



# **Policy Monitoring Review of Lubbock County's Indigent Defense Systems**

**January 2025**



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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.<sup>1</sup> TIDC observed court, interviewed officials, and reviewed FY2022 data from Lubbock County. TIDC made three findings of noncompliance.

- a. Reasonable assistance in completing financial forms necessary for requesting counsel.
- b. Untimely rulings on requests for counsel in felony cases.
- c. Untimely rulings on requests for counsel in misdemeanor cases.

TIDC thanks Lubbock 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 findings within two years.<sup>2</sup>

## Background

TIDC selected Lubbock County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. This review covers the first five FDA core requirements listed below. Core Requirement 6 is covered in a separate fiscal report.

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 members William R. “Bill” Cox, Natasha George, and Joel Lieurance made an on-site visit to the County between September 11 and August 13, 2023, to conduct the review. TIDC examined FY2022 data, including felony, misdemeanor, and juvenile case files; local indigent defense plans; appointment lists; and records of attorney continuing legal education (CLE) hours. TIDC interviewed judges, Lubbock County staff, and local criminal defense attorneys. TIDC observed Article 15.17 hearings, as well as felony, misdemeanor, and juvenile dockets. TIDC also conducted a survey of criminal defense attorneys as part of this report’s Quality Supplement.

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

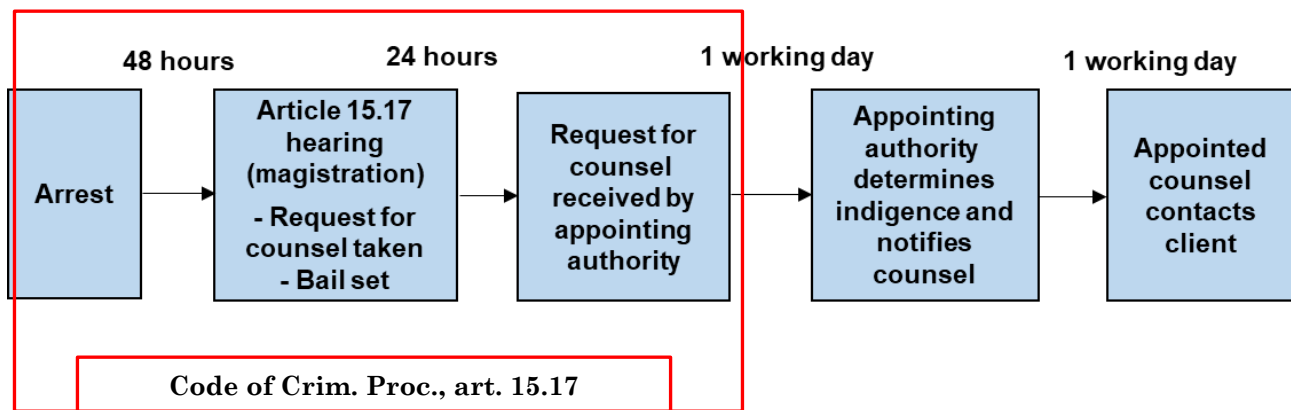
<sup>2</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## 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.<sup>3</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>4</sup> Magistrates must transmit requests for counsel to the appointing authority within 24 hours.<sup>5</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>6</sup>

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



#### *Local Practices for Conducting Magistrate Warnings*

In Lubbock County, arrested defendants are promptly brought before associate judges who conduct Article 15.17 hearings.<sup>7</sup> Judges make probable cause determinations, set bail, explain the right to counsel, and take requests for appointed counsel.

<sup>3</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<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. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tfdc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

<sup>7</sup> About 5% of TIDC's sample misdemeanor defendants waived the Article 15.17 hearing and posted bail prior to their scheduled hearing.

