



Policy Monitoring Review of San Jacinto County's Indigent Defense Systems

March 2026



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Mr. Jim Bethke	San Antonio, Executive Director, Bexar County Managed Assigned Counsel Program
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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 TIDC observed court, interviewed officials, and reviewed FY2024 data from San Jacinto County. TIDC made ten findings of noncompliance.

- a. One magistrate did not record counsel requests in a manner that allowed trial courts to rule on the recorded request.
- b. Magistrates did not ensure assistance with financial affidavits at the time of the Article 15.17 hearing.
- c. Untimely transmission of counsel requests to the appointing court.
- d. The County did not maintain CLE records for attorneys on all appointment lists.
- e. Untimely rulings on requests for counsel in felony cases.
- f. Untimely rulings on requests for counsel in misdemeanor cases.
- g. Defendants sometimes waived the right to counsel while having a pending counsel request.
- h. At arraignment, misdemeanor defendants were encouraged to speak with the prosecutor before being allowed to request counsel.
- i. Counsel was not always present at the initial juvenile detention hearing.
- j. Counsel requests made at the Article 15.17 hearing were not always reported in Judicial Council Monthly Court Activity Reports.

TIDC thanks San Jacinto 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 within two years.²

Background

TIDC selected San Jacinto County for a policy monitoring review through its annual county selection process, which seeks to cycle through counties around the State. This review covers all six FDA core requirements listed below:

- 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

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY
- REQUIREMENT 5: INSTITUTE A FAIR, NEUTRAL, AND NONDISCRIMINATORY ATTORNEY SELECTION PROCESS
- REQUIREMENT 6: REPORT DATA REQUIRED BY STATUTE

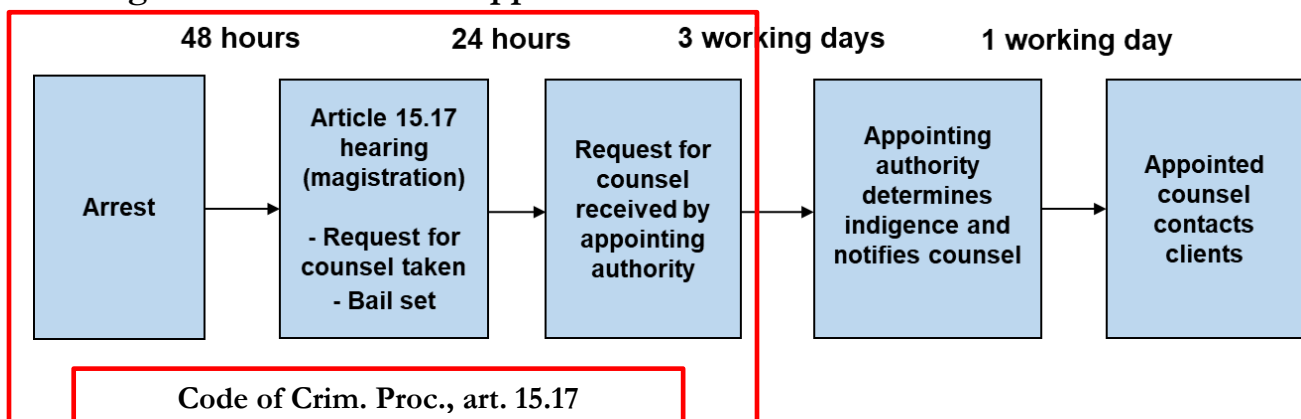
TIDC staff members Kenitra Brown, Ashley De La Garza, and Joel Lieurance made an on-site visit to the County on November 17 and 18, 2025, to conduct the review. TIDC examined the following documents: FY2024 data, including felony, misdemeanor, and juvenile case files; the local indigent defense plans; and appointment lists. TIDC interviewed judges and San Jacinto County staff. TIDC observed Article 15.17 hearings and a misdemeanor docket.

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.³ At this hearing, the magistrate must inform the person of the right to counsel and the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the necessary forms for requesting counsel.⁴ Magistrates must transmit requests for counsel to the appointing authority within 24 hours.⁵ 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.⁶

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



³ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁶ 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>.

