TEXAS INDIGENT DEFENSE COMMISSION

Indigent Defense Expenditure Report Manual

Fiscal Year 2020[1]

PUBLIC DEFENDER OFFICE SUPPLEMENT

This document is a supplement instruction guide specifically for counties with Public Defender Offices (PDOs) because those counties have unique indigent defense reporting issues. The challenge is to comply with statutory requirements while still making the information compatible with other statewide reporting.

Counties with PDOs will use this set of instructions and forms instead of the Procedure Manual for the Indigent Defense Expenditure Report only **for reporting PDO information**. **The Procedure Manual for the Indigent Defense Expenditure Report must still be used to report assigned counsel, contract defender and managed assigned counsel cases.**

For the purpose of the Indigent Defense Expenditure Report, the Commission uses the definition of public defender set forth in Article 26.044 of the Texas Code of Criminal Procedure:

(a) In this chapter, "public defender" means a governmental entity or nonprofit corporation: operating under a written agreement with a governmental entity, other than an individual judge or court; using public funds; and providing legal representation and services to indigent defendants accused of a crime or juvenile offense, as those terms are defined by Section 71.001, Government Code.

Case Counting on the Court Page in the IDER

Counties with public defender offices must provide to the county financial officer a count of cases closed or disposed by public defender attorneys during the fiscal year, with the exception of appeals. In order to avoid duplicate case counts, appeals should be counted once the brief has been filed as opposed to when the appeal is disposed due to the lengthy time to disposition. Use the case counting definitions and information provided in the Indigent Defense Expenditure Report Manual for Fiscal Year 2020.

At the bottom of the electronic form for each court on which cases are reported to the Commission there are four columns. The first column is used to report cases for the assigned counsel system; the second column is used to report cases for the contract counsel system; the third column is used to report cases for the managed assigned counsel system; and the fourth column is used to report cases for the public defender system. The cases must be reported for each specific court. Report all cases on the court page form – some

[1] Manual revisions new in this edition are reflected with underlines and ~~strikethroughs~~.

courts may have one or more of the following categories completed: assigned counsel cases, contract attorney cases, managed assigned counsel cases, and public defender cases.

Reported case counts will be determined by the respective public defender office's internal case tracking system for cases disposed by the office for the various courts within a county. Financial officers are required by Texas Government Code 79.036 (e) to report these cases just as they would for assigned counsel, MAC, or contract defender systems. Care should be taken by financial officers to ensure that tracking systems in the public defender offices are accurate and verifiable. The PDO must report the cases disposed in a particular court in the appropriate columns.

Attorney Level Detail Portion of Court Expenditure Report

Financial Officers must include the attorney level data for each attorney in the public defender office on the Court Attorney Report for each court**.** In counties that use horizontal representation, the county must attribute the case to the attorney that was present when the case was disposed. Note that the last column of each court's Attorney Detail Report for attorney fees will be blank for Public Defender attorneys.

The attorney detail portion of the court expenditure report contains fields for case courts and total amount paid for each attorney handling indigent cases in the county. Number of cases closed or disposed by public defenders should re reported for each attorney in their respective categories. For public defender attorneys, the "Total Attorney Fees Paid" field should be left blank. Public defender expenditures are captured in the Public Defender Addendum.

Limited Scope Appointments for Representation at Article 15.17 Magistration Hearings or Automatic Bail Review Hearings

Counties that appoint public defenders for the limited purpose of representation at the Article 15.17 magistration hearings or automatic bail review hearings should track the total number of defendants represented at such hearings and report them in the new Limited Scope Representation Addendum of the IDER. ~~such appointments for each attorney and report those numbers in the Attorney Detail section of the "Magistrate Court" section of the IDER under "Limited Scope 15.17 Appointments."~~ Public defender costs should NOT be included in this ~~section~~ addendum, but rather ~~under "Attorney Fees" but~~ should be allocated in the Public Defender Addendum under the "Article 15.17 Magistration/Automatic Bail Review" case type. Costs for this category of representation should be allocated in the same manner that costs for other case types are allocated. Costs associated with defense representation at bond review hearings that are not reported elsewhere on the IDER may be reported here as well.

Regardless of whether the same public defender or a different public defender is appointed to represent a defendant beyond the Article 15.17 magistration hearing, the case should also be counted and recorded on the IDER under the court in which the case is disposed and in the corresponding Attorney Detail for that court.