### ***Timeliness of Warnings***

An arrested person must be brought before a magistrate within 48 hours of arrest.<sup>8</sup> TIDC presumes a county is in substantial compliance with the prompt magistration requirement if at least 98% of Article 15.17 hearings are conducted within 48 hours.<sup>9</sup> To determine the timeliness of Article 15.17 warnings, TIDC staff examined 339 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 for all sample cases, indicating Lubbock 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:	339	
0 days	194	
1 day	136	
2 days	9	
<b>Timely Hearings</b>	<b>339</b>	<b>100%</b>
More than 2 days	0	0%

### ***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.<sup>10</sup> Based on TIDC's observations, judges were mindful of their responsibility to ensure that defendants understood both their rights and the purpose of the hearing. From TIDC's case file review, just over 50% of sample felony defendants and sample misdemeanor defendants requested counsel at the Article 15.17 hearing.

### ***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.<sup>11</sup> Lubbock County has a staff person designated as an indigent defense coordinator who conducts financial interviews with defendants requesting counsel. Some defendants requesting counsel make bail before meeting with the indigent defense coordinator. These requests are not immediately ruled upon. Instead,

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<sup>8</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>9</sup> 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.

<sup>10</sup> TEX. CODE CRIM. PROC. ART. 15.17(a), (e).

<sup>11</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

defendants who promptly make bail can request counsel again at their initial trial court appearance.

### ***Transmitting Forms to the Appointing Authority***

Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the court, or its designee, authorized to appoint counsel.<sup>12</sup> In Lubbock County, the indigent defense coordinator conducts financial interviews with defendants requesting counsel to appoint counsel or deny indigence. The indigence determination is made when he meets with the defendant. If a defendant qualifies, the Lubbock Private Defenders Office (LPDO) is notified to assign counsel for the defendant.

#### **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1**

##### **Conduct prompt and accurate magistration proceedings**

**FINDING 1 AND RECOMMENDATION:** At the Article 15.17 hearing, a magistrate must ensure arrested persons have reasonable assistance in completing the necessary forms for requesting counsel. This assistance is provided for many defendants, but not those who promptly make bail. 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.

### **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.

The local presumptions for determining indigence are set in each county's indigent defense plans.

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<sup>12</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

### ***Indigence Standard in Adult Criminal Cases***

For adult criminal cases in Lubbock County, the adult indigent defense plan lists multiple tests to qualify as indigent.<sup>13</sup> A defendant qualifies as indigent if the defendant meets any of the following three conditions:

- defendant is eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;
- net household income less than 125% of the Federal Poverty Guidelines; or
- defendant resides in a correctional institution or public mental health facility.

A defendant may still qualify as indigent if unable to retain counsel without substantial hardship. The ability to post bail may not be considered in determining indigence.

### ***Indigence Standard in Juvenile Cases***

For juvenile delinquency cases in Lubbock County, the same standard of indigence applies, except that it applies to the person responsible for the youth.<sup>14</sup>

### ***Local Practices***

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds that Lubbock 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.<sup>15</sup> Assigned counsel attorneys must be approved by a majority of the judges presiding over criminal and juvenile matters.<sup>16</sup> Managed assigned counsel attorneys must be approved by the program.<sup>17</sup>

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<sup>13</sup> The adult indigent defense plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=36>.

<sup>14</sup> The juvenile indigent defense plan is available at <http://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=45>.

<sup>15</sup> 1 TEX. ADMIN. CODE §§ 174.1–4. Attorneys may be Board Certified in criminal or juvenile law in lieu of the annual CLE requirement.

<sup>16</sup> TEX. CODE CRIM. PROC. ART. 26.04(d).

<sup>17</sup> TEX. CODE CRIM. PROC. ART. 26.047(f).



## ***Felony and Misdemeanor Cases***

Felony and misdemeanor appointments are managed by the Lubbock Private Defenders Office (LPDO), a managed assigned counsel program. The program was designed to provide a level of oversight and quality control not obtainable under the assigned counsel system. All attorneys admitted as panel members must meet seven requirements, including completion of 12 hours of criminal CLE hours over the last year and current membership in the Lubbock Criminal Defense Lawyers Association.<sup>18</sup> The panel has two misdemeanor levels, three felony levels, and a mental health designation.

