



Chair:  
The Honorable Sharon Keller  
Presiding Judge, Court of Criminal Appeals

Vice Chair:  
The Honorable Olen Underwood

March 31, 2015

Ex Officio Members:  
Honorable Sharon Keller  
Honorable Nathan Hecht  
Honorable John Whitmire  
Honorable Royce West  
Honorable Roberto Alonzo  
Honorable Abel Herrero

The Honorable David Barkemeyer  
Constitutional County Judge  
Milam County Courthouse  
102 S. Fannin, Suite 1  
Cameron, TX 76520

Members Appointed by Governor:  
Honorable Olen Underwood  
Honorable Sherry Radack  
Honorable Jon Burrows  
Honorable B. Glen Whitley  
Honorable Linda Rodriguez  
Mr. Anthony Odiorne  
Mr. Don Hase

Re: Milam County Fiscal Monitoring Visit

Executive Director:  
James D. Bethke

Dear Judge Barkemeyer:

The Texas Indigent Defense Commission has completed its fiscal monitoring review of Milam County covering the contract period of October 1, 2012 through September 30, 2013.

The objective of the review was to determine if Milam County was in compliance with the fiscal requirements of the formula and/or discretionary grants per Commission rules under the Texas Administrative Code (TAC), Uniform Grant Management Standards (UGMS), Texas Government Code, and grant provisions.

The final report including your county response and corrective action plan is enclosed.

We would like to thank Milam County officials and employees for their assistance and cooperation during the fiscal monitoring process. If you have any questions or need further clarification please do not hesitate to contact me.

Sincerely,

Debra Stewart, CPA, CIGA  
Fiscal Monitor



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Milam County, Texas**

**FY 2013 Indigent Defense Expenses**

**Final Report**

**March 31, 2015**

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## **EXECUTIVE SUMMARY**

Milam County's on-site fiscal monitoring visit was conducted on September 9-10, 2014. Review of the attorney fee vouchers extended offsite as well as conversation with the District Judge on September 16, 2014. 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, 2012 to September 30, 2013 (FY 2013) was reviewed during the fiscal monitoring visit.

### **Summary of Findings**

- Errors were detected within the County's FY2013 Indigent Defense Expenditure Report (IDER).
- Attorney fee vouchers did not always include a reason from the judge for approving an amount that differed from the requested amount.
- The published fee schedules for appeal cases was not utilized and an error occurred in which a payment that was not supported by the fee schedule was made after the judge approved an amount that was supported by the fee schedule.
- The county paid attorneys that did not have current validation of eligibility for appointment under the county's indigent defense plan. The Auditor's office did not maintain records that these appointments were in accordance with TAC Rule §174.4 Emergency Appointment.

### **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 FY 2013. Records provided by the Milam County Auditor's Office were reviewed.

### **Methodology**

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

- random samples of paid attorney fees for verification;
- general ledger transactions, invoices, and additional supporting documents prepared by the Milam County Auditor's Office;
- IDER and attorney fee schedule;
- public 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

Milam County (County) was one of seven original Texas counties founded in 1836 by the first Congress of the Republic of Texas. The County originated from a colonization grant from Mexico. As colonization progressed fifteen counties were carved from the grant and another eighteen counties received land from the grant. Currently the County occupies an area of 1019 square miles, and serves an estimated population of 25,396. The County is a political subdivision of the State of Texas and neighboring counties include Robertson, Lee, Burleson, Bell and Falls.

### Commission Background

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> 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 2013 indigent defense on-line grant application to assist in the provision of indigent defense services. Milam County met the formula grant eligibility requirements and was awarded \$26,180 for FY 2013.

### Discretionary Grant

Milam County did not apply for a discretionary grant for the FY 2013; therefore grant funds were not available to review.

### Other Related Issues

During the desk review of the FY 2013 IDER, it was noted that the number of cases paid reported in the IDER combined with the court clerk’s reports to the Office of Court Administration show that counsel was appointed in 6.4% of the misdemeanor cases when compared to the statewide percentage rate at 41.6%. This low appointment rate indicates a procedural concern.

## **DETAILED FINDINGS AND RECOMMENDATIONS**

### **Finding One**

The general ledger of the account for court-appointed attorneys included both civil and criminal appointments. Therefore, the total dollar spent, per the general ledger, does not support the IDER as the amount reported should be for criminal cases only. Milam County maintains a binder in which a copy of each voucher payment is placed under a tab for each level of case based on court. To prepare the IDER the auditor added up the invoice amounts for each level of case using the calculator tape as support for totals. The reviewer was able to support that each invoice maintained in the binder was included both in the calculator tape and in the general ledger. However, with other payments included within the general ledger, support that all the invoices for criminal appointments were included in the binder was not validated. In addition to adding the amounts of each invoice the calculator was set up to add the number of items entered. This total of items entered was utilized to report the number of cases for the felony and misdemeanor appointments. This number did not take into account the additional number of cases when more than one case was reported on an invoice. Therefore the number of cases reported disposed for misdemeanor and felony cases was understated.