Local Practices for Conducting Magistrate Warnings

In San Jacinto County, arrested defendants are promptly brought before a justice of the peace who conducts Article 15.17 hearings. Judges make probable cause determinations, set bail, explain the right to counsel, and take requests for appointed counsel. The judges do not use a countywide magistration form, and judges do not have a standard method to record whether a defendant requests appointed counsel. One judge relies on recordings of the Article 15.17 hearing to document whether a defendant requests counsel, rather than marking it on the magistration form. Other judges mark whether a defendant requests counsel. If a defendant requests counsel, jail staff are available to help with affidavits of indigence. Jail staff forward financial affidavits to the District Clerk's Office, which then forwards the requests to the courts. At the time of our review, jail staff had begun copying court coordinators when they sent financial affidavits to the District Clerk's Office.

Timeliness of Warnings

An arrested person must be brought before a magistrate within 48 hours of arrest.⁷ 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.⁸ To determine the timeliness of Article 15.17 warnings in the County, TIDC staff examined 73 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 in 72 sample cases (99% timely), indicating the 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:	73	
0 days	14	
1 day	49	
2 days	9	
Timely Hearings	72	99%
More than 2 days	1	1%

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

⁷ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁸ 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.

person requests counsel.⁹ Based on sample cases, about 47% of felony defendants and 34% of misdemeanor defendants request counsel at the Article 15.17 hearing.

Sample counsel request rates were significantly higher than was reported to the Office of Court Administration (OCA), as shown in Table 2 below. However, data reported to OCA included two justice courts that reported receiving zero requests for counsel. For one of these courts, there was formerly an issue with reporting counsel requests to OCA. For the other, the judge did not mark whether defendants requested counsel on the magistrate warning form. TIDC discusses this matter in Requirement 6, with a finding about reporting this data variable.

Table 2: Article 15.17 Data Reported to OCA

Magistrate	Misd A&B Warnings	A&B Requests	% Misd Requests	Felony Warnings	Felony Requests	% Felony Requests
JP1	58	29	50%	36	26	72%
JP2	47	29	62%	54	31	57%
JP3	102	0	0%	114	0	0%
JP4	92	0	0%	97	0	0%
Total	299	58	19%	301	57	19%

As required by Article 15.17(e) of the Code of Criminal Procedure, magistrates in San Jacinto County must ask and record whether defendants request counsel. This recording must be done in a manner that can be reported to OCA in monthly activity reports. The counsel request documentation must also be done in a manner that allows other County officials to appoint counsel or deny indigence based on the request.

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.¹⁰ Magistrates in San Jacinto County do not personally assist with financial affidavits or oversee a process to ensure they are promptly completed. Instead, jail staff handle this task and forward completed affidavits of indigence to the District Clerk's Office.

Transmitting Forms to the Appointing Authority

Within 24 hours of a person requesting counsel, the magistrate must transmit the request to the entity authorized to appoint counsel.¹¹ Based on court observations and

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

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

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

case file review, the trial courts receive few counsel requests and associated financial affidavits. Currently, jail staff sends financial affidavits to the District Clerk's Office, which then forwards them to the appropriate court. Under Article 15.17, the magistrate is charged with ensuring that counsel requests and financial affidavits are sent to the appointing court within 24 hours of the request being made. San Jacinto County must adopt procedures to ensure that counsel requests and associated financial forms made at the Article 15.17 hearing are sent to the appointing courts within 24 hours of the request being made.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct Prompt and Accurate Magistration Proceedings

FINDING 1 AND RECOMMENDATION: At the Article 15.17 hearing, one magistrate did not record whether defendants requested counsel in a manner that would allow other County officials to rule on a request. As required by Article 15.17(e) of the Code of Criminal Procedure, magistrates in San Jacinto County must ask and record whether defendants would like to request counsel. This recording must be done in a manner that allows County officials to rule on the request and that can be reported to OCA in monthly activity reports.

FINDING 2 AND RECOMMENDATION: Based on sample data, there are gaps in completing affidavits of indigence. At the Article 15.17 hearing, a magistrate must ensure arrested persons have reasonable assistance in completing the necessary forms for requesting counsel.

FINDING 3 AND RECOMMENDATION: Based on sample data, there are gaps in sending counsel requests and financial affidavits to the trial courts. Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

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.

Indigence Standard in Adult Criminal Cases

For adult criminal cases in San Jacinto County, the felony and misdemeanor indigent defense plans list multiple factors to determine indigence.¹² Under this plan, a defendant qualifies as indigent if the person meets any of three conditions:

- eligible for public benefits (food stamps, Medicaid, TANF, Supplemental Security Income, or public housing);
- net household income less than 100% of the Federal Poverty Guidelines; or
- 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 posting of bail may not be considered in determining indigence.

