



# **Follow-up Policy Monitoring Review of Comanche County's Indigent Defense Systems**

**June 2022**



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

**Chair:**

Honorable Sharon Keller

Presiding Judge, Court of Criminal Appeals

**Ex Officio Members:**

Honorable Nathan L. Hecht  
Honorable John Whitmire  
Honorable Brandon Creighton  
Honorable Nicole Collier  
Honorable Reggie Smith  
Honorable Sherry Radack  
Honorable Vivian Torres  
Mr. Alex Bunin

Austin, Chief Justice, Supreme Court of Texas  
Houston, State Senator  
Conroe, State Senator  
Fort Worth, State Representative  
Sherman, State Representative  
Houston, Chief Justice, First Court of Appeals  
Rio Medina, Medina Statutory County Judge  
Houston, Chief Public Defender, Harris County  
Public Defender Office

Honorable Valerie Covey  
Honorable Richard Evans  
Honorable Missy Medary

Georgetown, Williamson County Commissioner  
Bandera, Bandera County Judge  
Corpus Christi, Presiding Judge, 5th

Mr. Gonzalo Rios, Jr.

Administrative Judicial Region of Texas  
San Angelo, Attorney, Gonzalo P Rios Jr Law Office

**Staff:**

Geoff Burkhart  
Wesley Shackelford  
Megan Bradburry  
Kathleen Casey-Gamez  
Edwin Colfax  
William Cox  
Scott Ehlers  
Linda Gonzalez  
Olivia Lee  
Crystal Leff-Pinon  
Joel Lieurance  
Kristin Meeks  
Nicholas Sawyer  
Debra Stewart  
Doriana Torres  
Sharon Whitfield

Executive Director  
Deputy Director  
Executive Assistant  
Senior Policy Analyst  
Grant Program Manager  
Senior Policy Analyst  
Director of Public Defense Improvement  
Senior Policy Analyst  
Policy Analyst  
Senior Policy Analyst  
Senior Policy Monitor  
Policy Analyst  
Policy Analyst  
Fiscal Monitor  
Grant Specialist  
Budget & Accounting Analyst

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

## **Executive Summary**

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act through policy reviews.<sup>1</sup> In this follow-up review, TIDC observed court, interviewed officials, and reviewed FY2021 data from Comanche County. TIDC found that three of the previous report's findings remained pending:

- a. Lack of assistance with filling out requests for counsel and their untimely transmission to the courts.
- b. Untimely misdemeanor appointments.
- c. No processes in place to ensure misdemeanor requests for counsel are ruled upon prior to a defendant's waiver of counsel.

TIDC thanks Comanche 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 regarding its finding within two years.<sup>2</sup>

## **Background**

TIDC issued an initial policy report of Comanche County's indigent defense practices in September 2017. The report made recommendations concerning the local procedures for requesting counsel at Article 15.17 hearings and the timeliness of appointments of counsel in juvenile, misdemeanor, and felony cases. Other Comanche County's procedures complied with the core requirements of the Fair Defense Act.

## **Current Review**

TIDC's policy monitoring rules require follow-up reviews where the report included noncompliance findings.<sup>3</sup> Staff members Joel Lieurance and Olivia Lee conducted a follow-up review of Comanche County, with site visits on December 7 and 8, 2021 and on April 6, 2022. TIDC examined whether Comanche County successfully addressed the findings and recommendations from the September 2017 report. TIDC examined misdemeanor and felony case files to check for timeliness in appointments and met with the local justice of the peace who conducts 15.17 hearings. On April 6, 2022, TIDC observed a misdemeanor arraignment docket to see what procedures were in place for requesting counsel.

---

<sup>1</sup> TEX. GOV'T CODE § 79.037(a)–(b).

