requested counsel as required by

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

⁴ A full monitor review will cover all six core requirements. This review covers the core requirements for which finds were made in 2018, and does not cover:

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

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

REQUIREMENT 6: STATUTORY DATA REPORTING.

Article 15.17(e). Kendall County has since modified the Spanish language form, and it now includes a space to mark whether the defendant requested counsel.

TIDC's 2018 review also found that assistance with affidavits of indigence was not available for defendants requesting counsel. As a result, counsel requests were not always transmitted to the trial court in a timely manner. When TIDC conducted its initial 2018 review, Kendall County did not yet have an indigent defense coordinator. In this current review, all sample requests for counsel were ruled upon, and as mentioned in our discussion of Requirement 4, below, over 90% were appointed in a timely fashion. TIDC finds that the indigent defense coordinator provides reasonable assistance with affidavits of indigence and timely transmission of counsel requests.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings.

2018 Finding 1 and Recommendation: Article 15.17(e) requires the magistrate to mark whether an arrestee requests the appointment of counsel. The Spanish language magistrate warning form does not contain a space to mark whether the arrestee requested counsel. Kendall County must ensure that all magistrate forms allow for counsel requests to be recorded. *Successfully Addressed.*

2018 Finding 2 and Recommendation: Article 15.17(a) requires reasonable assistance in completing financial paperwork be provided to persons requesting counsel at the time of the 15.17 hearing. Kendall County must put in place a system in which all persons requesting counsel receive contemporaneous assistance in completing financial affidavits. Once financial paperwork is completed, it must be transmitted to the appointing authority within 24 hours of the request being made. *Successfully Addressed.*

Requirement 3: Establish minimum attorney qualifications.

Kendall County uses both assigned counsel and the Hill Country Regional Public Defender Office to provide representation for indigent defendants. The Kendall County Adult Indigent Defense Plan creates the following attorney appointment lists for assigned counsel: capital cases; first- and second-degree felony cases; third-degree and state jail felony cases; appeals cases; and misdemeanor cases. The juvenile plan creates three separate lists based on potential dispositions: (1) CINS charges or delinquent conduct, and commitment to TJJD is not an authorized disposition; (2) delinquent conduct, and commitment to TJJD where a determinate sentence is not an authorized disposition; and (3) determinate sentence proceedings or proceedings for discretionary transfer to criminal court have been initiated.

Attorneys on the adult appointment lists must obtain a minimum of six hours of continuing legal education (CLE) training in criminal law, and attorneys on the juvenile appointment list must obtain a minimum of six hours of CLE training in juvenile law.

In 2018, TIDC found that the County did not track whether attorneys met their required criminal and juvenile delinquency CLE hours. In the current review, TIDC found that the County now tracks whether attorneys meet these requirements.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

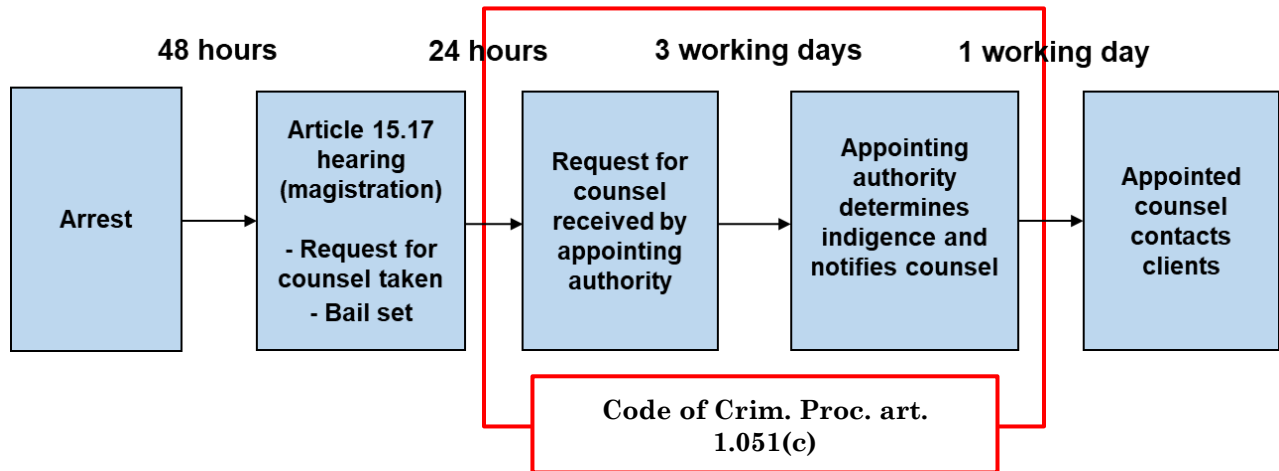
Establish Minimum Attorney Qualifications.