**Table 2: Qualifications for LPDO Panels**

<b>List</b>	<b>Requirements</b>
Category 1 Misdemeanors	Base qualifications for all lists
Category 2 Misdemeanors (DWI & assault with family violence)	2 <sup>nd</sup> chair on four trials; Preference given to those who have attended a Trial College
State Jail Felonies	Category 2 Misdemeanor qualifications and 2 <sup>nd</sup> chair on three felony trials
3 <sup>rd</sup> Degree Felonies	State Jail Felony qualifications and 1 <sup>st</sup> chair on one felony trial
2 <sup>nd</sup> and 1 <sup>st</sup> Degree Felonies	Third Degree Felony qualifications and 1 <sup>st</sup> chair in two felony trials of third degree or higher
Mental Health Designation	8 hours of mental health CLE

LPDO attempts to ensure quality representation through: (1) training and mentoring; (2) caseload control; (3) access to investigators; and (4) access to mental health resources. These quality control initiatives are covered in the Quality Supplement to this report.

## ***Juvenile Cases***

Juvenile appointments are managed by the Lubbock County Juvenile Courts, not by LPDO. The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually, and new attorneys must complete a mentorship program before their application will be considered. The program requires new attorneys to work with an experienced attorney on two cases in which a youth has been released from detention and two cases in which a youth is detained. The juvenile lists are divided into three

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<sup>18</sup> The seven requirements are as follows:

- (1) Licensed to practice law in the State of Texas.
- (2) Principal or main office located in Lubbock County.
- (3) Member in good standing with Texas State Bar.
- (4) Member of the Lubbock Criminal Defense Lawyers Association.
- (5) Minimum of 12 hours of mandatory CLE in criminal law within the past calendar year. (You may upload your MCLE State Bar Compliance Report to this form.)
- (6) Compliance with state reporting requirements for criminal indigent practice percentages.
- (7) Familiarity with case management software applications.

levels: (1) conduct indicating a need for supervision (CINS) or delinquent conduct (in which commitment to TJJD not an option at disposition); (2) delinquent conduct (in which commitment to TJJD is a potential disposition); and (3) determinate sentence proceedings have been or discretionary transfer to criminal court has been initiated.

### ***Assessment***

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

## **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3**

### **Establish Minimum Attorney Qualifications**

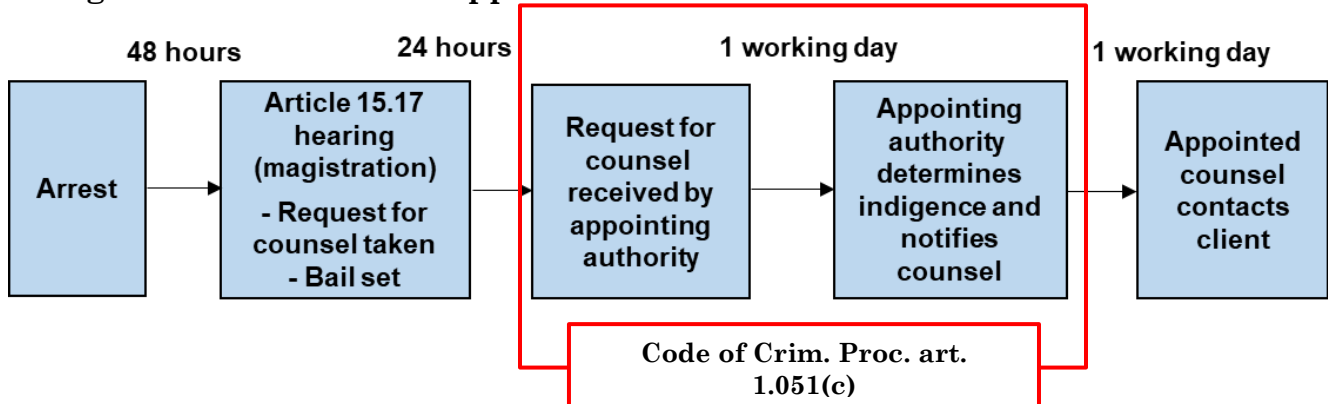
Requirement satisfied. No findings.