Indigence Standard in Juvenile Cases

For juvenile delinquency cases in San Jacinto County, the juvenile indigent defense plan lists similar conditions to qualify as indigent, but the assessment concerns the financial capabilities of the person responsible for the youth.¹³ Under this standard, a youth qualifies as indigent if the responsible person meets any of three conditions:

- eligible for public benefits (food stamps, Medicaid, TANF, Supplemental Security Income, or public housing);
- net household income less than 100% of the Federal Poverty Guidelines;
- the responsible person resides in a correctional institution or public mental health facility.

A youth may still qualify as indigent if the responsible person is unable to retain counsel without substantial hardship.

¹² The felony indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=325>. The misdemeanor plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=344>.

¹³ The juvenile indigent defense plan is available at <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=437>.

Local Practices

Based on case file examination, the courts appeared to follow the local standard of indigence. TIDC finds San Jacinto 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.¹⁴ Assigned counsel attorneys must be approved by a majority of judges presiding over criminal and juvenile matters.¹⁵

Felony and Misdemeanor Cases

For both felony and misdemeanor appointment lists, attorneys must obtain at least six criminal CLE hours annually. The courts noted they had difficulties attracting attorneys willing to accept appointments in criminal cases.

Table 3a: Qualifications for San Jacinto County Adult Appointment Lists¹⁶

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
Misdemeanor	6 criminal	n/a	n/a
SJF / 3 rd Degree Felony	6 criminal	1 year	n/a
1 st / 2 nd Degree Felony	6 criminal	2 years	Have experience as 1st or 2nd chair in at least 2 felony case(s) tried to verdict before a jury.
Capital Felony	n/a	n/a	1 st or 2 nd chair approved by the Administrative Region's Selection Committee.
Appeals	6 criminal	n/a	Board certified in criminal law; or personally authored and filed at least 3 briefs or post-conviction writs of habeas corpus; submitted an appellate writing sample approved by a majority of judges; or worked as appellate court briefing clerk for at least 1 year.

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

¹⁵ TEX. CODE CRIM. PROC. ART. 26.04(d).

¹⁶ Polk, San Jacinto, and Trinity District Court Plan, <https://tidc.tamu.edu/IDPlan/ViewPlan.aspx?PlanID=325>

Juvenile Cases

The juvenile courts require all attorneys to obtain at least six juvenile CLE hours annually.

Table 3b: Qualifications for San Jacinto County Juvenile Appointment Lists

List	CLE Hours	# Years Experience	# Jury Trials or # App. Briefs
CINS or Delinquent Conduct (commitment to TJJD not an option)	6 juvenile	1	n/a
Delinquent Conduct (commitment to TJJD authorized)	6 juvenile	1	n/a
Determinate Sentence or Proceedings for Discretionary Transfer to Criminal Court have been initiated	6 juvenile	3	Participated in at least 5 criminal or juvenile cases, of which at least 2 were tried to jury verdict. Tried at least 5 criminal or juvenile cases as lead counsel.

Assessment

TIDC reviewed appointment lists and CLE records. TIDC found that the District Courts have procedures for maintaining appointment lists and tracking CLE records. At the time of our onsite review, the County Court did not appear to track whether attorneys met their annual CLE requirement. However, after our visit, the Court provided proof of the CLE requirement by the attorney who takes most of its appointments. 1 TEX. ADMIN. CODE §§ 174.1–4 requires that as a condition of being eligible for an appointment list, attorneys must obtain at least six criminal or juvenile law CLE hours or be Board Certified in criminal or juvenile law, respectively. The County must keep records to ensure that all attorneys on its appointment lists meet the annual CLE requirement.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 3

