TIDC
TEXAS INDIGENT DEFENSE COMMISSION

# A Court Coordinator's Guide to Indigent Defense

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# Presentation Roadmap



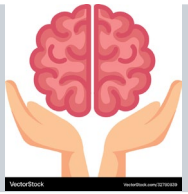
Who We Are?



Managing appointment timelines



Managing attorney duties and appointment lists



Mental health issues



Grant opportunities



Questions



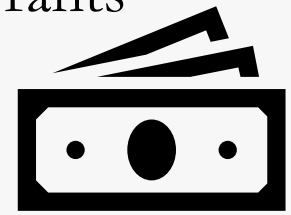
# About the Texas Indigent Defense Commission (TIDC)

# Who We Are and What We Do

A state commission, administratively attached to the Office of Court Administration (OCA) to remedy deficiencies in indigent defense across the entire State of Texas, specifically access to counsel, quality of counsel, and data collection.

## Funding

- Improvement Grants
- Formula Grants
- Innocence Projects
- Extraordinary Grants



## Oversight

- Explore Data
- Review ID Plans
- Monitoring Reviews
- Reporting



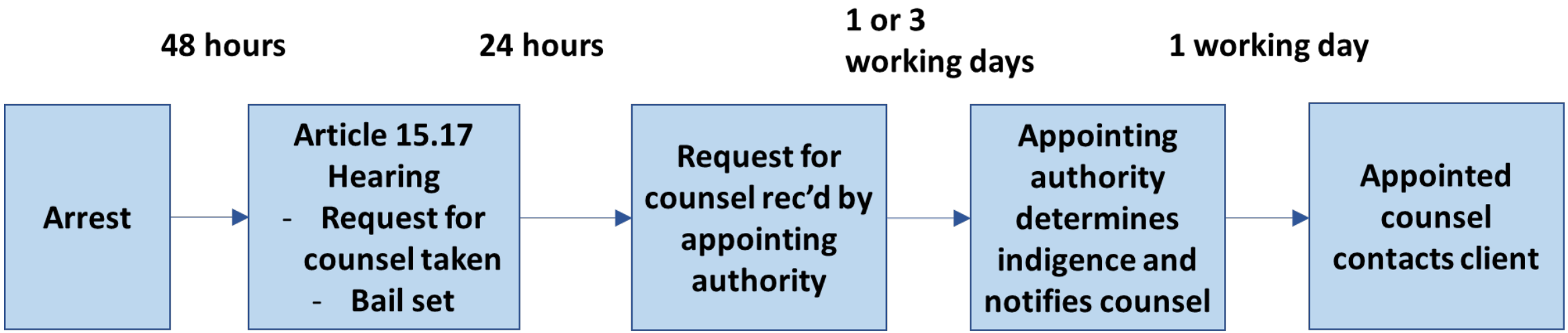
## Improvement

- System Building
- Training/Mentoring
- Publications
- Rules/Model Forms



# Managing Appointment(s) Timelines

# Adult Appointment Timeline




**** Note CCP 17.033** - Requires detained person arrested on a misdemeanor w/o warrant to be released not later than 24 hrs. after arrest if probable cause not determined. Release on bond not exceeding $5,000 or personal bond required.

# Local Indigence Standard

- Tex. Code Crim. Proc. art. 1.051(b) For purposes of this article and Articles 26.04 and 26.05 of this code, "indigent" means a person who is not financially able to employ counsel.
- Art. 26.04(l) – local indigent defense plan must set financial standard for presuming indigence
- Standards apply equally, **regardless of whether defendant made bail**
- Common Standards
  - Gross income 200%, 150%, 125%, or 100% of Federal Poverty Guidelines
  - Net income test
  - Eligible for federal/state public benefits
  - Incarcerated or in mental health facility

# Bonded Defendants

**Magistration = Initiation of Adversarial Judicial Proceedings**

**Rothgery v. Gillespie County, 554 US 191 (2008).**

A criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

Supreme Court did not address whether counsel had to be present at magistration.

# Bonded Defendants

**Magistration = Initiation of Adversarial Judicial Proceedings**

**Rothgery v. Gillespie County, 554 US 191 (2008).**
**Facts:** Walter Rothgery moved to Fredericksburg from Arizona to manage an RV Park. Three weeks later, he was arrested for being a felon in possession of a firearm. He lost his job, and the RV park where he and his wife expected to live.

