



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Cochran County, Texas**

**FY 2017 Indigent Defense Expenses**

**Final Report**

**December 21, 2018**

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# EXECUTIVE SUMMARY

The Texas Indigent Defense Commission (TIDC) conducted an on-site fiscal monitoring review of Cochran County the week of May 21-25, 2018. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of TIDC grants.

TIDC reviewed the expenditure period of October 1, 2016 through September 30, 2017 (FY2017).

## SUMMARY OF FINDINGS

- General court expenditures were included with the criminal indigent defense expenses in the FY 2017 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section §79.036 (e).
- Attorney CLE hours are not maintained to verify attorney eligibility to receive appointments.
- Some attorney payments do not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedures.

## 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 payments;
- Provide recommendations pertaining to operational efficiency; and
- Assist with any questions or concerns on the indigent defense program requirements.

## SCOPE

TIDC reviewed the County's indigent defense expenditures to ensure compliance with applicable laws, regulations, and the provisions of the grants for FY2017. The records reviewed were provided by the Cochran County auditor's office. Compliance with other statutory indigent defense program requirements was not included in this review.

## METHODOLOGY

To accomplish the objectives, the fiscal monitor met with the County Auditor. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Cochran County Auditor's Office;
- IDER;
- Attorney fee schedule;
- Any applicable contracts; and
- The County's local indigent defense plan filed with TIDC.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Cochran County is in West Texas and borders the state of New Mexico. The county was created in 1876, however it was not organized until 1924. Cochran County is named after Robert E. Cochran, a defender of the Alamo. The county seat is Morton. Cochran County serves an estimated population of 2,990 and occupies an area of 775 square miles, of which .09 square miles is water. The neighboring counties are Bailey, Hockley and Yoakum in Texas and Lea and Roosevelt counties in New Mexico.

Cochran County is served by the 286<sup>th</sup> district court and the county court.

### Commission Background

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

TIDC 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.

TIDC's purpose is to promote justice and fairness for all indigent persons accused of crimes, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. TIDC 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 2017 indigent defense online grant application to assist in the provision of indigent defense services. Cochran County met the formula grant eligibility requirements and was awarded \$7,192 for FY 2017.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Cochran County included some general court expenditures with criminal indigent defense expenses in the FY 2017 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.

Three vouchers from the “expert witness” and “other direct litigation” expense categories were reviewed. One expert witness voucher was sealed, and the remaining two were for mental health evaluations. These two vouchers were billed directly to the court, and each invoice included an “order for examination regarding incompetency.”

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 for the expenditure to be allowable 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 2018 formula grant funding for Cochran County may have been 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/57810/fy17-ider-manual.pdf>

### **Recommendation:**

The County must develop 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. Procedures must distinguish such expenses from examinations ordered by the court to determine competency to stand trial, which are considered general court expenses.

### **Cochran County Action Plan**

*Separate line items will be made in the county auditor's report reflecting any expenses to the defense attorneys for the representation of the defendant. Additional line items will be made in the county auditor's reports so that a determination may be made as to competency expense request by the court, defendant or the state.*

**Contact person(s):** *Beverly McClellan*

**Completion date:** *Completed*

### **Finding Two**

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides that an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorneys assigned criminal cases had met the CLE requirements to be eligible for appointment. The County may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available.)

### **Recommendation:**

The County must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

### **Cochran County Action Plan**

*Cochran County will maintain CLE records to verify that each attorney on the appointment list has complied with current year's CLE requirements. Additionally, the indigent plan will reflect the minimum number of CLE hours the prospective appointed attorney shall maintain.*

**Contact person(s):** *The Judge responsible for his/her court*

**Completion date:** *December 31, 2018*

### **Finding Three**

Some attorney payments do not appear to be made in accordance with the published fee schedule as required by Article 26.05(b) of Texas Code of Criminal Procedures (CCP).

TIDC examined 30 attorney fee vouchers to determine whether indigent defense payments met the requirements of Article 26.05 and the local fee schedule. The published fee schedule adopted by Cochran County indicates that attorneys may be paid either a flat rate (\$300 for felonies or \$200 for misdemeanors) or an hourly rate ranging from \$50 to \$100.