2018 Finding 3 and Recommendation: The local indigent defense plans require attorneys on appointment lists to annually obtain six criminal / juvenile CLE hours. Kendall County must put in place a system to track whether attorneys meet this condition for remaining on the appointment list. *Successfully Addressed.*

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: 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. 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.⁵

⁵ 1 TEX. ADMIN. CODE § 174.28.

Timeliness of Appointments in Felony Cases

TIDC examined 66 felony cases filed in FY2022 (October 2021 – September 2022) to determine the timeliness of felony appointments. From this sample, TIDC found 42 cases with counsel requests. Counsel was appointed in a timely manner in 91% of those cases. This exceeds TIDC’s threshold (90% timely) for presuming a jurisdiction’s procedures ensure timely appointment of counsel. TIDC congratulates Kendall County for significant improvement in the timeliness of felony appointments.

Table 2: Times from Request to Appointment in Felony Cases

	Number from Sample	Percent of Sample
Total records examined	66	
Requests for counsel	42	
Request for counsel ruled upon in ‘x’ workdays		
0 workdays	17	
1 to 3 workdays + 24 hours allowed to transmit a request	21	
Timely Rulings on Requests	38	91%
Between 4 and 7 workdays	2	
More than 7 workdays	2	
No ruling on request	0	
Untimely / No Rulings on Requests	4	9%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 85 misdemeanor cases filed in FY2022 (October 2021 – September 2022) to determine the timeliness of misdemeanor appointments. From this sample, TIDC found 41 cases with requests for counsel. Counsel was appointed in a timely manner in 95% of those cases. This exceeds TIDC’s threshold (90% timely) for presuming a jurisdiction’s procedures ensure timely appointment of counsel. TIDC congratulates Kendall County for significant improvement in the timeliness of misdemeanor appointments.

Table 3: Times to Appointment in Misdemeanor Cases

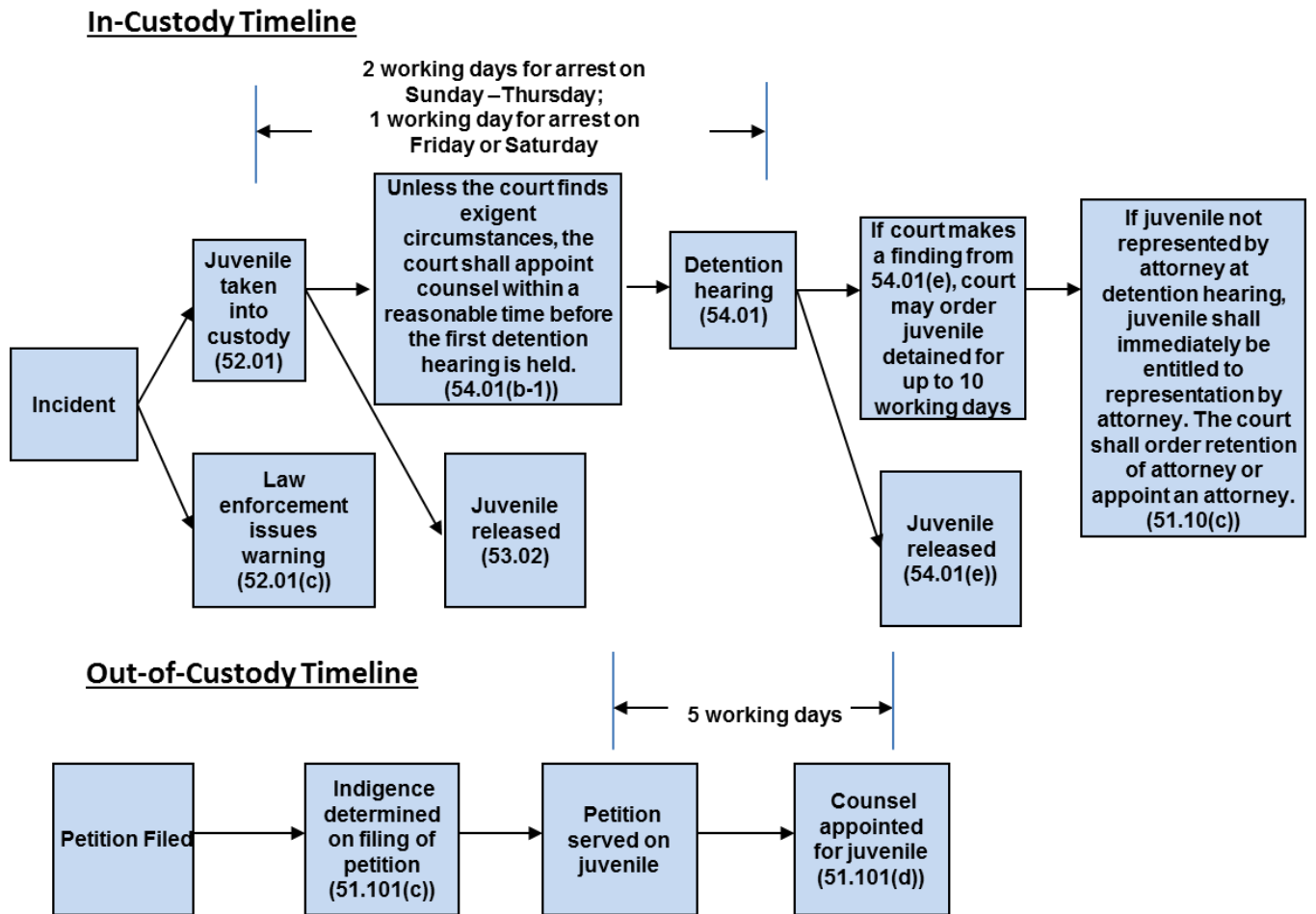
	Number from Sample	Percent of Sample
Total records examined	85	
Requests for counsel	41	
Request for counsel ruled upon in 'x' workdays		
0 workdays	26	
1 to 3 workdays + 24 hours allowed to transmit a request	13	
Timely Rulings on Requests	39	95%
Between 4 and 7 workdays	2	
More than 7 workdays	0	
No ruling on request	0	
Untimely / No Rulings on Requests	2	5%