As a result, the County did not report indigent defense expenditures and case information in the manner prescribed by Section 79.036 of the Texas Government Code.

### **Recommendation:**

The County should develop procedures to ensure that the case count information provided on the IDER is both supported and accurate.

The County could maintain separate general ledger accounts for court-appointed attorney fees with one for the county court's criminal cases and one for the district court's criminal cases. Civil court cases could be maintained in an account of their own. The County could utilize the description field within the software program to document the case numbers and count per voucher.

### **County Response:**

The County agrees with the finding and will address the issue.

### **Milam County Action Plan**

The County has implemented separate general ledger accounts for court-appointed attorney fees for criminal and civil cases in County Court and District Court.

**Contact person(s):** Danica Lara, Auditor

**Completion date:** October 1, 2014

## **Finding Two**

Code of Criminal Procedure (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..." "...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. "

Fifty-two attorney fee vouchers were reviewed. Six of these vouchers had a change by the judge regarding the amount requested however four vouchers provided no explanation as to the reason for the change. These four attorney fee vouchers did not meet the statutory requirements of CCP Article 26.05 (c).

### **Recommendation:**

The judges should provide written findings when the judge approves an amount different than the amount requested by the attorney. The County should develop and add a review procedure that would verify that the judges have provided written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount as required by CCP Article 26.05(c).

### **County Response:**

The County concurs that such notations are not always made and should be.

### **Milam County Action Plan**

Henceforth, the judges when reviewing vouchers shall make a notation anytime the amount approved differs from the amount requested. If this step is overlooked, the auditor shall send the voucher back to the appropriate judge for correction.

**Contact person(s):** Danica Lara, Auditor

**Completion date:** Immediately

### **Finding Three**

CCP Article 26.05 (b) reads in part “All payments made under this article shall be paid in accordance with a schedule of fees adopted by formal action of the judges of the county courts, statutory county courts, and district courts trying criminal cases in each county. ...”

Of the 52 attorney fee vouchers reviewed, two (2) appeared to not be paid in accordance with the published fee schedule. One voucher submitted by an attorney was not approved by the judge for the amount requested but was instead reduced. The judge did not provide a reason for the reduction although the fee requested appeared to not be in compliance with the fee schedule. However, this same invoice was paid for the amount requested by the attorney, rather than the amount approved by the judge. In addition there appeared to be a math error on the same invoice referenced. A second invoice regarding an appeal was approved at an hourly rate higher than the published fee schedule.

### **Recommendation:**

The Judges should evaluate the current fee schedule to determine if the rates established continue to state reasonable rates for the availability of qualified attorneys willing to accept the stated rates including those for appeal cases and update the schedule if necessary.

The county should develop and add review procedures that would verify that amounts paid are both approved by the judge and meet the guidelines of the published fee schedule.

### **County Response:**

The County agrees with the finding and is in the process of reviewing the fee schedule.

### **Milam County Action Plan**

The fee schedule will be reviewed, including a comparison to similar counties and, if warranted, a new fee schedule will be included with the next submission of the indigent defense plan.

**Contact person(s):** John Youngblood, District Judge

**Completion date:** Next required update of the indigent defense plan

## **Finding Four**

The County paid attorneys in FY 2013 for indigent defense representation when the County did not have current validation of eligibility for those attorneys; therefore, Milam County may have paid attorneys when they were not eligible to receive payments.

The County did not maintain supporting documentation that all of the attorneys paid in FY13 were on the appointment list, that attorney applications were on file for all attorneys given an appointment, or that attorneys were current on their annual continuing legal education (CLE) requirements.

CCP Article 26.04 outlines procedures for appointing counsel and TAC Rules Chapter 174 outline the minimum CLE requirements and both of these rules are included in the Milam County's indigent defense plans approved by the judges; however, the supporting documentation to show that these procedures are followed were not maintained. Also, these appointments could potentially have been made in accordance with TAC Rule §174.4 Emergency Appointment, although there were no records maintained to validate this.

## **Recommendation:**

There should be a procedure in place that verifies all attorneys included on the appointment list are eligible to receive appointments for indigent defense. The verification should include:

- Ensuring a completed application is on file for each attorney on the list,
- Verifying each attorney has met the current CLE requirements, and
- Documenting the offense levels for which each attorney is qualified.

As changes to the list are made throughout the year, an updated list should be provided to the auditor's office. The county auditor should verify that each attorney receiving payment for services are on the list and meet requirements.

## **County Response:**

The County agrees with the finding and recommendation..

