



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Brazoria County, Texas

FY 2016 Indigent Defense Expenses

Final Report

March 27, 2018

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EXECUTIVE SUMMARY

Brazoria County's on-site fiscal monitoring visit was conducted June 26-28, 2017. Follow-up email exchanges continued to June 30, 2017 to complete the record review. 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, 2015 to September 30, 2016 (FY2016) was reviewed during the fiscal monitoring visit and for the subsequent follow up documents.

SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- 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 the accuracy of the Indigent Defense Expenditure Report;
- 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 grants during FY2016. Records provided by the Brazoria County Auditor's Office and Indigent Defense Office were reviewed.

METHODOLOGY

To accomplish the objectives, the fiscal monitor met with the County Auditor, Assistant County Auditors and Indigent Defense Coordinator. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- general ledger transactions provided by the Brazoria County Auditor's Office;
- IDER;
- 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

Brazoria County was home to the first colonists Stephen F. Austin brought to settle in Texas. The county is affectionately known as “Where Texas Began.” The county included the town once known as Velasco, which was the first capital of the Republic of Texas. Brazoria County is in the Gulf Coast region of Texas and is named for the Brazos River which empties into the Gulf of Mexico. The county is part of the Houston-The Woodlands-Sugar Land, TX Metropolitan Statistical Area and the county seat is Angleton. Brazoria County serves an estimated population of 349,500 and occupies an area of 1,609 square miles, of which 251 square miles is water. The neighboring counties are Fort Bend, Galveston, Harris, Matagorda and Wharton.

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 2016 indigent defense on-line grant application to assist in the provision of indigent defense services. Brazoria County met the formula grant eligibility requirements and was awarded \$255,222 for FY 2016.

Discretionary Grant

Brazoria County did not apply for a discretionary grant for FY 2016; therefore, no discretionary grant funds were reviewed.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Brazoria County included some general court expenditures with the criminal indigent defense expenses in the FY 2016 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e). These general court expenses are not eligible indigent defense expenditures and should not be included in the IDER. Ten vouchers from the expert witness, investigation and other direct litigation expense categories were reviewed. Of these ten vouchers, three were for mental health evaluations. All three vouchers were billed directly to the court and each indicated the mental health exam was performed to determine if defendant was competent to stand trial.

A request for a mental health evaluation to determine competency to stand trial is typically a general court expense. The mental health examinations that are considered indigent defense expenses are those requested by the defense counsel where the results are shared exclusively with the defense team. No mental health evaluations requested by the judge or prosecuting attorney should be reported as indigent defense expenses. Support that the expense is for a mental health expert working for the defense under derivative attorney-client privilege to assist in the criminal defense of an indigent defendant must be documented in order to include the expenditure on the IDER. An order granting an *ex parte* defense motion requesting funds for a mental health defense expert is generally sufficient to establish eligibility as an indigent defense expenditure.

The expenditures detailed above should not be included in the criminal indigent defense expense report. The IDER overstated the county's criminal indigent defense expenditures due to the inclusion of these ineligible costs. This could mean that the FY 2017 formula grant for Brazoria County was greater than would have been authorized if reported without the ineligible expenses. Please refer to the Indigent Defense Expenditure Report Procedure Manual: <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>.

Recommendation:

Procedures to identify and record expenses for mental health expert expenses requested by the appointed defense counsel for the exclusive use of defense counsel in preparation of a defense should be developed. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial, which are considered general court expenses.

Brazoria County Action Plan

Brazoria County has implemented a procedure where the Brazoria County Auditor's Office identifies expenses from examinations ordered by the court to determine competency to stand trial and excludes such costs from indigent defense expenses.

Contact person(s): *Brazoria County Judge L.M. "Matt" Sebesta, Jr. and 239th District Court Judge Patrick Sebesta.*

Completion date: *September 11, 2017.*

Finding Two

Attorneys do not appear to submit fully itemized attorney fee vouchers. All ninety-six 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...."

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 requested for those services in addition to information currently provided.

The judges must provide written explanation for any variance between the amount requested by the attorney and the amount approved for payment.