Establish Minimum Attorney Qualifications

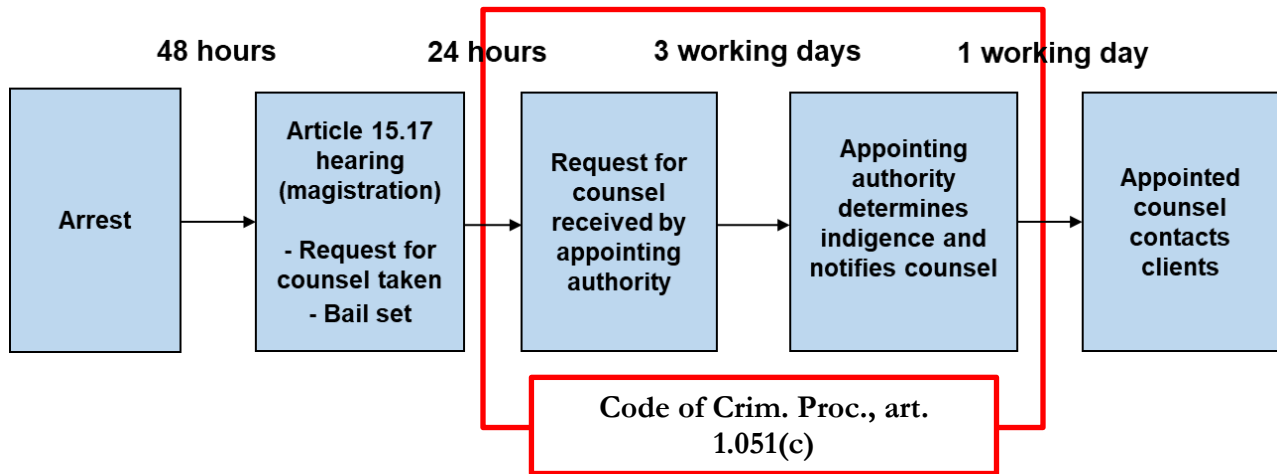
FINDING 4 AND RECOMMENDATION: 1 TEX. ADMIN. CODE §§ 174.1–4 requires that, as a condition of being eligible for an appointment list, attorneys must obtain at least six criminal or juvenile law CLE hours or be Board Certified in criminal or juvenile law. The County must keep records to ensure that all attorneys on its appointment lists meet the annual CLE requirement.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Adult Cases

Under Article 1.051(c)(1) 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. TIDC examined cases filed in FY2024 (October 2023 to September 2024).

Timeliness of Appointment in Felony Cases

TIDC examined 30 sample felony cases filed in FY2024.¹⁷ The courts made timely appointments of counsel in 11 of 23 cases in which counsel was requested (**48% timely**). This 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.

¹⁷ TIDC's misdemeanor sample included 62 felony cases, but we could only match magistrate warning forms with 30 cases. TIDC excluded, from its timeliness analysis, those cases for which we could not match magistrate warning forms.

TIDC’s file examination indicated that when defendants requested counsel at the Article 15.17 hearing (as indicated by a marked request on the magistrate warning form), appointments of counsel were generally not timely. To address timeliness matters, San Jacinto County will need to ensure that the trial courts promptly receive counsel requests and accompanying financial affidavits when defendants request counsel at the Article 15.17 hearing.

Table 4: Times to Appointment in Felony Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	30		
Total cases with a counsel request		23	
Appointment/denial of indigence occurred in:			
0 workdays		8	
1 – 3 workdays + 24-hour transfer		3	
Total timely appointments/denials		11	48%
4 – 7 workdays + 24-hour transfer		0	
More than 7 workdays + 24-hour transfer		10	
No ruling on request		2	
Total untimely appointments/denials		12	52%

Timeliness of Appointments in Misdemeanor Cases

TIDC examined 56 sample misdemeanor cases filed in FY2024.¹⁸ The courts made timely appointments of counsel in 1 of 20 cases in which counsel was requested (**5% timely**). This 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.

TIDC’s file examination indicated that when defendants requested counsel at the Article 15.17 hearing (as indicated by a marked request on the magistrate warning form), appointments of counsel were generally not timely. Additionally, court observations established that defendants were directed to speak with the prosecutor before being allowed to request counsel in court. To address timeliness matters, San Jacinto County will need to: (1) ensure that the trial courts promptly receive counsel requests and accompanying financial affidavits when defendants request counsel at the Article 15.17 hearing; (2) promptly rule on counsel requests made at the Article 15.17 hearing; and (3) explain the procedures for requesting counsel to defendants appearing at the trial court and promptly rule on all requests made before the court.

¹⁸ TIDC’s misdemeanor sample included 98 misdemeanor cases, but we could only match magistrate warning forms with 56 cases. TIDC excluded those cases for which we could not match magistrate warning forms from its timeliness analysis.