## **Requirement 4: Appoint Counsel Promptly**

### ***Adult Cases***

Under Article 1.051(c)(2) of the Code of Criminal Procedure, courts in counties with a population over 250,000 must rule on a request for counsel within one working day of receiving the request.

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



### ***Local Procedures for Determining Indigence and Appointing Counsel***

In Lubbock County, jail staff ask defendants at booking if they want to request appointed counsel. As part of the booking process, the local mental health authority (LMHA) conducts mental health / intellectual disability screenings. This information is available for the magistrate conducting the Article 15.17 hearing. At the Article 15.17 hearing, the magistrate asks defendants a second time whether they want to request appointed counsel. Defendants who remain in jail then go over the affidavit of indigence with the indigent defense coordinator to determine indigence.

If a person, who requests counsel, qualifies as indigent, the indigence determination, mental health / intellectual disability status, veteran status, and citizenship information are sent to LPDO. LPDO appoints counsel most fitting for the defendant. Defendants with mental health issues are assigned a case worker as well as an attorney.

If a defendant makes bail before these events, the first opportunity to request counsel is in the trial court. The trial court explains the procedures for requesting counsel and screens defendants for indigence. LPDO staff are typically present at first appearance dockets, and they can immediately appoint counsel for those found to be indigent.

To assess the timeliness of local appointment procedures, TIDC examined randomly selected case files which were filed in FY2022 (October 2021 to September 2022) and measured the time from counsel request until appointment of counsel or denial of indigence.<sup>19</sup>

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

TIDC examined 136 sample felony cases filed in FY2022. The courts made timely appointments in 80 of 108 cases in which counsel was requested (**74% timely**). Late appointments appeared to occur for two main reasons. First, some defendants made bail before being screened for indigence. Second, a few cases had counsel appointments that occurred narrowly beyond statutory timelines. In these instances, defendants would be found indigent by Lubbock County, but then appointed counsel a day or two later by LPDO. The 74% sample timeliness 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.

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<sup>19</sup> The County found 2% of sample felony defendants and 10% of sample misdemeanor defendants not to be indigent.

**Table 3: Times to Appointment in Felony Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	136		
Total cases with a counsel request		108	
Appointment / denial of indigence occurred in:			
0 workdays		54	
1 workday + 24 hour transfer		26	
<b>Total timely appointments / denials</b>		<b>80</b>	<b>74%</b>
2 – 5 workdays + 24 hour transfer		9	
More than 5 work days + 24 hour transfer <sup>20</sup>		16	
No ruling on request		3	
Total untimely appointments / denials		28	26%

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

TIDC examined 227 sample misdemeanor cases filed in FY2022. The courts made timely appointments in 106 of 151 cases in which counsel was requested (**70% timely**). Late appointments appeared to occur for two main reasons. First, some defendants made bail before being screened for indigence. Second, some cases had counsel appointments that occurred narrowly beyond statutory timelines. In these instances, defendants would be found indigent by Lubbock County, but then appointed counsel a day or two later by LPDO. The 70% sample timeliness 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.

**Table 4: Times to Appointment in Misdemeanor Cases**

	Sample Size	Number from sample	Percent
Number of case files examined	227		
Total cases with a counsel request		151	
Appointment / denial of indigence occurred in:			
0 workdays		66	
1 workday + 24-hour transfer		40	
<b>Total timely appointments / denials</b>		<b>106</b>	<b>70%</b>
2 – 5 workdays + 24-hour transfer		20	
More than 5 workdays + 24-hour transfer <sup>21</sup>		18	
No ruling on request		7	
Total untimely appointments / denials		45	30%

<sup>20</sup> Many of these defendants requested counsel at the Article 15.17 hearing, but they made bail and there was no ruling on the request until after they requested a second time in the trial court.

<sup>21</sup> Many of these defendants requested counsel at the Article 15.17 hearing, but they made bail and there was no ruling on the request until after they requested a second time in the trial court.