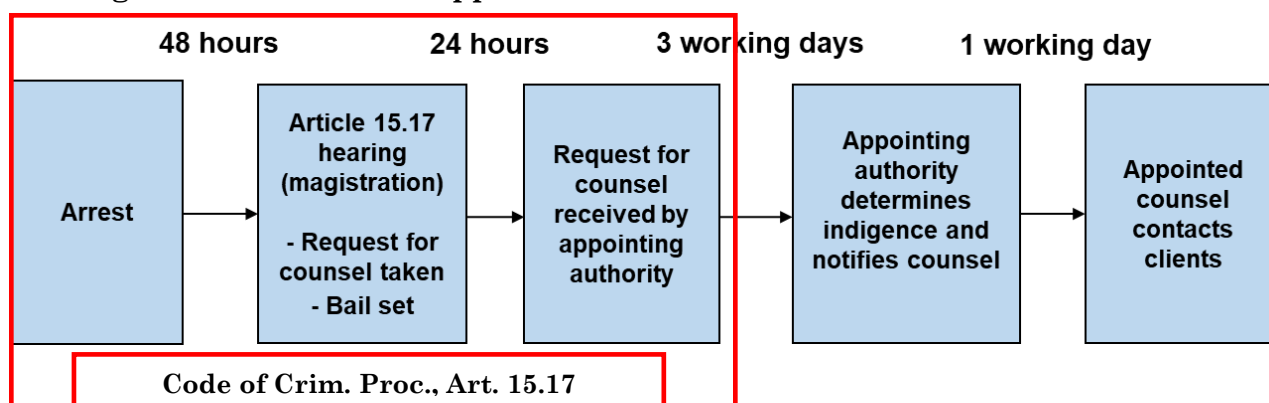
<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

<sup>3</sup> 1 TEX. ADMIN. CODE § 174.28(d)(3).

## 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.<sup>4</sup> 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.<sup>5</sup> Magistrates must transmit requests for counsel to the appointing authority within 24 hours.<sup>6</sup> 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.<sup>7</sup>

**Figure 1a: Timeline for Appointment of Counsel in Adult Criminal Cases**



### *Texas Judicial Council Monthly Court Activity Reports and the Ability of Arrestees to Request Counsel*

Under Articles 15.17 (a) and (e) of the Code of Criminal Procedure, the magistrate must ask the arrestee whether he or she would like to request counsel and make a record of the request. Justices of the peace and municipal court judges are required to report the number of Article 15.17 hearings conducted and the number of requests for counsel from these hearings to the Office of Court Administration monthly. This data indicates that in FY2021, about 56% of misdemeanor arrestees and about 55% of felony arrestees request counsel at Article 15.17 hearings.

### *Assistance with Counsel Requests and Their Transmission to the Courts*

If an arrestee requests counsel, Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing the paperwork necessary to request

<sup>4</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>5</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>6</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>7</sup> 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>.

counsel. The request must then be transmitted to the appointing authority within 24 hours. Article 15.17(a) does not require the magistrate to assist with financial forms, but puts responsibility on the magistrate to ensure the assistance is provided.

TIDC's review of case files revealed that several requests for counsel made at the Article 15.17 hearing either were not ruled upon or were ruled upon more than seven working days after the request was made. This was especially true for misdemeanor requests. In some sample misdemeanor cases, the court listed when it received the affidavit. In six of these cases in which the court listed the date received, the date was more than 24 hours after the request was made. The felony court attempts to compensate for the untimely transfers of requests by contacting inmates. The felony coordinator receives daily jail lists and monitors the list to be sure every inmate has an attorney.

From TIDC's observations, an informal process is in place for jail staff to assist with affidavits of indigence. However, there are no formal procedures allowing for one to check whether the affidavit was completed at the time of the Article 15.17 hearing or whether the affidavit was transmitted to the courts within 24 hours of the request being made. 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 could 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 and when.

**FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

**Conduct prompt and accurate magistration proceedings.**

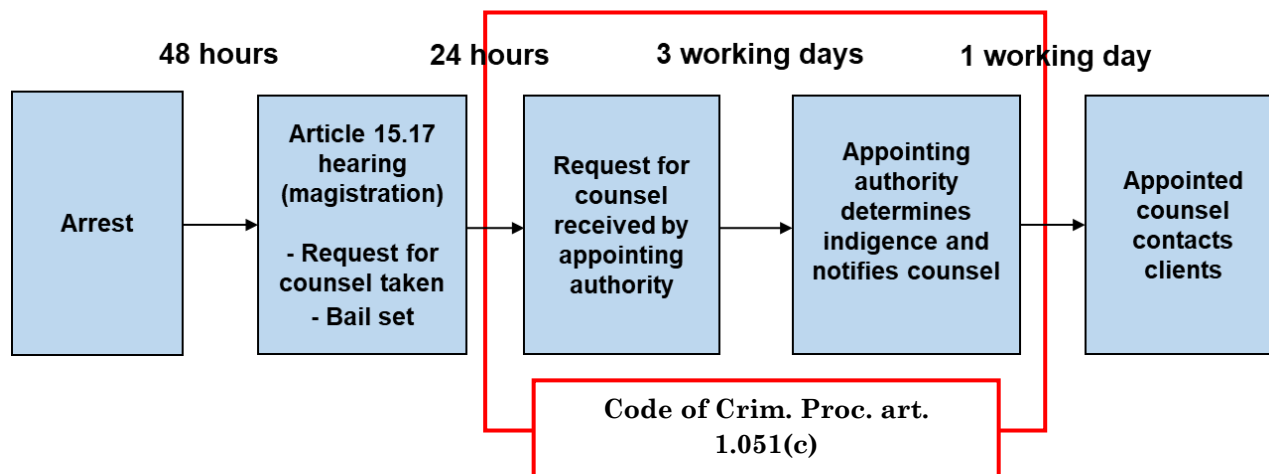
**2017 FINDING and RECOMMENDATION 1:** Article 15.17(a) requires that magistrates ensure reasonable assistance in completing forms necessary to obtain appointed. These forms must then be transmitted to the appointing authority within 24 hours. Comanche County magistrates must ensure arrestees receive this assistance and financial forms are promptly transmitted to the courts.

***Issue Pending.***

## 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: 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 comply with the prompt appointment of counsel requirement if at least 90% of indigence determinations in the monitor's sample are timely.<sup>8</sup>

### ***Timeliness of Appointments in Felony Cases***

TIDC examined 23 felony cases filed between April and September 2021 to determine the timeliness of felony appointments. From this sample, TIDC found 20 requests for counsel. Counsel was timely appointed in 90% of cases with a request for counsel. This meets TIDC's threshold for presuming a jurisdiction's procedures ensure timely appointment of counsel.

<sup>8</sup> 1 TEX. ADMIN. CODE § 174.28.

**Table 1: Times from Request to Appointment in Felony Cases**

	Number from Sample	Percent of Sample
Total records examined	23	
Requests for counsel	20	
Request for counsel ruled upon in 'x' workdays		
0 workdays	8	
1 to 3 workdays + 24 hours allowed to transmit a request	10	
<b>Timely Rulings on Requests</b>	<b>18</b>	<b>90%</b>
7 workdays	2	
No ruling on request	0	
<b>Untimely / No Rulings on Requests</b>	<b>2</b>	<b>10%</b>

***Timeliness of Appointments in Misdemeanor Cases***

To assess the timeliness of Comanche County's current appointment procedures in misdemeanor cases, TIDC examined 75 misdemeanor cases filed between April and September 2021. From this sample, the monitor found 53 requests for counsel. Counsel was timely appointed in approximately 42% of cases with a request for counsel. This falls below TIDC's threshold for presuming a jurisdiction's procedures ensure timely appointment of counsel. Twenty-one requests received a ruling more than seven working days after the request and one request was not ruled on. This is an indication that the court may not be receiving all requests in a timely fashion.