Walter wanted an attorney at the 15.17 hearing, but the JP informed him, this would delay the bail setting. He waived the right to an attorney at the 15.17 hearing. The judge set bail at $5000. His wife posted bail with their last $500. He requested an attorney several times but was told he would not be eligible until after indictment.

After indictment (6 months later), Walter was re-arrested and bail was tripled. He spent 3 weeks in jail until he was appointed an attorney. The attorney found that Walter did not have a felony conviction and notified the DA. The DA dismissed the case.

**Bottom Line:** Walter Rothgery suffered a real loss because the appointment of counsel was delayed.

# Bonded Defendants

**You must promptly rule on a counsel request even if a defendant makes bail.**

*Rothgery* and Art. 1.051 mean:

- If a defendant is released from custody after requesting counsel but prior to appointment, the appointing authority must still rule on the request by appointing counsel or denying indigence.

- **You cannot simply wait to make the determination at the first court appearance.**
  - **"…appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first." (Art. 1.051(j))**

# Why is Prompt/Timely Appointment of Counsel Important?

**Principle: Defendants are presumed innocent, and also:**

- Earlier appointments can impact defendant outcomes and save county funds!

  - To ensure that defendants have an opportunity to confer with appointed counsel *before* the commencement of judicial proceedings. (TX. Code Crim. Pro. Art. 26.04)
  - Probable cause arguments (no indictment/information)
  - Bail reduction arguments
  - Fewer days in jails
  - Preserve family units
  - Maintain benefits/housing
  - Mitigation investigations
  - Preserve investigative tools and information
  - Keep track of defendants
  - Improve the attorney/client relationship
  - Earlier, tailored negotiation of case(s)
  - Informs defendant so that the plea is knowing and voluntary
  - Efficient case resolutions

# Waivers of Counsel

**Requirements before defendant speaks with prosecutor**

**Art. 1.051(f),(f-1),(f-2) Texas Code of Criminal Procedure**

(f) A defendant may voluntarily and intelligently waive in writing the right to counsel. A waiver obtained in violation of Subsection (f-1) or (f-2) is presumed invalid.

(f-1) In any adversary judicial proceeding that may result in punishment by confinement, the **attorney representing the state <u>may not</u>**:

(1) initiate or encourage an attempt to obtain from a defendant who is not represented by counsel a waiver of the right to counsel; or

(2) communicate with a defendant who has requested the appointment of counsel, unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant: . . .

# Waivers of Counsel

**Court requirements before defendant speaks with prosecutor**

**Art. 1.051(f),(f-1),(f-2) Texas Code of Criminal Procedure**

(f-2) In any adversary judicial proceeding that may result in punishment by confinement, the **court may not** direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request and, subsequent to the denial, the defendant:

# Waivers of Counsel

**Waiver for the plea**
**Art. 1.051(g)**
**Texas Code of Criminal Procedure**

(g) If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently made, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings:

"I have been advised this _____ day of _____, 20___, 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)"

# Waivers of Counsel

## Model Form to Speak with the Prosecutor

https://www.tidc.texas.gov/media/kkgembze/model-waiver-to-speak-with-the-prosecutor.docx

**DEFENDANT'S CHOICE** [mark initials next to only **ONE** choice]

_____ I want to reset this case to hire my own attorney.

_____ I have hired an attorney, whose name is: _____

_____ I want to apply for court-appointed counsel.

_____ I have a court-appointed attorney, whose name is: _____

_____ I want to waive my right to an attorney and represent myself.

Defendant: _____ Date: _____



# Managing and Communicating with Other County Personnel

# Facilitating Efficient Indigency Determinations & Appointment Practices

- Create protocols and guidelines for providing reasonable assistance with financial affidavits to help avoid delays when information is incomplete or inaccurate. Assistance can help defendants who have issues with reading/writing.

- Need to have dedicated staff responsible for helping to interview, transmitting affidavits to appointing authority, for reinterviewing defendants who remain detained, or who may provide additional information to defendants on bail who are otherwise still eligible for appointed counsel (e.g. provide physical directions to ID/Coordinator's office, or provide email/website info). Provide with paperwork.