### ***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 did not contain any instances in which defendants waived counsel while having a pending counsel request. TIDC commends Lubbock County for its pretrial waiver of counsel procedures.

### ***Juvenile Cases***

Counsel must be appointed for youth alleged to have engaged in delinquent conduct when the child is brought to a detention hearing and when served with a copy of the petition alleging misconduct.<sup>22</sup> 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. When a petition is filed, 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. Subsection 51.101(d) requires the court to appoint counsel for those found to be indigent, within five working days of service of the petition on the youth.<sup>23</sup>

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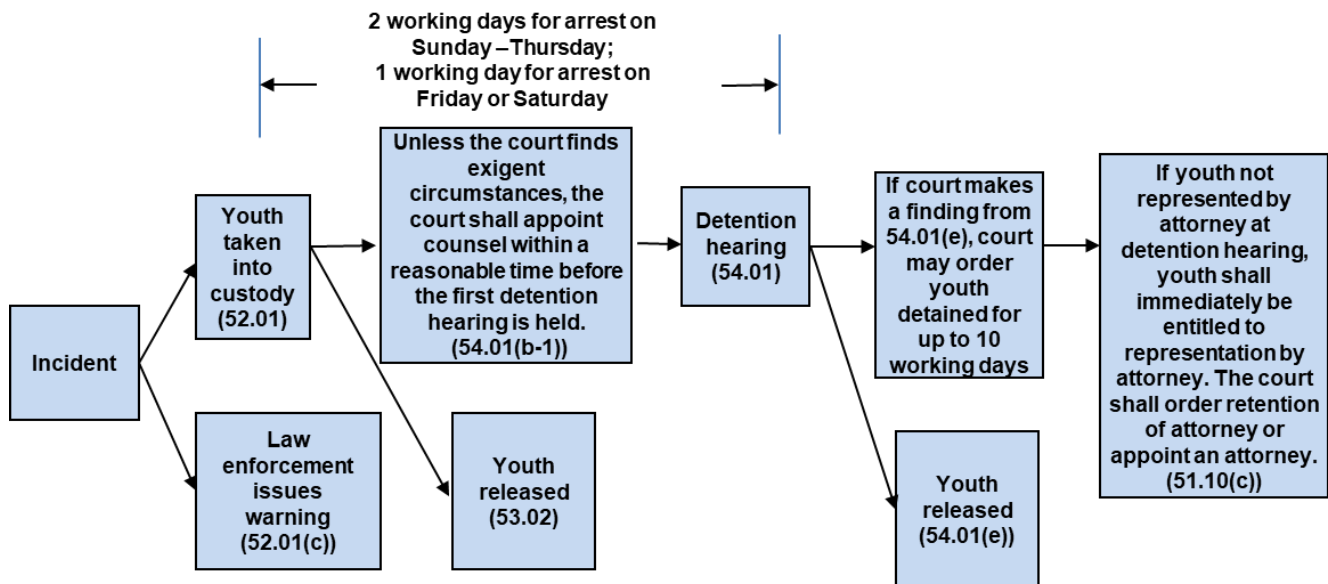
<sup>22</sup> TEX. FAM. CODE § 51.10(f).

<sup>23</sup> 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

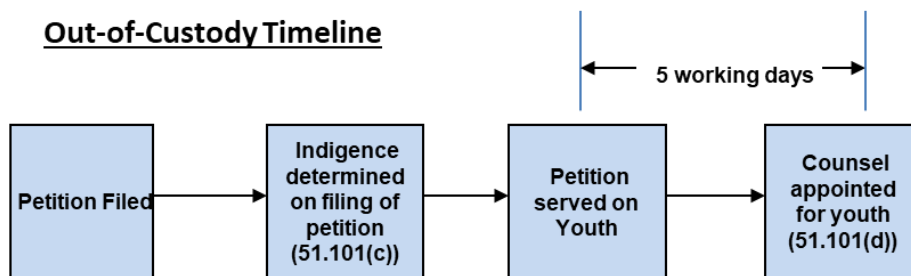
- (1) a hearing to consider transfer to criminal court as required by Section 54.02;
- (2) an adjudication hearing as required by Section 54.03;
- (3) a disposition hearing as required by Section 54.04;
- (4) a hearing prior to commitment to the Texas Juvenile Justice Department as a modified disposition in accordance with Section 54.05(f); or
- (5) hearings required by Chapter 55.