**Table 2: Times to Appointment in Misdemeanor Cases**

	Number from Sample	Percent of Sample
Total records examined	75	
Requests for counsel <sup>16</sup>	53	
Request for counsel ruled upon in 'x' workdays		
0 workdays	4	
1 to 3 workdays + 24 hours allowed to transmit a request	18	
<b>Timely Rulings on Requests</b>	<b>22</b>	<b>42%</b>
Between 4 and 7 workdays	8	
More than 7 workdays	22	
No ruling on request	1	
<b>Untimely / No Rulings on Requests</b>	<b>31</b>	<b>58%</b>

### ***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, he or she 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 a sample in which a defendant requested counsel at the Article 15.17 hearing, but the court did not receive the request until after the defendant entered an uncounseled plea without the request having been 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)). Comanche 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).

### ***Timeliness of Appointments in Juvenile Cases***

When a juvenile is brought to a detention hearing, the court must appoint counsel within a reasonable time before the first detention hearing, unless the court finds the appointment of counsel is not feasible due to exigent circumstances.<sup>9</sup>

To assess the timeliness of Comanche County's appointment procedures in juvenile cases, TIDC examined four juvenile cases filed between September of 2020 and December of 2021 that had detention hearings. All the defendants had counsel at the time of the detention hearing. In speaking with the judge, TIDC found that there is always a qualified attorney on call in case of juvenile detention hearings.

---

<sup>9</sup> TEX. FAM. CODE § 54.01(b-1).



## FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

### **Appoint Counsel Promptly.**

**2017 FINDING and RECOMMENDATION 2 (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. TIDC's sample of attorney appointments in felony cases fell below the Commission'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.*

**2017 FINDING and RECOMMENDATION 3 (misdemeanor cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. TIDC's sample of attorney appointments in misdemeanor cases fell below the Commission'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 appointment timeline in misdemeanor cases. *Issue Pending.*

**2017 FINDING and RECOMMENDATION 4 (misdemeanor cases):** The County does not have processes in place to ensure 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 requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor. *Issue Pending.*

**2017 FINDING and RECOMMENDATION 5 (juvenile cases):** The County does not have processes in place to ensure appointment of counsel for all juvenile detention hearings. As required by Section 54.01(b-1) of the Family Code, the court must appoint counsel prior to a detention hearing or must find the appointment of counsel is not feasible due to exigent circumstances. If the appointment is not feasible due to exigent circumstance, Section 51.10(c) of the Family Code still applies (requiring an immediate appointment if there is a decision to detain the child). *Successfully Addressed.*

## **Conclusion**

TIDC thanks Comanche 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.<sup>10</sup> TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

---

<sup>10</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Findings and Recommendations from the June 2022 Review**

The County must provide a written response to each of the report's findings within 60 days after the report is received by the County. TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

### **Core Requirement 1. Conduct prompt and accurate Article 15.17 proceedings.**

**2022 FINDING and RECOMMENDATION 1:** Article 15.17(a) requires that magistrates ensure reasonable assistance in completing forms necessary to obtain appointed. These forms must then be transmitted to the appointing authority within 24 hours. Comanche County magistrates must ensure arrestees receive this assistance and financial forms are promptly transmitted to the courts.

### **Core Requirement 4. Appoint counsel promptly.**

**2022 FINDING and RECOMMENDATION 2 (misdemeanor cases):** Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working day (plus 24 hours allowed for transferring requests to the courts) of the request being made. TIDC's sample of attorney appointments in misdemeanor cases fell below the Commission'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 appointment timeline in misdemeanor cases.

**2022 FINDING and RECOMMENDATION 3 (misdemeanor cases):** The County does not have processes in place to ensure 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 requests for counsel prior to procuring a waiver of counsel for the purpose of speaking with the prosecutor.