Public Defender Office Administrative Expenditure Report Addendum

Allocating Costs

The Commission attempts to capture the average cost for different types of cases (felony, misdemeanor, and juvenile). Auditors and Treasurers must work with the PDO to establish a clear basis for the assignment of cost per case. One factor used to calculate the cost per case is percent of actual time (or reasonable

estimate) spent on different types of cases. The Commission previously asked counties to solely submit the number of cases handled by the PDO. This has been determined by staff to be unreliable and incomparable to the other data. To capture a truer picture of the average cost per case requires that each public defender office report how attorney and other salaries are allocated between different types of cases based on time spent. For example, a county may find that based on actual or estimated attorney time spent, 50% of attorneys' salaries are spent on felonies, 25% on misdemeanors, and 25% on juvenile cases. If the total PDO expenses totaled $500,000, then the estimated felony expenses would be $250,000. The estimated misdemeanor expenses would be $125,000, and the estimated juvenile expenses would be $125,000. If a staff investigator only works on adult non-capital felonies, then 100% of the salary would be reported under adult non-capital felonies. These numbers should be entered into the appropriate felony, misdemeanor, and juvenile boxes under Personnel of the Public Defender Office Administrative Expenditure Report Addendum.

Reporting Costs

Personnel: Report all personnel costs by type (Attorney, Investigator, Mitigation Specialists, Mental Health Specialists, and Administrative Support). For each line item, report the combination of salary and fringe.

Attorneys: Attorney salaries are to be separated by felony, misdemeanor, juvenile, capital, and appeal expenses based on actual or estimated time. To capture these average costs requires that each public defender county report how attorney salaries are allocated between different types of cases based on time. If an attorney spends all her time on felony cases, 100% of that attorney's salary payments can be allocated to felony cases. If an attorney's time is split between types of cases, the attorney's salary should be split according to how the chief public defender documents or estimates each attorney's time was spent. As an example of reporting, the estimated expenses associated with each type of case, consider the public defender office below.

Atty.	Salary + Benefits	% Time on Felony Non-Cap Cases	% Time on Capital Cases	% Time on Adult Misd Cases	% Time on Juvenile Cases	% Time on Juvenile Appeals	% Time on Adult Felony Appeals	% Time on Adult Misd Appeals	% Time Limited Scope 15.17 or Auto Bail Review
A	$30,000			100%					
B	$96,000	50%	50%						
C	$72,000			50%	50%				
D	$84,000	100%							
E	$60,000			50%	50%				

From the above chart, the salaries can be summarized in the following way:

	Total Salary by Case Type
Felony Non-Cap	$132,000
Capital	$48,000
Adult Misdemeanor	$96,000
Juvenile	$66,000
Juvenile Appeals	
Adult Felony Appeals	
Adult Misdemeanor Appeals	
Limited Scope 15.17/Automatic Bail Review	

The Chief PD must estimate or provide actual time salary allocation for attorneys serving as managers and include them with the proper attorney category. **Note:** Please e-mail the Commission Grants Administrator the basis or method of calculation if an estimate is made.

Repeat the above calculation for each of the following:

Mitigation Specialists: These positions are attributed entirely to capital cases and offices.

Investigators: Counties can enter the actual salary and fringe of the investigators where the office has department investigators assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where investigators work with all level of cases.

Mental Health Professionals (including case managers and social workers): Counties with mental health public defenders can enter the actual salary and fringe of the mental health professionals where the office has department professionals assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where mental health professionals work with all level of cases.

Administrative Support: Counties can enter the actual salary and fringe of the administrative support staff where the office has department support staff assigned to divisions within the office (i.e. felony, misdemeanor, juvenile, etc.). Alternatively, they may use the attorney breakdown to assign the cost in smaller departments or departments where support staff work with all level of cases.

Commission staff will attribute the following costs based on the breakdown of attorney costs:

Public Defender Travel and Training: Include travel and training of all types for PDO employees.

Public Defender Equipment: Report all equipment purchased for the public defender.

Public Defender Other Direct Operating Expenditures: Include identifiable direct costs attributable to operating a public defender program. Examples include supplies, software, building and machine rental, and all other operating cost not specifically recorded in the other sections.