**Figure 2: Timeline for Appointment of Counsel in Juvenile Cases**

**In-Custody Timeline**



**Out-of-Custody Timeline**



***Juvenile Detention Hearings***

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC staff examined 75 randomly selected cases filed in FY2022 (October 2021 – September 2022). 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.<sup>24</sup> Of the 75 sample cases, 50 involved detention hearings. Counsel was present for the initial detention hearing in all 50 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 of counsel for the youth. Of 75 sample cases, 61 involved service of the petition on the

<sup>24</sup> 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.

youth. Counsel was timely appointed for 61 of these cases (**100% timely**), which exceeds TIDC's 90% threshold. TIDC commends Lubbock County for timely appointment of counsel in every sample juvenile case reviewed.

**Table 5: Times to Appointment in Juvenile Cases**

	<b>Sample Size</b>	<b>Number from Sample</b>	<b>Percent</b>
Total juvenile cases examined	75		
<b>TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS</b>			
Case files with detention hearings		50	
<b>Cases with attorney present at initial hearing</b>		<b>50</b>	<b>100%</b>
<b>TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION</b>			
Case files in which youth served with a petition	61		
Counsel appointed within 5 working days of service		61	
Indigence denied or counsel retained within 5 working days of service <sup>25</sup>		0	
<b>Total cases with timely presence of counsel</b>		<b>61</b>	<b>100%</b>
Cases where counsel not present in a timely fashion		0	<b>0%</b>

#### **FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4**

##### **Appoint Counsel Promptly**

**FINDING 2 (FELONY CASES):** Lubbock County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the court or its designee (LPDO) must appoint counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(2)'s timeline.

**FINDING 3 (MISDEMEANOR CASES):** Lubbock County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the court or its designee (LPDO) must appoint counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(2)'s timeline.

<sup>25</sup> 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. For managed assigned counsel programs, TIDC checks that the appointment system works according to the entity's plan of operation. Under Lubbock's managed assigned counsel program, LPDO creates panels of attorneys who are eligible to be appointed to each criminal case type.<sup>26</sup> LPDO appoints counsel in a rotational manner for the top attorney who is eligible to receive the appointment from the relevant list.

Since LPDO uses rotating wheels, TIDC analyzed the attorney selection process in the same manner as an assigned counsel system. Under this system, 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 receives no more than three times their respective share of appointments.<sup>27</sup> 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.

