



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Andrews County, Texas

FY 2015 Indigent Defense Expenses

Final Report

July 5, 2016

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EXECUTIVE SUMMARY

Andrews County's fiscal monitoring desk review began on January 15, 2016. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed as part of the fiscal monitoring desk review process.

Summary of Findings

- The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by financial data provided.
- Civil case expenditures were included on the IDER.
- Attorney Fee Vouchers did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.

Objective

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grant during FY2014. Records provided by the Andrews County Auditor's Office were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the assistant county auditor, the county judge, and the district court administrator. The fiscal monitor reviewed:

- random samples of paid attorney fee vouchers;
- general ledger transactions provided by the Andrews County Auditor's Office;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Andrews County is located in West Texas on the border with New Mexico. The County occupies an area of 1501 square miles, and serves an estimated population of 17,785. The County was created August 21, 1876, from Tom Green County and was later organized in 1910. Andrews County is a political subdivision of the State of Texas. The county was named for Richard Andrews, the first Texian soldier to die in the war for Texas independence in 1835. Neighboring counties are Gaines, Martin, Midland, Ector and Winkler Counties in the State of Texas and Lea County in the State of New Mexico.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant,” as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

Formula Grant

The County submitted the FY 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Andrews County met the formula grant eligibility requirements and was awarded \$16,002 for FY 2015.

Discretionary Grant

Andrews County did not apply for a discretionary grant for FY 2015; therefore no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

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 is to 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 on criminal matters. Since FY 2014, the financial data reports expanded to include attorney-level information. Section 79.036(a-1) of the Texas Government Code states "Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure."

Andrews County prepared and submitted the FY 2015 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section 79.036(e). However it was noted that the amounts paid to attorneys based on the new attorney detail information did not match up with the attorney fees paid reported on the court report. The reviewer initiated a reconciliation procedure of the financial data from the official county records to the IDER report. The general ledgers of the official county financial data provided did not support the amounts claimed on the IDER. It appears that information was duplicated in a couple of categories which overstated the expenses reported on the IDER.

Recommendation:

TIDC staff will provide a technical assistance letter to Andrews County which will outline the preparation of the IDER utilizing the specific data provided by the County. The County Auditor and appropriate staff must review this letter and gain an understanding on how to prepare the IDER properly. The County staff should gain an understanding of the court processes for Andrews County to further assist in the IDER preparation.

Because the amounts reported on the IDER are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Andrews County was greater than would have been authorized if reported without the duplicated additional expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

The County must submit corrected expenditures and case counts in order for the Commission to consider the effect on the formula grant calculation.

County Response

Andrews County Action Plan

Andrew County and appropriate staff will review to have a better understanding in preparing the IDER properly and will follow through with the Indigent Defense Report Procedural Manual.

Andrews County will look forward to a hands on visitor. Andrews County and appropriate staff agrees to the changes outlined in the Technical Assistance letter and the corrected calculations to be used for the IDER.

Contact person(s): Nancy M. Jimenez

Completion date: 6/2/16

Additional Reviewer Comment:

Based on the response from the auditor’s office that they agree to the amounts outlined in the technical assistance letter, \$28,078.50 was overstated expenses on the IDER for FY2015. The effect of this overstatement resulted in the formula grant calculation for FY 2016 to be greater by \$1,406.00. These results will be presented to the TIDC Board Members at the next scheduled meeting and Andrews County will be notified of any resulting actions thereafter.

Finding Two

The FY2015 IDER submitted by Andrews County under Texas Government Code Section 79.036(e) included the cost of attorney fees on civil cases with the criminal indigent defense attorney fees paid. Expenses associated with civil cases are ineligible and may not be included in the IDER.

Andrews County has overstated the county’s criminal indigent defense expenditures due to the inclusion of civil case costs. Because the amounts reported are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Andrews County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

Recommendation:

The appropriate county personnel should be trained to identify the difference between civil cases and criminal cases. Case numbering conventions used by the courts may be used to help track civil case expenditures separately.

County Response

Andrews County Action Plan

Andrews County and appropriate staff will get with County and District Judges and identify the differences between Civil/CPS Cases implement a new line item. Andrews County will review with Clerk on existing line items of Court Appointed Professional Services. The Auditor’s office has renamed line items and added to Court Appointed Prof./Civil.