TIDC found that, out of the 12 felony fee vouchers reviewed, seven were paid a flat rate of \$375 per case. One voucher was paid \$300, while another voucher was paid \$350, and a third voucher with two cases listed was paid \$400. The remaining two vouchers requested an hourly amount to be paid, which fell within the published fee schedule range.

Eighteen attorney fee vouchers for misdemeanor cases were reviewed. Seventeen were paid the flat rate of \$200, while one voucher was paid a flat rate of \$100 and was described as dismissed.

**Recommendation:**

Judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that is consistent with current payment practices in accordance with the requirements of CCP Article 26.05(b).

**Cochran County Action Plan**

*The Judges are revising the Indigent Plan to reflect the actual payment practices. The \$100 fee paid for a dismissal is pursuant to the plan on file with TIDC that pays a \$100 fee for the dismissal or "non-filing" of a case to the court-appointed attorney.*

**Contact person(s):** *Pat Phelan, District Judge*

**Completion date:** *December 31, 2018*

# APPENDICES

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>COCHRAN COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Population Estimate	3,199	3,012	2,990
Juvenile Assigned Counsel	\$2,150	\$1,200	\$1,000
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$8,275	\$6,400	\$14,169
Adult Misdemeanor Assigned Counsel	\$2,350	\$900	\$4,900
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$0	\$0	\$2,500
Other Direct Litigation	\$0	\$0	\$1,950
Total Court Expenditures	\$12,775	\$8,500	\$24,519
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$1,157	\$1,000	\$2,000
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$13,932	\$9,500	\$26,519
Formula Grant Disbursement	\$6,910	\$6,958	\$7,192
Supplemental Capital Defense Grant	\$0	\$0	\$0
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$472	\$322	\$1,479
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0	\$0	\$0
Total Public Defender Cases	NA	NA	NA
Total Assigned Counsel Cases	37	27	47

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Cochran County</b>				
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Texas 2017</b>
Population (Non-Census years are estimates)	3,199	3,012	2,990	28,059,337
Felony Charges Added (from OCA report)	25	0	48	279,474
Felony Cases Paid	22	18	22	212,428
% Felony Charges Defended with Appointed Counsel	88%		46%	76%
Felony Trial Court-Attorney Fees	\$8,275	\$6,400	\$14,169	\$123,500,620
Total Felony Court Expenditures	\$8,275	\$6,400	\$18,619	\$141,042,744
Misdemeanor Charges Added (from OCA report)	12	5	1	473,896
Misdemeanor Cases Paid	9	5	21	217,002
% Misdemeanor Charges Defended with Appointed Counsel	75%	100%	2,100%	46%
Misdemeanor Trial Court Attorney Fees	\$2,350	\$900	\$4,900	\$43,271,420
Total Misdemeanor Court Expenditures	\$2,350	\$900	\$4,900	\$44,143,098
Juvenile Charges Added (from OCA report)	4	2	0	29,152
Juvenile Cases Paid	6	4	4	39,635
Juvenile Attorney Fees	\$2,150	\$1,200	\$1,000	\$11,386,741
Total Juvenile Expenditures	\$2,150	\$1,200	\$1,000	\$11,967,965
Total Attorney Fees	\$2,150	\$1,200	\$1,000	\$183,294,600
Total ID Expenditures	\$13,932	\$9,500	\$26,519	\$265,131,386
Increase in Total Expenditures over Baseline	-1%	-33%	88%	199%
Total ID Expenditures per Population	\$4.36	\$3.15	\$8.87	\$9.45
Commission Formula Grant Disbursement	\$6,910	\$6,958	\$7,192	\$31,751,772
Cost Recouped from Defendants	\$472	\$322	\$1,479	\$10,262,531

*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
- FY2017 Indigent Defense Expenditure Report Manual found at:
- <http://www.tidc.texas.gov/media/57810/fy17-ider-manual.pdf>

## APPENDIX C – DISTRIBUTION LIST

Honorable Pat Sabala Henry  
Constitutional County Judge  
Cochran County  
100 North Main Street, Rm 105  
Morton, TX 79346

Honorable Jay Pat Phelan  
Local Administrative District Judge  
286<sup>th</sup> District Court  
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Levelland, TX 79336

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