Table 5: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	56		
Total cases with a counsel request		20	
Appointment/denial of indigence occurred in:			
0 workdays		1	
1 – 3 workdays + 24-hour transfer		0	
Total timely appointments/denials		1	5%
4 – 7 workdays + 24-hour transfer		0	
More than 7 workdays + 24-hour transfer		2	
No ruling on request		17	
Total untimely appointments/denials		19	95%

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 that substantially conforms to the language of Article 1.051(g).

Before the arraignment docket, the court sends a notice to defendants. The notice states, “If you would like to accept a plea bargain agreement without the assistance of counsel, you may contact the District Attorney at (936)653-2601, PRIOR TO YOUR COURT DATE.” This practice encourages defendants to communicate with the prosecutor before the court explains the procedures for requesting counsel.

TIDC observed a misdemeanor arraignment docket. At the docket, the County Judge explained to the entire audience that defendants have certain rights, including the right to appointed counsel if indigent, but the judge does not ask if a defendant would like to request counsel. The judge called each defendant to the bench and explained they could choose one of three plea options. The judge then stated that the defendant had a right to speak to the prosecutor prior to entering a plea. Most defendants chose to speak with the prosecutor. This procedure informs defendants that they have a right to appointed counsel but does not give them a reasonable opportunity to request counsel prior to being encouraged to speak with the prosecutor. The Court may wish to adopt an arraignment

check-in form that requires defendants to mark if they would like to request counsel.¹⁹ Such a check-in form ensures defendants are able to request counsel at the docket before any encouragement to speak with the prosecutor.

TIDC's case file examination contained 17 samples in which the court did not rule on requests for counsel. In two of these sample cases, a misdemeanor defendant requested counsel at the Article 15.17 hearing and later entered an uncounseled plea without the request being 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)). San Jacinto 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).

Juvenile Cases

Counsel must be appointed for youths alleged to have engaged in 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.²⁰ 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 juvenile.²¹

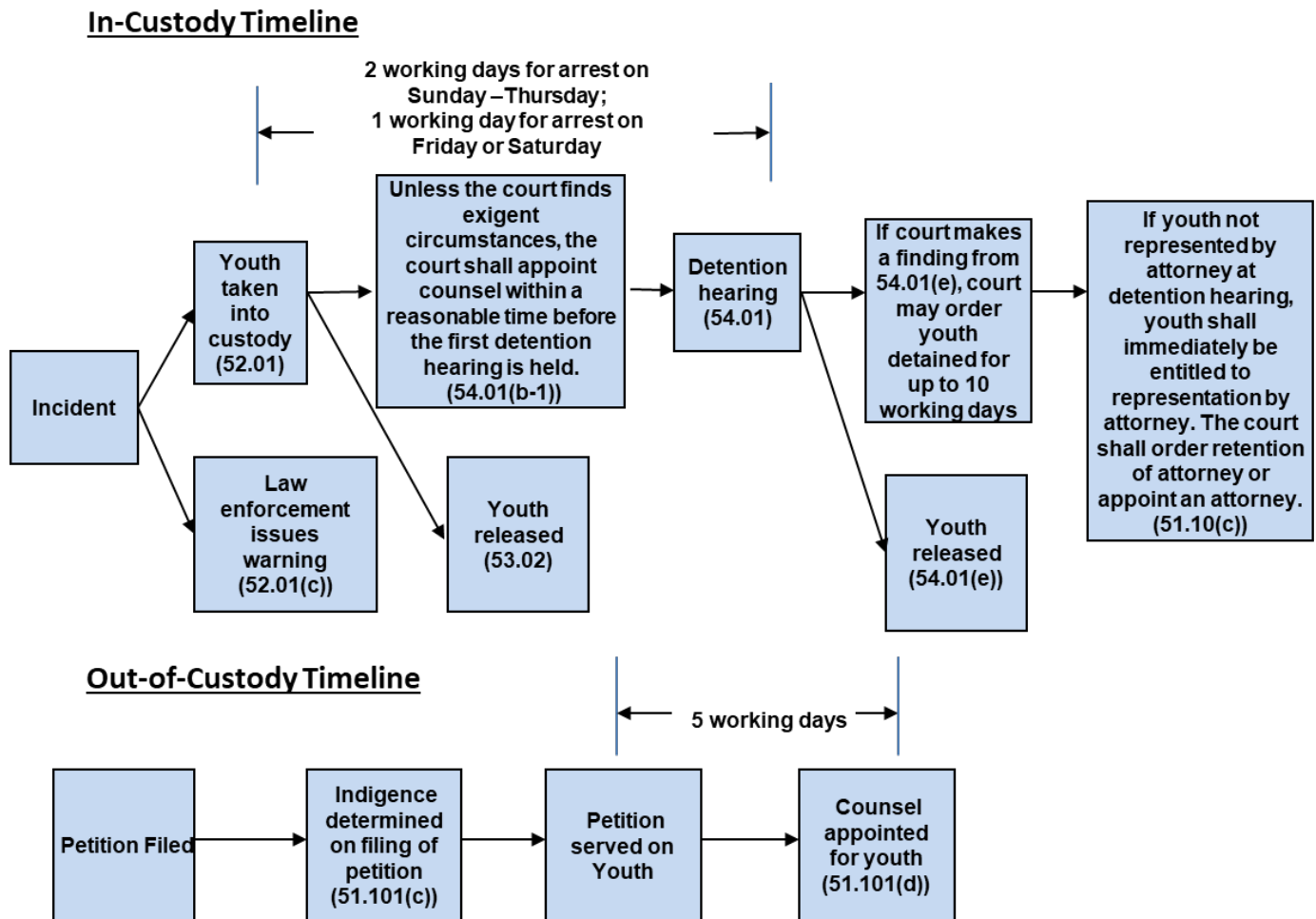
¹⁹ TIDC's model waiver of counsel for purposes of speaking with the prosecutor is available at <https://www.tidc.texas.gov/media/kkgembze/model-waiver-to-speak-with-the-prosecutor.docx>.

