



Follow-up Review of Tom Green County's Indigent Defense Systems

August 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 through policy reviews.¹ In this follow-up review, TIDC interviewed officials and reviewed FY2024 data from Tom Green County. TIDC found that the distribution of juvenile appointments now falls within our agency’s presumed threshold for ensuring a fair, neutral, and nondiscriminatory appointment system. After the 2025 review, there are two pending findings:

1. The timeliness of misdemeanor appointments in sample cases did not meet TIDC’s 90% timeliness threshold. Tom Green County must implement practices that satisfy Article 1.051(c)(1)’s timelines.
2. Multiple misdemeanor defendants requested counsel, but those requests were not ruled upon prior to uncounseled pleas. The County must ensure its procedures for ruling on counsel requests meet the requirements of Article 1.051(f-2).

TIDC thanks Tom Green County officials and staff for their assistance in completing this review. TIDC staff stands ready to provide technical and financial assistance to remedy these issues. TIDC will attempt to conduct a second follow-up review regarding its findings within two years.²

Background

In 2022, TIDC issued an initial policy monitoring review of Tom Green County. The report made three findings, two of which involved appointment procedures in misdemeanor cases, and one which involved an uneven distribution of juvenile appointments. The County responded to the report by noting that several misdemeanor defendants failed to complete affidavits of indigence before making bail. The County stated it would promptly deny indigence for those persons who request counsel but fail to complete affidavits of indigence. As to the distribution of juvenile appointments, the courts noted they lacked a sufficient number of attorneys willing to take juvenile appointments, but the incoming public defender office (the Concho Valley Public Defender’s Office) would provide the necessary resources to address distribution issues.

August 2025 Follow-up Review

TIDC’s Policy Monitoring Rules require follow-up reviews of counties where the report included noncompliant findings.³ Staff members, Natasha George and Joel Lieurance, conducted the follow-up review. The purpose of this review was to verify

¹ TEX. GOV’T CODE § 79.037(a)–(b).

² Title 1 TEX. ADMIN. CODE § 174.28(c)(2).

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

that the January 2022 report findings were addressed. The review consisted of a site visit to Tom Green County on April 23, 2025, as well as interviews and data queries conducted off-site. TIDC relied on the following items in preparing this report: misdemeanor case files and magistrate warning forms; interviews with Tom Green County officials and staff; the Indigent Defense Expense Report (IDER) data; and the local indigent defense plans. The County must respond to this report’s findings and recommendations.

Table 1: History of Monitoring Findings

FDA Core Requirement	Description and Initial Year of Finding	Status After 2025 Review	
		Satisfied	Pending
4. Prompt Appointment	Appointments in the misdemeanor case sample did not meet TIDC’s threshold for presuming a timely appointment system (90% timely). (2022)		✓
4. Prompt Appointment	Several misdemeanor counsel requests were not ruled upon before a waiver of counsel. The misdemeanor courts must ensure all requests for counsel are ruled upon prior to a waiver of counsel. (2022)		✓
5. Attorney Selection Process	The distribution of juvenile appointments did not meet TIDC’s threshold for presuming a fair, neutral, and nondiscriminatory appointment system. (2022)	✓ (2025)	

Program Assessment

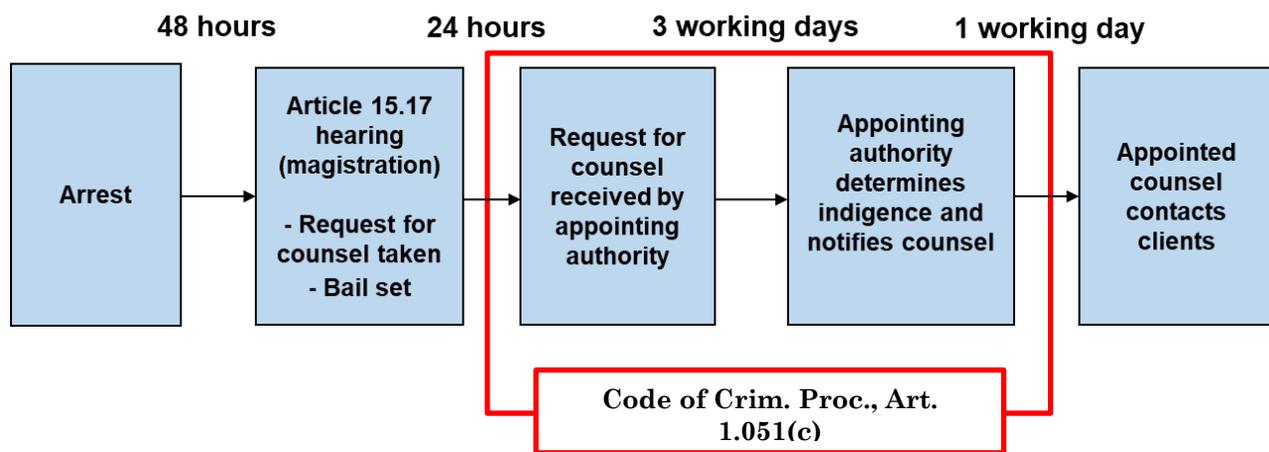
TIDC compared the core requirements of the Fair Defense Act (FDA) with the County's performance for each finding listed in the 2022 report. This review examined previous findings and recommendations covering the following core FDA requirements:

- REQUIREMENT 4: APPOINT COUNSEL PROMPTLY
- REQUIREMENT 5: ATTORNEY SELECTION PROCESS

Requirement 4: Appoint Counsel Promptly.

