



# **TEXAS INDIGENT DEFENSE COMMISSION**

## **Fiscal Monitoring Report**

**Hockley 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 Hockley 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 (FY 2017).

## 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 Hockley 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 and District Judge. The fiscal monitor reviewed

- Random samples of paid attorney fees;
- General ledger transactions provided by the Hockley 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

Hockley County was created in 1876 from portions of Bexar and Young counties, however it was not organized until 1921. Hockley County is named after George Washington Hockley, a secretary of war of the Republic of Texas. The county seat is Levelland. Hockley County serves an estimated population of 23,409 and occupies an area of 909 square miles, of which .2 square miles is water. The neighboring counties are Bailey, Cochran, Hale, Lamb, Lubbock, Lynn, Terry and Yoakum Counties.

Hockley 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 on-line grant application to assist in the provision of indigent defense services. Hockley County met the formula grant eligibility requirements and was awarded \$27,449 for FY 2017.

## DETAILED FINDINGS AND RECOMMENDATIONS

### **Finding One**

Hockley County included some general court expenditures with the 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.

Six vouchers from the “other direct litigation” expense categories were reviewed, constituting 100% of the expenditures in this category. Two vouchers were for allowable transcript costs, and the remaining four were for mental health evaluations. One mental health evaluation voucher was billed to the attorney and was cited as an evaluation of risk for sexual offending. The remaining 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. These three vouchers for competency evaluations are considered general court expenditures that are ineligible to be reported on the IDER.

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 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 2018 formula grant for Hockley 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/57810/fy17-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.

### **Hockley 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):** *Shirley Penner, Auditor*

**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.

### **Hockley County Action Plan**

*Hockley 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.

TIDC examined 64 attorney fee vouchers to determine whether indigent defense payments met the requirements of Article 26.05 and the local fee schedule. The fee schedule adopted by Hockley County indicates that attorneys may be paid either a flat rate (\$350 for felonies or \$200 for misdemeanors) or an hourly rate ranging from \$50 to \$100.

TIDC found that attorneys that submit vouchers with more than one case listed per defendant sometimes get the flat fee amount per case and sometimes they will be paid the designated flat fee amount for one case and \$100 for each additional case. Sometimes, if the case was unindicted or dismissed, the attorney received a flat rate of \$100 rather than the published flat rate amount. One misdemeanor voucher listed two cases and the judge approved a total of \$200 to cover both cases.

### **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).

### **Hockley 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>HOCKLEY COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Population Estimate	23,509	23,612	23,409
Juvenile Assigned Counsel	\$20,745	\$16,075	\$8,475
Capital Murder	\$0	\$0	\$0
Adult Non-Capital Felony Assigned Counsel	\$97,267	\$102,944	\$117,758
Adult Misdemeanor Assigned Counsel	\$30,088	\$26,450	\$37,368
Juvenile Appeals	\$0	\$0	\$0
Adult Felony Appeals	\$0	\$0	\$0
Adult Misdemeanor Appeals	\$0	\$0	\$0
Licensed Investigation	\$0	\$0	\$0
Expert Witness	\$2,450	\$0	\$0
Other Direct Litigation	\$0	\$9,324	\$4,397
Total Court Expenditures	\$150,549	\$154,793	\$167,997
Administrative Expenditures	\$0	\$0	\$0
Funds Paid by Participating County to Regional Program	\$9,149	\$3,993	\$3,993
Total Public Defender Expenditures	\$0	\$0	\$0
Total Court and Administrative Expenditures	\$159,698	\$158,786	\$171,991
Formula Grant Disbursement	\$20,700	\$23,139	\$27,449
Supplemental Capital Defense Grant	\$0	\$0	\$0
Discretionary Disbursement	\$0	\$0	\$0
Reimbursement of Attorney Fees	\$10,495	\$14,737	\$15,336
Reimbursement by State Comptroller for Writs of Habeas Corpus	0	\$0	\$0
Total Public Defender Cases	14	NA	NA
Total Assigned Counsel Cases	452	499	544

*Indigent Defense Expenditure Reporting*

Source: Texas Indigent Defense Commission records

<b>Hockley County</b>				
<b>Year</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Texas 2017</b>
Population (Non-Census years are estimates)	23,509	23,612	23,409	28,059,337
Felony Charges Added (from OCA report)	354	503	332	279,474
Felony Cases Paid	240	310	300	212,428
% Felony Charges Defended with Appointed Counsel	68%	62%	90%	76%
Felony Trial Court-Attorney Fees	\$97,267	\$102,944	\$117,758	\$123,500,620
Total Felony Court Expenditures	\$99,717	\$112,268	\$122,154	\$141,042,744
Misdemeanor Charges Added (from OCA report)	648	577	467	473,896
Misdemeanor Cases Paid	169	160	225	217,002
% Misdemeanor Charges Defended with Appointed Counsel	26%	28%	48%	46%
Misdemeanor Trial Court Attorney Fees	\$30,088	\$26,450	\$37,368	\$43,271,420
Total Misdemeanor Court Expenditures	\$30,088	\$26,450	\$37,368	\$44,143,098
Juvenile Charges Added (from OCA report)	48	31	19	29,152
Juvenile Cases Paid	57	29	19	39,635
Juvenile Attorney Fees	\$20,745	\$16,075	\$8,475	\$11,386,741
Total Juvenile Expenditures	\$20,745	\$16,075	\$8,475	\$11,967,965
Total Attorney Fees	\$148,099	\$145,469	\$163,601	\$183,294,600
Total ID Expenditures	\$159,698	\$158,786	\$171,991	\$265,131,386
Increase in Total Expenditures over Baseline	130%	129%	148%	199%
Total ID Expenditures per Population	\$6.79	\$6.72	\$7.35	\$9.45
Commission Formula Grant Disbursement	\$20,700	\$23,139	\$27,449	\$31,751,772
Cost Recouped from Defendants	\$10,495	\$14,737	\$15,336	\$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 Sharla Baldrige  
Constitutional County Judge  
Hockley County  
802 Houston Street, Ste 101  
Levelland, TX 79336

Honorable Jay Pat Phelan  
Local Administrative District Judge  
286<sup>th</sup> District Court  
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Ms. Shirley Penner  
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