²⁰ TEX. FAM. CODE § 51.10(f).

²¹ 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



Juvenile Detention Hearings

To assess the timeliness of the County’s appointment procedures in juvenile cases, TIDC staff examined six cases filed in FY2024.²² Section 54.01(b-1) of the Family Code requires counsel to be appointed prior to the initial detention hearing unless appointment is not feasible due to exigent circumstances.²³ Of the six sample cases, three involved detention hearings. Counsel was present for the initial detention hearing in two cases (**67% timely**). The County must ensure all youths at the initial detention hearing have counsel, unless the court finds the appointment of counsel is not feasible due to exigent circumstances.

²² For the 411th District Court cases, TIDC did not examine juvenile case files. Instead, the District Clerk called out the relevant dates of events.

²³ 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

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 the six sample cases, all involved service of the petition on the youth. Counsel was timely appointed in all these cases (**100% timely**), which exceeds TIDC's 90% threshold.

Table 6: Times to Appointment in Juvenile Cases

	Sample Size	Number from Sample	Percent
Total juvenile cases examined	6		
TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS			
Case files with detention hearings		3	
Cases with attorney present at initial hearing		2	67%
TIMELINESS OF COUNSEL APPOINTMENTS WHERE YOUTH SERVED WITH A PETITION			
Case files in which youth served with a petition	6		
Counsel appointed within 5 working days of service		6	
Indigence denied or counsel retained within 5 working days of service ²⁴		0	
Total cases with timely presence of counsel		6	100%
Cases where counsel not present in a timely fashion		0	0%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly

FINDING 5 (FELONY CASES) AND RECOMMENDATION: San Jacinto County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the district courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 6 (MISDEMEANOR CASES) AND RECOMMENDATION: San Jacinto County's misdemeanor appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the county court must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 7 (MISDEMEANOR CASES) AND RECOMMENDATION: In misdemeanor cases, defendants are encouraged to speak with the prosecutor before being allowed to request counsel. These encouragements include the notice of arraignment and direction

²⁴ TIDC considered a denial of indigence to be synonymous with an order to retain counsel.

given to defendants at misdemeanor dockets. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel and give an opportunity to request appointment counsel before directing or encouraging a defendant to communicate with the prosecutor.

FINDING 8 (MISDEMEANOR CASES) AND RECOMMENDATION: The County does not have procedures in place to ensure all 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 a request for counsel prior to a defendant's waiver of the right to retain counsel.

FINDING 9 (JUVENILE CASES) AND RECOMMENDATION: One sample juvenile case did not have counsel present at the initial detention hearing. The County must ensure all youths at the initial detention hearing have counsel, unless the court finds the appointment of counsel is not feasible due to exigent circumstances.

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.

In assigned counsel systems, 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 receive no more than three times their respective share of appointments.²⁵ 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.