- Include appointment orders in the magistrate's file and the clerk's file.
  - Helps with reappointment [continuity of representation]; maintaining timelines [timely appointment, statutory releases, etc.].
  - Include a denial line and date.

- Include an additional question in affidavit about recent appointments:
  - Specific to the county
  - Within the past calendar year.

- **REMEMBER:** Timeliness counts from the time of the first request of counsel.



# Managing Attorney Appointment Lists

# Attorney Selection Process

- Rotational – pick 1st attorney from top five attorneys on the list. Can skip the 1st attorney for good cause
- Managed Assigned Counsel – The Office selects the attorney for the case
- Public Defender – the court appoints the public defender and the Office determines which attorney handles the case

# Attorney List Requirements

- Attorneys must apply
- Obtain at least 6 CLE hours in criminal or juvenile law
- Meet any local requirements set in the ID Plan
- Be approved by majority of judges
- Annually submit attorney practice time reports to TIDC
- Some plans require attorneys to visit clients within a certain period of time. The attorney is often required to provide an affidavit stating when the initial visit occurred.

# Complaints about Attorneys

- Many indigent defendants complain about their attorneys.
- The top complaint is that attorneys do not visit them.
- Ideally, someone in the county (often the court coordinator or indigent defense coordinator) collects these complaints. Sometimes, these complaints provide indications of a systemic or attorney specific issue.
- You may need to tell attorneys their client(s) complain the attorney is not visiting them and then ensure the issue is resolved.

# Mental Health Issues

# 16.22 Orders

- If a magistrate finds a defendant may have MH or ID issues, the magistrate must order a mini-assessment under Article 16.22, CCP.
- The written mini-assessment must determine
  - Whether the defendant has a MH / ID issue
  - Whether there is clinical evidence to support incompetence
  - Recommended treatment
- **The written report must be sent to the trial court, prosecutor, and defense attorney**
- TIDC often discovers these reports are not sent to any of the parties.

# Mental Health Attorneys

- Mental health cases frequently take extensive time and resources from the defense
- Public defenders and managed assigned counsel programs frequently staff mental health case workers and social workers
- Private attorneys are unlikely to have time to ensure recommended treatment from 16.22 orders are followed by defendants. However, case workers and social workers can address these matters.