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: Timeline for Appointment of Counsel in Adult Criminal Cases



Under Article 15.17 and local procedures, 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. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the first opportunity a defendant has to request counsel is at the initial appearance in the trial court.

In Tom Green County, an indigent defense coordinator interviews defendants at the jail after the Article 15.17 hearing and transmits the financial data to the misdemeanor courts. There are currently gaps in filling this role on weekends. The misdemeanor courts typically appoint counsel for bonded defendants after the case has been filed.

Timeliness of Appointments in Misdemeanor Cases

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 195 sample misdemeanor cases filed in FY2024 (October 2023 to September 2024). Counsel was timely appointed in 56 of 95 cases having a request for counsel (**59% timely**). This falls below TIDC’s 90% threshold for presuming a jurisdiction’s practices ensure timely appointment of counsel. Under Article 1.051(c)(1), the County 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 in misdemeanor cases. To address timeliness issues, the County will need to (1) ensure that all defendants are able to complete affidavits of indigence and (2) rule on all requests in a timely manner.

Table 2: Times to Appointment in Misdemeanor Cases

	Sample Size	Number from Sample	Percent
Number of case files examined	195		
Total cases with a counsel request		95	
Appointment/denial of indigence occurred in:			
0 work days		45	
1 -3 work days + 24 hour transfer		11	
Total timely appointments/denials		56	59%
4 to 7 work days + 24 hour transfer		5	
More than 7 work days + 24 hour transfer		16	
No ruling on request		18	
Total untimely appointments/denials		39	41%

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).⁴

⁴ The waiver language of Article 1.051(g) states:

TIDC’s misdemeanor case samples included 18 cases in which counsel requests were not ruled upon. Nine of these defendants entered uncounseled pleas. 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)). Tom Green 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).

RECOMMENDATION FOR REQUIREMENT 4

Appoint Counsel Promptly

2022 FINDING 1 (MISDEMEANOR CASES): Tom Green 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 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. *Issue Pending.*

2022 FINDING 2 (MISDEMEANOR CASES): 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)). Tom Green 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). *Issue Pending.*

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.

Tom Green County uses a rotational system of appointment for private counsel and also hosts a regional public defender office. Under the rotational system, the court appoints the attorney who is next on the appointment wheel, and once an appointment is received, the attorney moves to the bottom of the list. When the public defender is appointed, the office allocates its resources as it sees fit.

”I have been advised this _____ day of _____, 2____, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”

TIDC examined the distribution of juvenile appointments to private attorneys in Tom Green County by case level for FY2024.⁵ TIDC attempts to consider only those appointments to attorneys who were on the appointment list for the entire year. Based on this analysis, the juvenile court level had an appointment distribution in which the top ten percent of attorneys received less than 3.0 times their respective share of cases paid, indicating that it complies with this requirement. A major factor for this improved distribution is that the public defender office is now able to take on more than 50% of juvenile appointments.

Table 3: Share of Cases Paid to Top 10% of Attorneys in Tom Green County

Level	Attorneys on List	Top 10% Attorneys ⁶	Respective Share of Cases ⁷ [Column A]	Actual Share of Cases [Column B]	Top 10% Received 'x' Times Their Respective Share [Col. B] / [Col. A]
Juvenile	4	1	25%	57.5%	2.3

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 5

Attorney Selection Process

2022 FINDING 3 (JUVENILE CASES): The distribution of appointments in juvenile cases did not meet TIDC’s threshold for presuming a fair, neutral, and nondiscriminatory appointment system. The courts must put in place a system that ensures appointments are made in a fair, neutral, and nondiscriminatory manner. *Successfully Addressed.*

Conclusion

TIDC enjoyed meeting with Tom Green County officials and staff and appreciates their cooperation during this review. TIDC stands ready to provide any assistance the County may need to address the issues identified in this report.

⁵ If a jurisdiction can track its appointments, TIDC uses the jurisdiction’s data. If not, TIDC uses cases paid data reported by the county auditor for this analysis.

⁶ 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.

⁷ 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.

Pending Findings and Recommendations

Tom Green County must respond in writing about how it will address the pending findings.

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY.

2025 FINDING 1 (MISDEMEANOR CASES): Tom Green 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 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.

2025 FINDING 2 (MISDEMEANOR CASES): 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)). Tom Green 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).