Assessment

TIDC examined the distribution of cases paid to attorneys on the felony, misdemeanor, and juvenile appointment lists (see Table 7). The distributions fell within TIDC's presumed threshold. TIDC finds San Jacinto County is in substantial compliance with Requirement 5.

San Jacinto County officials and staff noted significant difficulties in gathering an adequate number of attorneys for their appointment lists. If the number of available attorneys continues to decline, the County may wish to inquire about other appointment systems. TIDC offers free planning studies for these inquiries.

²⁵ 1 TEX. ADMIN. CODE § 174.28(c)(5)(D).

Table 7: Share of Cases Paid to Top 10% of Attorneys

Level	Attorneys on List	Top 10% Attorneys ²⁶	Respective Share of Cases ²⁷ [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Felony	8	1	12.5%	25.5%	2.0
Misdemeanor	4	1	25.0%	44.4%	1.8
Juvenile	3	1	33.3%	57.1%	1.7

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. Since FY2014, financial data reports must include attorney-level information.²⁸

Under Title 1 Tex. Admin. Code § 171.7 – 8, justice of the peace and municipal courts must submit Judicial Council Monthly Court Activity Reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. TIDC uses these reports as a guide to understand if arrestees are informed of their right to counsel, and if they invoke that right.

TIDC found that all justice courts reported conducting Article 15.17 hearings, but some courts did not report counsel requests made at the hearing. The justice courts must put in place methods to capture and report the number of Article 15.17 hearings and the number of requests for counsel in their Judicial Council Monthly Court Activity Reports.

²⁶ 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.

²⁷ 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.

²⁸ TEX. GOV'T CODE § 79.036(a-1).

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 6

Statutory Data Reporting

FINDING 10 AND RECOMMENDATION: Under Title 1 Tex. Admin. Code § 171.7, justice courts must submit to OCA monthly reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. The justice courts must put in place methods to capture and report both elements in their Judicial Council Monthly Court Activity Reports.

Conclusion

TIDC thanks San Jacinto 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.²⁹ TIDC staff stand ready to provide technical and financial assistance to ensure full compliance with the Fair Defense Act.

²⁹ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Summary of Findings and Recommendations

San Jacinto County must respond in writing as to 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, one magistrate did not record whether defendants requested counsel in a manner that would allow other County officials to rule on a request. As required by Article 15.17(e) of the Code of Criminal Procedure, magistrates in San Jacinto County must ask and record whether defendants would like to request counsel. This recording must be done in a manner that allows County officials to rule on the request and that can be reported to OCA in monthly activity reports.

FINDING 2 AND RECOMMENDATION: Based on sample data, there are gaps in completing affidavits of indigence. At the Article 15.17 hearing, a magistrate must ensure arrested persons have reasonable assistance in completing the necessary forms for requesting counsel.

FINDING 3 AND RECOMMENDATION: Based on sample data, there are gaps in sending counsel requests and financial affidavits to the trial courts. Article 15.17(a) requires requests for counsel and associated paperwork to be sent to the appointing authority within 24 hours of the request being made. The County must provide a consistent and reliable process to ensure requests are sent to the appointing authority within 24 hours of the request.

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

FINDING 4 AND RECOMMENDATION: 1 TEX. ADMIN. CODE §§ 174.1–4 requires that, as a condition of being eligible for an appointment list, attorneys must obtain at least six criminal or juvenile law CLE hours or be Board Certified in criminal or juvenile law. The County must keep records to ensure that all attorneys on its appointment lists meet the annual CLE requirement.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

FINDING 5 (FELONY CASES) AND RECOMMENDATION: San Jacinto County's felony appointment process did not meet TIDC's threshold for timely appointment of counsel (90% timely). Under Article 1.051(c)(1), the district courts must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 6 (MISDEMEANOR CASES) AND RECOMMENDATION: San Jacinto County's misdemeanor appointment process did not meet TIDC's threshold for timely

appointment of counsel (90% timely). Under Article 1.051(c)(1), the county court must rule on all requests for counsel within three working days. The County must implement practices that satisfy Article 1.051(c)(1)'s timeline.

FINDING 7 (MISDEMEANOR CASES) AND RECOMMENDATION: In misdemeanor cases, defendants are encouraged to speak with the prosecutor before being allowed to request counsel. These encouragements include the notice of arraignment and direction given to defendants at misdemeanor dockets. Under Article 1.051(f-2), the court must explain the procedures for requesting counsel and give an opportunity to request appointment of counsel before directing or encouraging a defendant to communicate with the prosecutor.