Brazoria County Action Plan

Brazoria County intends to adopt the enclosed "Attorney Fee Voucher" form. This form provides that compensation is requested at rates within the schedule of fees adopted pursuant to Texas Code of Criminal Procedure article 26.05(b). In addition, the form provides for judges to enter a written explanation for any denial or variation from the requested fee.

Contact person(s): *Brazoria County Judge L.M. "Matt" Sebesta, Jr. and 239th District Court Judge Patrick Sebesta.*

Completion date: *September 11, 2017.*

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

BRAZORIA COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2014	2015	2016
Population Estimate	333,224	342,421	349,500
Juvenile Assigned Counsel	\$154,616	\$160,275	\$170,018
Capital Murder	\$0.00	\$45,700	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$1,151,827	\$1,288,333	\$1,303,035
Adult Misdemeanor Assigned Counsel	\$366,973	\$369,075	\$445,291
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$33,047	\$96,449	\$55,504
Adult Misdemeanor Appeals	\$0.00	\$1,000	\$0.00
Licensed Investigation	\$21,570	\$17,095	\$11,403
Expert Witness	\$68,399	\$105,670	\$76,810
Other Direct Litigation	\$146,917	\$74,718	\$58,715
Total Court Expenditures	\$1,943,350	\$2,158,316	\$2,120,775
Administrative Expenditures	\$106,068	\$122,699	\$124,977
Funds Paid by Participating County to Regional Program	\$75,524	\$0.00	\$0.00
Total Public Defender Expenditures	\$0.00	\$0.00	\$0.00
Total Court and Administrative Expenditures	\$2,124,941	\$2,281,014	\$2,245,752
Formula Grant Disbursement	\$391,398	\$251,429	\$255,222
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$445,278	\$485,486	\$508,314
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	4719	4512	5185

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Brazoria County				
Year	2014	2015	2016	Texas 2016
Population (Non-Census years are estimates)	333,224	342,421	349,500	27,725,192
Felony Charges Added (from OCA report)	3,157	3,452	3,500	276,879
Felony Cases Paid	2,157	2,146	2,471	200,580
% Felony Charges Defended with Appointed Counsel	68%	62%	71%	72%
Felony Trial Court-Attorney Fees	\$1,151,828	\$1,334,033	\$1,303,035	\$115,192,600
Total Felony Court Expenditures	\$1,373,348	\$1,509,083	\$1,426,738	\$131,727,198
Misdemeanor Charges Added (from OCA report)	8,250	7,463	7,475	481,253
Misdemeanor Cases Paid	1,572	1,386	1,750	214,674
% Misdemeanor Charges Defended with Appointed Counsel	19%	19%	23%	45%
Misdemeanor Trial Court Attorney Fees	\$366,973	\$369,075	\$445,291	\$40,245,051
Total Misdemeanor Court Expenditures	\$377,953	\$385,778	\$461,616	\$41,003,480
Juvenile Charges Added (from OCA report)	490	513	413	27,307
Juvenile Cases Paid	980	959	939	41,989
Juvenile Attorney Fees	\$154,616	\$160,275	\$170,018	\$11,119,664
Total Juvenile Expenditures	\$159,001	\$166,005	\$176,918	\$11,424,425
Total Attorney Fees	\$1,706,464	\$1,960,832	\$1,973,848	\$172,232,454
Total ID Expenditures	\$2,124,941	\$2,281,014	\$2,245,752	\$247,730,647
Increase in Total Expenditures over Baseline	193%	214%	210%	179%
Total ID Expenditures per Population	\$6.38	\$6.66	\$6.43	\$8.94
Commission Formula Grant Disbursement	\$391,398	\$251,429	\$255,222	\$25,056,873
Cost Recouped from Defendants	\$445,278	\$485,486	\$508,314	\$11,055,035

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
- FY2016 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/48321/fy16-ider-manual.pdf>