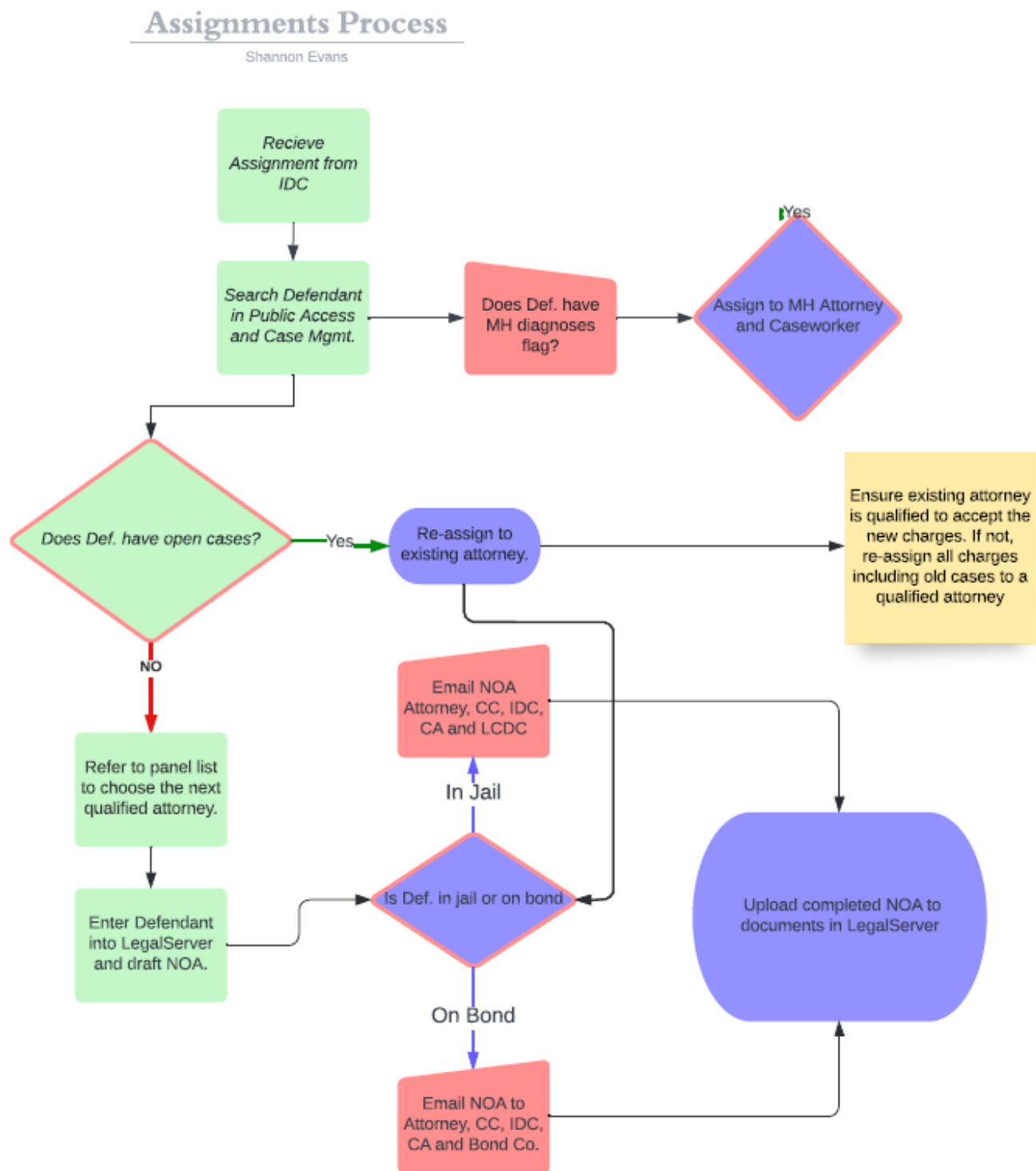
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<sup>26</sup> Lists are adjusted throughout the year as attorneys may temporarily remove themselves from the list.

<sup>27</sup> 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).



**Figure 3: LPDO Attorney Selection Procedure**



### **Assessment**

TIDC analyzed the distribution of attorney appointments by offense level (felony, misdemeanor, juvenile) during FY2022. Based on this analysis, all appointment levels had distributions in which the top ten percent of attorneys received less than three times their respective share of appointments, indicating all levels are in compliance.

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

Level	Attorneys Eligible for Appointment from List	Top 10% Attorneys <sup>28</sup>	Respective Share of Cases <sup>29</sup> [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	40	4	10.0%	21.6%	<b>2.2</b>
Misdemeanor	54	5	9.3%	24.0%	<b>2.6</b>
Juvenile	9	1	11.1%	28.8%	<b>2.6</b>

### FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

#### **Attorney Selection Process**

Requirement satisfied. No findings.

### **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. Financial data reports must include attorney-level information. The fiscal monitor reviewed the accuracy of this information, and this is covered in the fiscal monitoring report.

### FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

#### **Statutory Data Reporting**

This requirement is covered in the fiscal monitoring report.

## **Conclusion**

TIDC thanks Lubbock 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>30</sup> TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

<sup>28</sup> The number "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.