FINDING 8 (MISDEMEANOR CASES) AND RECOMMENDATION: The County does not have procedures in place to ensure all 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 a request for counsel prior to a defendant's waiver of the right to retain counsel.

FINDING 9 (JUVENILE CASES) AND RECOMMENDATION: One sample juvenile case did not have counsel present at the initial detention hearing. The County must ensure all youths at the initial detention hearing have counsel, unless the court finds the appointment of counsel is not feasible due to exigent circumstances.

REQUIREMENT 6: STATUTORY DATA REPORTING

FINDING 10 AND RECOMMENDATION: Under Title 1, Tex. Admin. Code § 171.7, justice courts must submit to OCA monthly reports documenting the number of magistrate warnings conducted and the number of those persons who request counsel. The justice courts must put in place methods to capture and report both elements in their Judicial Council Monthly Court Activity Reports.

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.³⁰
 - 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.³¹
- ☒ The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.³²
- ☐ The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.³³
- ☐ 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.³⁴
- ☐ 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 250,000.³⁵
- ☐ 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.³⁶

³⁰ TEX. CODE CRIM. PROC. ART. 14.06(a).

³¹ TEX. CODE CRIM. PROC. ART. 17.033.

³² TEX. CODE CRIM. PROC. ART. 15.17(a).

³³ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because we could not verify that procedures for assisting with affidavits ensured they were promptly completed.

³⁴ TEX. CODE CRIM. PROC. ART. 15.17(e). This box is not checked because one justice court did not record counsel requests in a manner that reasonably allowed the trial courts to rule on the recording.

³⁵ 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).

³⁶ TEX. CODE CRIM. PROC. ART. 15.17(a). This box is not checked because we could not verify that requests were transmitted to the trial courts within 24 hours of the request being made.

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

- ☒ Provide detailed procedures used to determine whether a defendant is indigent.³⁷
- ☒ State the financial standard(s) to determine whether a defendant is indigent.³⁸
- ☒ List factors the court will consider when determining whether a defendant is indigent.³⁹

REQUIREMENT 3: ESTABLISH MINIMUM ATTORNEY QUALIFICATIONS

- ☐ Establish objective qualification standards for attorneys to be on an appointment list.⁴⁰
 - 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.⁴¹
 - 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 30.⁴²

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.⁴³
- ☒ 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.⁴⁴

³⁷ TEX. CODE CRIM. PROC. ART. 26.04(l)–(r).

³⁸ TEX. CODE CRIM. PROC. ART. 26.04(l).

³⁹ TEX. CODE CRIM. PROC. ART. 26.04(m).

⁴⁰ TEX. CODE CRIM. PROC. ART. 26.04(d).

⁴¹ 1 TEX. ADMIN. CODE § 174.1–.4. This box is not checked because the County Court did not track criminal CLE hours for appointment list attorneys.

⁴² TEX. CODE CRIM. PROC. ART. 26.04(j)(4).

⁴³ TEX. FAM. CODE § 54.01(b-1). TEX. FAM. CODE § 51.10(c). This box is not checked because one sample youth did not have counsel at the initial detention hearing.

⁴⁴ 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 250,000.⁴⁵
- ☐ 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.⁴⁶
- ☐ All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.⁴⁷

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.⁴⁸
- ☐ 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.⁴⁹

NOT APPLICABLE.

- ☐ Alternative appointment method:⁵⁰
 - 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.

⁴⁵ TEX. CODE CRIM. PROC. ART. 1.051(c). This box is not checked because several detained defendants did not receive timely appointments.

⁴⁶ 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 several defendants who made bail did not receive timely appointments.

⁴⁷ TEX. CODE CRIM. PROC. ART. 1.051(f-2). This box is not checked because sample misdemeanor defendants requested counsel but entered uncounseled pleas before the requests were ruled upon.

⁴⁸ TEX. CODE CRIM. PROC. ART. 26.04(a).

⁴⁹ TEX. CODE CRIM. PROC. ART. 26.044.

⁵⁰ 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:⁵¹
 - 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.

⁵¹ TEX. GOV'T CODE § 79.036(a-1). 1 Tex. Admin. Code § 171.7 – 8. This box is not checked because some justice courts did not report counsel requests in their Judicial Council Monthly Court Activity Reports.