APPENDIX C – ATTORNEY FEE VOUCHER

ATTORNEY FEE VOUCHER - BRAZORIA COUNTY																																																											
District Court # _____	STYLE: State of Texas v. _____	Disposition Date: ____/____/____																																																									
County Court at Law # _____	Cause #/Offense _____ Cause #/Offense _____	<input type="checkbox"/> Trial-Jury <input type="checkbox"/> Hired New Counsel <input type="checkbox"/> Trial-Court <input type="checkbox"/> Atty. Withdrawn <input type="checkbox"/> Plea <input type="checkbox"/> Atty. Removed <input type="checkbox"/> Dismissed <input type="checkbox"/> No-Billed <input type="checkbox"/> Dism/Red to Misd. # _____																																																									
Account #574100-10000- _____	Cause #/Offense _____ Cause #/Offense _____																																																										
Offense Level: <input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor <input type="checkbox"/> Juvenile <input type="checkbox"/> Appeal <input type="checkbox"/> Capital-Death Penalty <input type="checkbox"/> Capital-Non-Death <input type="checkbox"/> MRP- Felony <input type="checkbox"/> MRP-Misdemeanor																																																											
Attorney (Full Name-PRINT): _____ Street Address: _____ City/State/Zip: _____		Phone: _____ Cell: _____ Fax: _____ Bar# _____																																																									
Time Period for Services Rendered: Beginning ____/____/____ through ____/____/____																																																											
Compensation is requested at the below rates pursuant to the Third Amended Standards and Procedures Related to Appointment of Counsel for Indigent Defendants ¹ :																																																											
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">Non-Trial Plea Agreement Cases</th> <th colspan="2" style="text-align: center;">Trial</th> <th colspan="2" style="text-align: center;">Non-Trial</th> </tr> <tr> <th>Type</th> <th>Rate</th> <th>Type</th> <th>Rate</th> <th>Type</th> <th>Rate</th> </tr> </thead> <tbody> <tr> <td>1st/2nd/3rd Degree/SJF/MRP/MTAG</td> <td>\$50-150/hr \$750/plea</td> <td>1st Degree</td> <td>\$600/day</td> <td>1st Degree</td> <td>\$50-150/hr \$600/day</td> </tr> <tr> <td>Misdemeanor (A or B)</td> <td>\$50-150/hr \$375/plea</td> <td>2nd Degree</td> <td>\$500/day</td> <td>2nd Degree</td> <td>\$50-150/hr \$500/day</td> </tr> <tr> <td colspan="2">*Juvenile rate is corresponding case level.</td> <td>3rd Degree/SJF/</td> <td>\$500/day</td> <td>3rd Degree/SJF/MRP/MTAG</td> <td>\$50-150/hr \$400/day</td> </tr> <tr> <td colspan="2" style="text-align: center;">Post-Conviction/Other</td> <td>MRP/MTAG</td> <td>\$400/day</td> <td>Misdemeanor</td> <td>\$50-150/hr \$375/day</td> </tr> <tr> <td>Appeal/MNT</td> <td>\$75-95/hr \$3,000/case</td> <td>Misdemeanor (A or B)</td> <td>\$375/day</td> <td>Juvenile Detention Hearing</td> <td>\$125/case (max \$375/day/court)</td> </tr> <tr> <td>Appeal (after PDR)/Art. 11.07</td> <td>\$75-95/hr \$1,750/case</td> <td colspan="2">*Juvenile rate is corresponding case level.</td> <td colspan="2">*Other juvenile rate is corresponding case level.</td> </tr> <tr> <td>DNA Motion</td> <td>\$75-95/hr \$500/case</td> <td colspan="4" rowspan="2"> ¹The "Presumptive Maximum" applies to all cases unless indicated otherwise. "Presumptive Maximum" includes all non-trial hours on plea cases, six hours on felony cases and three hours on misdemeanor cases. In the event the amount requested by the attorney exceeds the Presumptive Maximum, the attorney is responsible for providing an explanation to the Court to which the voucher is presented before the same will be approved. </td> </tr> <tr> <td>Attorney-for-the-Day</td> <td>\$125 - 150/hr</td> </tr> </tbody> </table>				Non-Trial Plea Agreement Cases		Trial		Non-Trial		Type	Rate	Type	Rate	Type	Rate	1 st /2 nd /3 rd Degree/SJF/MRP/MTAG	\$50-150/hr \$750/plea	1 st Degree	\$600/day	1 st Degree	\$50-150/hr \$600/day	Misdemeanor (A or B)	\$50-150/hr \$375/plea	2 nd Degree	\$500/day	2 nd Degree	\$50-150/hr \$500/day	*Juvenile rate is corresponding case level.		