Timeliness of Appointments in Juvenile Cases

Counsel must be appointed for youth charged with 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. Under Section 54.01(b-1) of the Family Code, 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.

Subsection 51.101(c) of the Family Code directs the court to determine whether a youth's family is indigent upon the filing of the petition, with Subsection 51.101(d), requiring the court to appoint counsel, for those found to be indigent, within five working days of service of the petition on the juvenile. If the court determines that the person responsible for the youth's support is financially able to employ an attorney, Subsection 51.10(d) allows the court to order the retention of counsel. To assess the timeliness of Kendall County's appointment procedures in juvenile cases, TIDC staff examined 16 cases filed in FY2022 (October 2021 – September 2022).

Figure 2: Timeline for Appointment of Counsel in Juvenile Cases



Juvenile Detention Hearings

Section 54.01(b-1) of the Family Code requires counsel be appointed prior to the detention hearing unless appointment is not feasible due to exigent circumstances.⁶ Kendall County does not have its own detention facility, so detention hearings are set with very little notice. Of sixteen sample juvenile cases, two involved detention hearings. In one of these, counsel could not be appointed prior to the hearing due to exigent circumstances but was appointed immediately after. In the other case, counsel was present for the hearing. Counsel was appointed in a **timely fashion in 100% of sample cases**. This exceeds TIDC’s 90% threshold for timeliness.

⁶ 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.

Appointment After Service of the Petition

In cases involving the service of a petition on a juvenile, counsel was present in a **timely fashion for 75% of the sample**. Although higher than our 2018 report, which found 64% timely, this falls below TIDC’s 90% threshold for timeliness, indicating that the County is not in substantial compliance with this requirement. The late appointments may be due to the court not making contact with parents prior to the expiration of the five-working-day requirement set in Section 51.101(d). To address the issue, the County should ensure that financial information is gathered at intake, when the person responsible for the youth must meet with juvenile probation. At the time of the on-site review, Kendall County was planning methods to address this issue.

Table 4: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	16		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings	2		
Counsel timely for initial hearing		2	100%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE JUVENILE SERVED WITH A PETITION			
Case files in which juvenile served with a petition	16		
Counsel present within 5 working days of service		12	
Total cases with timely presence of counsel		12	75%
Total cases with untimely presence of counsel		4	25%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly.

2018 Finding 4 and recommendation (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. The felony case sample fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline in felony cases. *Successfully Addressed.*

2018 Finding 5 and recommendation (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours allowed for transferring requests to the courts) of the request being made. Kendall County does not typically issue formal orders appointing counsel or denying indigence in misdemeanor cases. The County must introduce procedures to document appointments of counsel in misdemeanor cases. *Successfully Addressed.*

2018 Finding 6 and recommendation (juvenile cases): The sample of attorney appointments where a juvenile remained in custody and received a detention hearing fell below TIDC's 90% timeliness threshold. The County must implement practices to ensure counsel is appointed within a reasonable time before the first detention hearing as required by Section 54.01(b-1) of the Family Code. *Successfully Addressed.*

2018 Finding 7 and recommendation (juvenile cases): The timeliness of counsel appointments in cases involving service of a petition fell below TIDC's threshold of 90% timeliness. The County must implement practices that satisfy the time frames set in Sections 51.10 and 51.101 of the Family Code (appointment of counsel or order to employ counsel occurring within five working days of petition service). *Issue Pending.*

Conclusion

TIDC thanks Kendall 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.⁷ TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

⁷ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

Kendall County must respond in writing how it will address the report's finding.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

2024 Finding 1 and recommendation (juvenile cases): The timeliness of counsel appointments in cases involving service of a petition fell below TIDC's threshold of 90% timeliness. The County must implement practices that satisfy the time frames set in Sections 51.10 and 51.101 of the Family Code (appointment of counsel or order to employ counsel occurring within five working days of petition service). *Issue Pending.*