<sup>29</sup> The percent "Respective Share of Cases" is equal to the number of Top 10% Attorneys divided by the number of Attorneys on List for Entire Year.

<sup>30</sup> 1 TEX. ADMIN. CODE § 174.28(c)(2).

## **Summary of Findings and Recommendations**

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

### **REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE MAGISTRATION PROCEEDINGS.**

**FINDING 1 AND RECOMMENDATION:** At the Article 15.17 hearing, a magistrate must ensure arrested persons have reasonable assistance in completing the necessary forms for requesting counsel. This assistance is provided for many defendants, but not those who promptly make bail. 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.

### **REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.**

**FINDING 2 (FELONY CASES):** Lubbock County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the court or its designee (LPDO) must appoint counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(2)'s timeline.

**FINDING 3 (MISDEMEANOR CASES):** Lubbock County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(2), the court or its designee (LPDO) must appoint counsel within one working day. The County must implement practices that satisfy Article 1.051(c)(2)'s timeline.

## 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.<sup>31</sup>
    - 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.<sup>32</sup>
  - ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.<sup>33</sup>
  - ☐ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.<sup>34</sup>
  - ☒ 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.<sup>35</sup>
  - ☐ 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.<sup>36</sup>
- NOT APPLICABLE.**
- ☒ 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.<sup>37</sup>

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<sup>31</sup> TEX. CODE CRIM. PROC. ART. 14.06(a).

<sup>32</sup> TEX. CODE CRIM. PROC. ART. 17.033.

<sup>33</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

<sup>34</sup> *Id.* This box is not checked because some defendants who request counsel do not receive a financial interview.

<sup>35</sup> TEX. CODE CRIM. PROC. ART. 15.17(e).

<sup>36</sup> *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).

<sup>37</sup> TEX. CODE CRIM. PROC. ART. 15.17(a).

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.<sup>38</sup>
- ☒ State the financial standard(s) to determine whether a defendant is indigent.<sup>39</sup>
- ☒ List factors the court will consider when determining whether a defendant is indigent.<sup>40</sup>

**REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS.**

- ☒ Establish objective qualification standards for attorneys to be on an appointment list.<sup>41</sup>
  - 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.<sup>42</sup>
  - 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.<sup>43</sup>

**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.<sup>44</sup>
- ☒ 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.<sup>45</sup>

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<sup>38</sup> TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

<sup>39</sup> TEX. CODE CRIM. PROC. ART. 26.04(l).

<sup>40</sup> TEX. CODE CRIM. PROC. ART. 26.04(m).

<sup>41</sup> TEX. CODE CRIM. PROC. ART. 26.04(d).

<sup>42</sup> 1 TEX. ADMIN. CODE § 174.1–.4.

<sup>43</sup> TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

<sup>44</sup> TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c).

<sup>45</sup> 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.<sup>46</sup>
- ☐ 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.<sup>47</sup>
- ☒ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.<sup>48</sup>

#### **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.<sup>49</sup>
- ☐ 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.<sup>50</sup>

##### **NOT APPLICABLE.**

- ☒ Managed Assigned Counsel: 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.<sup>51</sup>
- ☐ Alternative appointment method:<sup>52</sup>
  - 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.

##### **NOT APPLICABLE.**

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<sup>46</sup> TEX. CODE CRIM. PROC. ART. 1.051(c).

<sup>47</sup> 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 some defendants who promptly make bail do not receive timely counsel appointment.

<sup>48</sup> TEX. CODE CRIM. PROC. ART. 1.051(f-2).

<sup>49</sup> TEX. CODE CRIM. PROC. ART. 26.04(a).

<sup>50</sup> TEX. CODE CRIM. PROC. ART. 26.044.

<sup>51</sup> TEX. CODE CRIM. PROC. ART. 26.047.

<sup>52</sup> TEX. CODE CRIM. PROC. ART. 26.04(g)–(h).

## **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:<sup>53</sup>
  - 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.

**NOT APPLICABLE.**

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<sup>53</sup> TEX. GOV'T CODE § 79.036(a-1).