# Grant Opportunities

# TIDC Improvement Grants

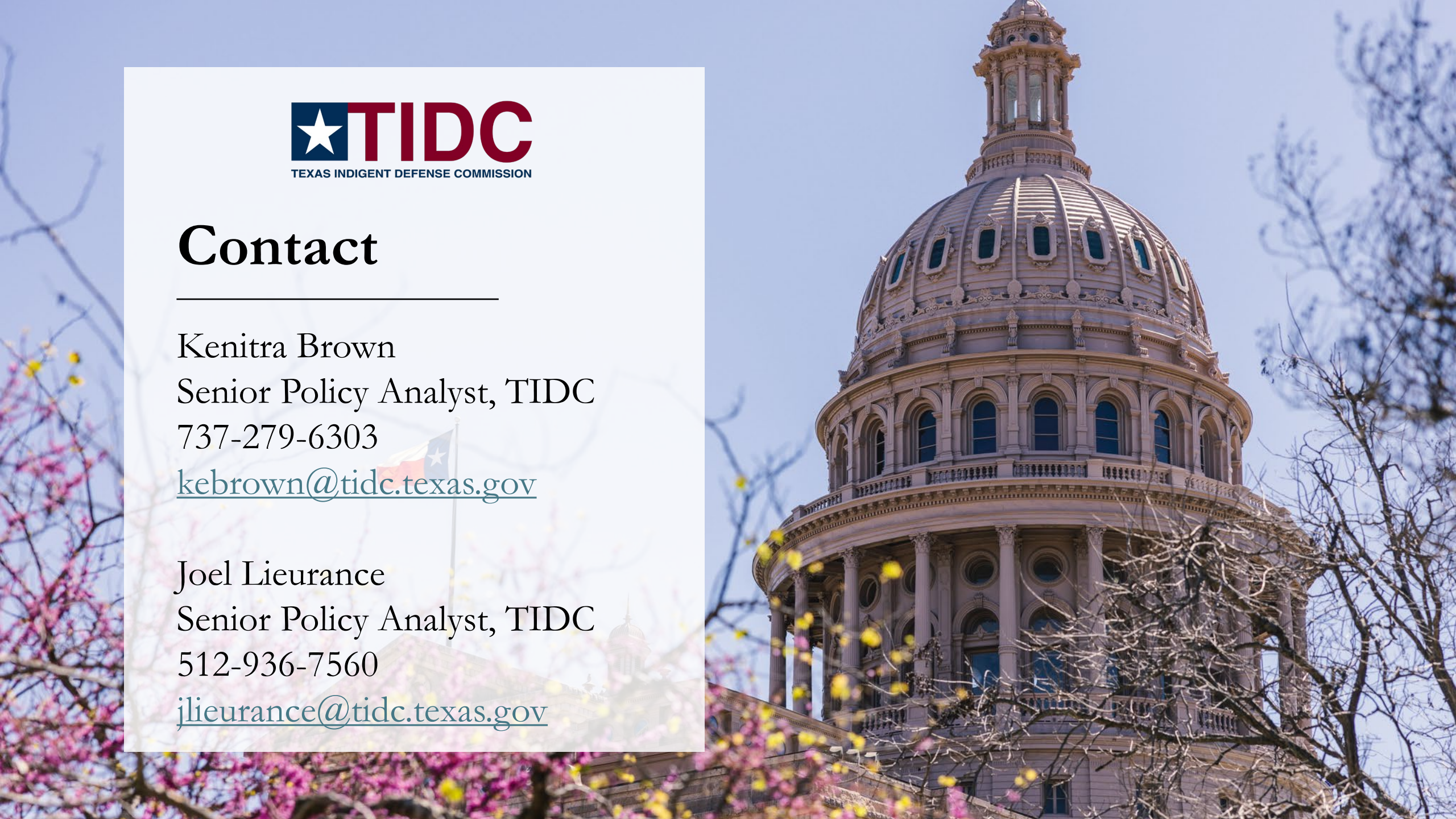
- TIDC can fund improvements to your indigent defense system
  - Indigent defense coordinators
  - Public defender offices
  - Managed assigned counsel offices
  - Technology improvements (must be indigent defense related)
  - Indigent defense program improvements (mental health public defenders/MACs, *my*Padilla, MACs, CAPDS Mitigation Program)

  - Contact Edwin Colfax (ecolfax@tidc.texas.gov) or Doriana Torres (dtorres@tidc.texas.gov)

# PUBLIC DEFENSE OFFICES AS OF OCTOBER 2025




- Atascosa Area Advocates, Public Defender's Office
- Bexar County, Public Defender's Office and Managed Assigned Counsel Office
- Bowie County, Public Defender's Office
- Brazos County, Public Defender's Office
- Cameron County, Juvenile Public Defender's Office
- Caprock Regional Public Defender's Office Only
- Collin County, Mental Health Managed Assigned Counsel Office
- Colorado County, Public Defender's Office
- Concho Valley Regional Public Defender's Office
- Crossroads Public Defender's Office
- Dallas County, Public Defender's Office
- Maverick County Regional Public Defender's Office, Texas RioGrande Public Defender
- El Paso County, Public Defender's Office
- Far West Texas Regional Public Defender's Office
- Fort Bend County, Public Defender's Office
- Galveston County, Misdemeanor Mental Health Public Defender's Office
- Harris County, Public Defender's Office and Misdemeanor Managed Assigned Counsel Office
- Hays County Public Defender's Office, Neighborhood Defender Service of Texas
- Hidalgo County, Public Defender's Office
- High Plains Regional Public Defender's Office
- High Plains Regional Public Defender's Office and Caprock Regional Public Defender's Office
- Hill Country Regional Public Defender's Office
- Kaufman County, Public Defender's Office
- Lubbock Private Defender's Office, Managed Assigned Counsel Office
- McLennan County, Mental Health Managed Assigned Counsel Office
- North Hill Country Regional Public Defender's Office
- Nueces County, Health Public Defender's Office
- Panhandle Area Public Defender's Office
- Potter-Armstrong Managed Assigned Counsel Office
- Randall County Managed Assigned Counsel
- Texas RioGrande Public Defender
- Travis County, Public Defender's Office, Capital Area Private Defenders Service - Managed Assigned Counsel Office
- Webb County, Public Defender's Office
- Wharton-Matagorda, Public Defender's Office
- Wichitia County, Public Defender's Office



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# Contact


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