3 rd Degree/SJF/	\$500/day	3 rd Degree/SJF/MRP/MTAG	\$50-150/hr \$400/day	Post-Conviction/Other		MRP/MTAG	\$400/day	Misdemeanor	\$50-150/hr \$375/day	Appeal/MNT	\$75-95/hr \$3,000/case	Misdemeanor (A or B)	\$375/day	Juvenile Detention Hearing	\$125/case (max \$375/day/court)	Appeal (after PDR)/Art. 11.07	\$75-95/hr \$1,750/case	*Juvenile rate is corresponding case level.		*Other juvenile rate is corresponding case level.		DNA Motion	\$75-95/hr \$500/case	¹ The "Presumptive Maximum" applies to all cases unless indicated otherwise. "Presumptive Maximum" includes all non-trial hours on plea cases, six hours on felony cases and three hours on misdemeanor cases. In the event the amount requested by the attorney exceeds the Presumptive Maximum, the attorney is responsible for providing an explanation to the Court to which the voucher is presented before the same will be approved.				Attorney-for-the-Day	\$125 - 150/hr
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In Court Services	Itemized Services (Attach Additional Pages if Needed)	Date(s)	Hours																																																								
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Other Allowable Expenses	Brief Description (Attached Additional Pages if Needed)	Date(s)	Amounts																																																								
			\$ _____																																																								
Investigator: SUBMIT BILL FROM INVESTIGATOR	To be paid by: <input type="checkbox"/> County <input type="checkbox"/> Attorney	\$ _____																																																									
Expert Witness: SUBMIT BILL FROM EXPERT/DOCTOR/OTHER	To be paid by: <input type="checkbox"/> County <input type="checkbox"/> Attorney	\$ _____																																																									
Pysc. Evaluation: SUBMIT BILL FROM DOCTOR	To be paid by: <input type="checkbox"/> County <input type="checkbox"/> Attorney	\$ _____																																																									
TOTAL HOURS: _____																																																											
<input type="checkbox"/> Final Payment <input type="checkbox"/> Partial Payment (allowed in special cases only, with Judge's approval)																																																											
TOTAL COMPENSATION AND EXPENSES CLAIMED (Do not include amounts to investigators, experts, etc. to be paid by County) \$ _____																																																											
ATTORNEY CERTIFICATION																																																											
I, the undersigned attorney, certify that the above information is true and correct and in accordance with the laws of the State of Texas. The compensation and expenses claimed were reasonable and necessary to provide effective assistance of counsel. I further certify that I am/was licensed by the State of Texas, during the time period these services were rendered to practice as an attorney in the State of Texas. No travel time has been included in this voucher. If I appeared in Court on more than one (1) case, the total time spent in Court has been fairly divided among each case.																																																											
Attorney Signature: _____		Date: ____/____/____																																																									
Signature of Presiding Judge: _____		Date: ____/____/____																																																									
		TOTAL ALLOWED																																																									
REASON FOR DENIAL OR VARIATION: _____																																																											

APPENDIX D – DISTRIBUTION LIST

Honorable L.M. “Matt” Sebesta, Jr.
Constitutional County Judge
Brazoria County
111 E. Locust, Ste. 102A
Angleton, TX 77515

Honorable Patrick Edward Sebesta
Local Administrative District Court
111 E. Locust, Ste. 214-A
Angleton, TX 77515

Honorable Lori Rickert
Local Administrative Statutory County Court Judge
111 E. Locust, Ste. 204
Angleton, TX 77515

Honorable Marc W. Holder
Chairman of the Juvenile Board
111 E. Locust, Ste. 300
Angleton, TX 77515

Ms. Connie Garner
County Auditor
111 E. Locust, Ste. 303
Angleton, TX 77515

Ms. Iris B. Huerta
Indigent Defense Coordinator
111 E. Locust, Ste. 309
Angleton, TX 77515

Mr. Geoff Burkhart
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
Grants Program Manager, Texas Indigent Defense Commission
209 W. 14th Street, Room 202
Austin, TX 78701