Contact person(s): Nancy M. Jimenez

Completion date: 6/2/16

Finding Three

Eight of the thirty-eight attorney fee vouchers reviewed did not meet the statutory requirements of the Code of Criminal Procedure (CCP) Article 26.05 (c) because the vouchers did not include the amount requested to be paid by the attorney. CCP Article 26.05 (c) reads in part “...No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings or, if the county operates a managed assigned counsel program under Article 26.047, to the director of the program, and until the judge or director, as applicable, approves the payment. If the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount. ...”

In addition to the attorney not requesting an amount, two vouchers were not signed and approved by the judge. Another voucher was paid a flat rate of \$1,500.00 for a trial. This rate was requested

by the attorney but the amount is not listed on the fee schedule. The fee schedule indicates that trials will be paid by the hour. No hours or list of services provided were submitted by the attorney.

Recommendation:

To ensure compliance of CCP Article 26.05 (c), the County should require attorneys to submit invoices that include both itemized services performed and a fee request for those services in addition to information currently provided.

The County should develop a process to confirm the judge has approved all vouchers.

County Response

Andrews County Action Plan

Andrews County will review all approved vouchers approved by the County and District Judges and that they are itemized and approved according to the fee schedule for services provided. When signed by the Judge's Office it should be in compliance with CCP Article 26.05 (c) before check is mailed out.

Contact person(s): Nancy M. Jimenez

Completion date: 6/2/16

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

ANDREWS COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2013	2014	2015
Population Estimate	16,402	16,729	17,785
Juvenile Assigned Counsel	\$44,902.94	\$12,650.00	\$42,050.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$59,890.76	\$52,969.80	\$53,463.50
Adult Misdemeanor Assigned Counsel	\$28,000.00	\$34,375.00	\$25,865.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$10,800.00	\$1,825.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$8,379.08	\$6,715.00	\$6,102.98
Total Court Expenditures	\$151,972.78	\$108,534.80	\$127,481.48
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$33,484.00	\$0.00	\$33,484.00
Total Court and Administrative Expenditures	\$185,456.78	\$108,534.80	\$160,965.48
Formula Grant Disbursement	\$18,499.00	\$32,251.00	\$16,002.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$89,951.40	\$113,013.68	\$86,473.54
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	260	293	267

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Andrews County				
Year	2013	2014	2015	Texas 2015
Population (Non-Census years are estimates)	16,402	16,729	17,785	27,213,214
Felony Charges Added (from OCA report)	344	332	210	271,744
Felony Cases Paid	101	142	123	193,560
% Felony Charges Defended with Appointed Counsel	29%	43%	59%	71%
Felony Trial Court-Attorney Fees	\$59,891.00	\$52,970.00	\$53,464.00	\$110,036,405
Total Felony Court Expenditures	\$61,492.00	\$52,970.00	\$55,266.00	\$126,091,674
Misdemeanor Charges Added (from OCA report)	500	496	396	503,299
Misdemeanor Cases Paid	80	108	116	222,408
% Misdemeanor Charges Defended with Appointed Counsel	16%	22%	29%	44%
Misdemeanor Trial Court Attorney Fees	\$28,000.00	\$34,375.00	\$25,865.00	\$39,141,724
Total Misdemeanor Court Expenditures	\$28,000.00	\$34,375.00	\$25,865.00	\$40,061,131
Juvenile Charges Added (from OCA report)	30	35	15	31,813
Juvenile Cases Paid	50	41	28	41,068
Juvenile Attorney Fees	\$44,903.00	\$12,650.00	\$42,050.00	\$11,072,434
Total Juvenile Expenditures	\$51,681.00	\$19,365.00	\$46,351.00	\$11,747,908
Total Attorney Fees	\$143,594.00	\$101,820.00	\$121,379.00	\$165,942,108
Total ID Expenditures	\$185,457.00	\$108,535.00	\$160,965.00	\$238,029,838
Increase In Total Expenditures over Baseline	100%	17%	74%	168%
Total ID Expenditures per Population	\$11.31	\$6.49	\$9.05	\$8.75
Commission Formula Grant Disbursement	\$18,499.00	\$32,251.00	\$16,002.00	\$23,931,689

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2015 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

APPENDIX C – DISTRIBUTION LIST

The Honorable Richard H. Dolgener
Constitutional County Judge
201 North Main
Courthouse, Room 104
Andrews, TX 79714

The Honorable Martin Muncy
109th District Court Judge
201 North Main
Courthouse, Room 201
Andrews, TX 79714

Mr. Patty Driver
County Auditor
201 North Main
Courthouse, Room 109
Andrews, TX 79714

Mr. James D. Bethke
Executive Director, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701

Mr. Wesley Shackelford
Deputy Director, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701

Mr. Edwin Colfax
Grant Program Manager, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701