Other Public Defender Court Related Expenses: All court related expenses authorized by a judge must be included in the court page of the IDER. This section is only for expenses of contract investigators (not including PD employees), expert witnesses, and other direct litigation costs paid for from the public defender office budget.

Indirect Costs Rates

Counties may not claim indirect costs, except for the portion attributable to public defender offices. These allowable indirect cost rates may only be calculated based on public defender staff salaries. Do not include fringe in the indirect cost calculation. PDOs claiming indirect costs must have the allocation schedule or cost allocation plan available in the event of a monitoring site visit. The county must fill in the spaces provided for the rate (percent) and the approving agency.

The Commission uses the definition of indirect costs set forth in the Uniform Grant Management Standards as promulgated by the Office of the Governor.

> *"F. Indirect Costs*
> *1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term 'indirect costs' as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within an entity or in other agencies providing services to an entity. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.*
> *2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.*
> *3. Limitation on indirect or administrative costs.*
> *a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.*
> *b. Amounts not recoverable as indirect costs or administrative costs under one Federal or state award may not be shifted to another Federal or state award, unless specifically authorized by Federal or state legislation or regulation."*

Improvement Grant Funded Programs

Discretionary Grant-funded public defenders or grant-funded departments within public defender offices will report all data in the Indigent Defense Expenditure Report (IDER). Counties funded by direct client service discretionary grants will report both the state funded portion and the county funded portion on the form below (i.e. gross expenditures). All case count data will be reported on the IDER by court. All investigative, expert witness and other direct litigation costs associated with public defender work will be reported in the PDO administrative form. Grant funded programs will continue to demonstrate activity by quarter in their discretionary grant reports to substantiate discretionary grant payments.

Counties participating in a regional public defender program will report any funds paid to or received from the other participating counties as part of an interlocal agreement on the main page of the IDER. Cases disposed by public defender attorneys in regional programs must be reported on the IDER for the county in which the cases were disposed in the appropriate courts.

Sample Public Defender Addendum

Indigent Defense Expenditure Report
Public Defender Office Administrative Addendum
_____ County
October 1, 2019 - September 30, 2020

Expenditures

Public Defender Personnel

	Attorney Salary and Fringe Benefits	Investigator Salaries and Fringe Benefits	Mitigation Specialist Salaries and Fringe Benefits	Mental Health Professionals Salaries and Fringe	Administrative Support Salaries and Fringe Benefits
Juvenile					
Capital Murder					
Adult Non-Capital Felony					
Adult Misdemeanor					
Juvenile Appeals					
Adult Felony Appeals					
Adult Misdemeanor Appeals					
Ltd. Scope 15.17/Auto Bail Review					
Total					

Total Public Defender Personnel Cost and Fringe Benefits

Please provide the County's average fringe benefit rate (%)

Public Defender Travel and Training

Public Defender Equipment

Public Defender Other Direct Operating Expenditures

Total Administrative Expenditures

Other Public Defender Court Related Expenditures

Expert Witness Expenditures

Contract Investigator Expenses

Other Direct Litigation Expenditures

Total Court Related Expenditures

Indirect Expenditures

Public Defender Indirect Costs (Apply rate to salaries line item only)

Public Defender Indirect Rate (The approving agency) %

Grand Total of All Public Defender Expenses

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Sample Limited Scope Representation Addendum

Indigent Defense Expenditure Report
Limited Scope Representation: Article 15.17 Magistration and Automatic Bail Review Hearings
Anderson County

Counties should complete this addendum ONLY if they provide limited scope defense representation specifically for Article 15.17 Magistration hearings and/or Automatic Bail Review Hearings. Representation is considered "limited scope" when it is provided separately from any appointment to represent a defendant against alleged offenses. If unsure, contact TIDC for assistance.

Expenditures and Defendants Represented
October 1, 2019 - September 30, 2020

Counsel Type	Attorney Fee Expenditures	Number of Defendants Represented
Limited Scope Representation for Article 15.17 Magistration Hearings		
Assigned Counsel		
Contract Counsel		
Managed Assigned Counsel		
Public Defender	*	
Limited Scope Representation for Automatic Bail Review Hearings		
Assigned Counsel		
Contract Counsel		
Managed Assigned Counsel		
Public Defender	*	
Total	$0.00	0

* PD expenditures associated with limited scope representation for these purposes should be reported in the Public Defender Addendum.

Notes (Please include any information needed by the Commission/OCA related to this report.)

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