## **Milam County Action Plan**

The County will require documentation as suggested, including annual verification of CLE requirements as required by TAC Rules Chapter 174

**Contact person(s):** John Youngblood, District Judge

**Completion date:** Immediately

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>MILAM COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Population Estimate	24,757	24,990	25396
Juvenile Assigned Counsel	\$15,562.50	\$19,693.00	\$15,582.00
Capital Murder	\$3,225.00	\$35,762.50	\$29,858.00
Adult Non-Capital Felony Assigned Counsel	\$134,672.50	\$148,019.50	\$173,555.50
Adult Misdemeanor Assigned Counsel	\$33,574.50	\$10,470.00	\$8,415.00
Juvenile Appeals	\$0.00	\$2,350.00	\$0.00
Adult Felony Appeals	\$0.00	\$7,767.50	\$3,638.50
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$844.96	\$0.00	\$2,361.75
Expert Witness	\$4,855.00	\$2,250.00	\$11,500.00
Other Direct Litigation	\$8,757.48	\$17,802.30	\$9,697.10
<b>Total Court Expenditures</b>	<b>\$201,491.94</b>	<b>\$244,114.80</b>	<b>\$254,607.85</b>
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$0.00	\$0.00	\$5,846.00
<b>Total Court and Administrative Expenditures</b>	<b>\$201,491.94</b>	<b>\$244,114.80</b>	<b>\$260,453.85</b>
Formula Grant Disbursement	\$18,417.00	\$15,619.00	\$26,180.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$0.00	\$3,491.37	\$7,430.75
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
<b>Total Assigned Counsel Cases</b>	<b>415</b>	<b>357</b>	<b>453</b>

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Milam County</b>				
<b>Year</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Texas 2013</b>
Population (Non-Census years are estimates)	24,757	24,990	25,396	26,251,278
Felony Charges Added (from OCA report)	432	506	593	272,990
Felony Cases Paid	267	269	371	192,045
% Felony Charges Defended with Appointed Counsel	61.81%	53.16%	62.56%	70.35%
Felony Trial Court-Attorney Fees	\$137,897.50	\$183,782.00	\$203,413.50	\$96,567,898.10
Total Felony Court Expenditures	\$152,341.29	\$202,783.19	\$226,741.15	\$109,898,235.77
Misdemeanor Charges Added (from OCA report)	626	550	547	549,030
Misdemeanor Cases Paid	109	28	35	228,357
% Misdemeanor Charges Defended with Appointed Counsel	17.41%	5.09%	6.40%	41.59%
Misdemeanor Trial Court Attorney Fees	\$33,574.50	\$10,470.00	\$8,415.00	\$36,880,978.23
Total Misdemeanor Court Expenditures	\$33,579.50	\$10,480.56	\$8,422.00	\$37,705,538.29
Juvenile Charges Added (from OCA report)	43	33	36	33,504
Juvenile Cases Paid	39	49	43	48,114
Juvenile Attorney Fees	\$15,562.50	\$19,693.00	\$15,582.00	\$10,468,295.88
Total Juvenile Expenditures	\$15,571.15	\$19,807.08	\$15,582.00	\$11,196,725.86
Total Attorney Fees	\$187,034.50	\$224,062.50	\$231,049.00	\$149,496,691.36
Total ID Expenditures	\$201,491.94	\$244,114.80	\$260,453.85	\$217,068,685.09
Increase In Total Expenditures over Baseline	85.46%	124.69%	139.73%	144.69%
Total ID Expenditures per Population	\$8.14	\$9.77	\$10.26	\$8.27
Commission Formula Grant Disbursement	\$18,417.00	\$15,619.00	\$26,180.00	\$19,897,469.00
Commission Equalization Grant Award				

### **Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## **APPENDIX B – OBJECTIVE, SCOPE, METHODOLOGY and CRITERIA**

### **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.
- 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 FY 2013. Records provided by the Robertson County Auditor's Office were reviewed.

### **Methodology**

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

- random samples of paid attorney fees for verification;
- general ledger transactions, invoices, and additional supporting spreadsheet prepared by the Robertson County Auditor's Office;
- IDER and attorney fee schedule;
- public appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan

### **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
- FY2013 Indigent Defense Expenditure Report Manual found at
- [http://www.txcourts.gov/tidc/pdf/FY2013\\_IDER\\_ManualFinal.pdf](http://www.txcourts.gov/tidc/pdf/FY2013_IDER_ManualFinal.pdf)

## **APPENDIX C – DISTRIBUTION LIST**

The Honorable John Youngblood  
20<sup>th</sup> Judicial District Court  
102 S. Fannin  
Cameron, TX 76520

Ms. Danica Lara  
County Auditor  
103 W. Main, suite A  
Cameron, TX 76520

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

Mr. Wesley Shackelford  
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