



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Travis County, Texas**

**FY 2015 Indigent Defense Expenses**

**Final Report**

**October 3, 2016**

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## **EXECUTIVE SUMMARY**

Travis County's on-site fiscal monitoring visit was conducted February 17-19, 2016 and a follow up meeting on March 31, 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 during the fiscal monitoring visit as well as documents to support the discretionary grant funding.

### **Summary of Findings**

- General court expenditures were included with the criminal indigent defense expenses in the FY 2015 Indigent Defense Expense Report (IDER) submitted under Texas Government Code Section 79.036 (e).
- Attorney reimbursement for additional expenses were reported as attorney fees and not as "Other litigation" cost as required by Texas Government Code Section 79.036 (e).
- One voucher selected for review did not have adequate documentation to verify the reimbursed expenditures amount were accurate and appropriate as required by Texas Administrative Code (TAC) rule 173.304 (c).

### **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 grants during FY2015. Records provided by the Travis County Auditor's Office as well as records from the office of Criminal Court Administration were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor met with the assistant county auditor and staff members of the administrative Criminal Court Administration office. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- accounts payable ledger transactions provided by the Travis 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;
- the county's local indigent defense plan; and
- discretionary grant records.

# DETAILED REPORT

## BACKGROUND INFORMATION

### County Background

Travis County is located in south central Texas. The county is part of the Austin-Round Rock, Texas Metropolitan Statistical Area. The county straddles the Balcones Fault, the boundary between the Edwards Plateau to the west and the Blackland Prairies to the east. The County serves an estimated population of 1,142,032 and is the fifth most populous county in Texas. The County seat is Austin, which is the state capital, and Travis County is a political subdivision of the State of Texas. The County occupies an area of 1,023 square miles, of which 33 square miles is water. The neighboring counties are Williamson, Bastrop, Caldwell, Hays, Blanco and Burnet.

### 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 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Travis County met the formula grant eligibility requirements and was awarded \$1,002,937 for FY 2015.

### Discretionary Grant

Travis County was awarded a discretionary grant in the amount of \$717,516 for the purpose of creating and operating a Managed Assigned Counsel system during FY 2015. A review of these funds was also conducted. Following is an overview of the program.

## Managed Assigned Counsel System

The Capital Area Private Defender Service (CAPDS) began operations in January 2015. Travis County created the program for managing the appointment of private attorneys assigned to protect the rights of indigent defendants. The non-profit CAPDS program operates under a contract with Travis County with oversight by a Board of Directors consisting of seven voting members and three non-voting members. CAPDS staff includes an Executive Director, two Deputy Directors, and an Administrative Assistant. During the time period covered by this review, there was also a staff investigator to work with CAPDS assigned counsel. In addition, CAPDS partnered with a local immigration attorney for a six-month period in which assigned counsel could seek guidance and advice about consequences of a criminal conviction for non-citizens, pursuant to the *Padilla v. Kentucky* decision.

Currently, CAPDS qualifies and provides administrative oversight to a roster of approximately 200 criminal defense attorneys. For most cases that started after January 1, 2015, attorneys for qualified indigent defendants have been appointed (or assigned) to cases via an appointment rotation wheel in an Indigent Defense Application (IDA) software system managed by a Travis County Criminal Court Administration (CCA) Judicial Aide. Each work day the CCA aide receives a detailed list of defendants who are in jail and who have already been screened for indigence. Using the IDA system, the aide assigns an attorney from the rotation wheel to each qualified defendant and sets each case on the docket of the appropriate court. If a defendant who has already been determined indigent posts bond before CCA assigns an attorney for them, CCA will assign an attorney at their first court *setting*, which is actually when they appear at CCA and not an appearance in court before a judge. Occasionally, CAPDS staff will have good cause to go off the appointment rotation wheel and assign an attorney out of order, but the assignment is still entered and managed in the IDA system. Similarly, a judge may occasionally have good cause to specify an attorney they want to handle a case, and they notify CCA or CAPDS via a handwritten form to enter the attorney assignment in the IDA system. Judges also still appoint attorneys in all capital cases and notify CCA to enter the assignment accordingly.

CAPDS also manages an ‘attorney of the day’ program for those times when attorneys and indigent defendants must be paired without delay at the time a defendant appears in court. In this method of assigning counsel, attorneys who have been qualified by CAPDS to provide indigent defense services may sign up through the CAPDS website to be on call to receive appointments on a specific day they know they will be available. If a judge needs to appoint defense counsel immediately at a court hearing on that day, the court e-mails CAPDS to dispatch an attorney to the court and enter the assignment in the IDA system.

Assigned counsel submit their vouchers for payment electronically, with the exception of paper vouchers that are submitted for cases that started before January 1, 2015, and for Capital Cases, Extradition Orders, Protective Orders, and Specialty Court Vouchers such as Drug Court or DWI Court. A Travis County CCA Financial Reviewer checks electronic attorney vouchers in IDA before final payment approval is made in the system by the CAPDS Executive Director. This process includes checking that the case started after January 1, 2015, verifying the cause number is correct, clicking on the attorney’s name in IDA to go to the appointment tab and check the date of the appointment, and verifying that all cause numbers on the appointment are included in the

electronic voucher. Staff also verifies the submitting attorney is the same as the attorney of record. Next, staff checks whether the defendant has any additional active cases that should be included on the electronic voucher. Staff then verifies that the case setting has been resolved and the case has been disposed, and they check the fee type against the disposition reason to verify that the fee type is correct.

Once the electronic voucher is approved by the CCA Financial Reviewer, it appears in the CAPDS Review Queue for final approval in the system by the CAPDS Executive Director, who requires documentation for any costs considered non-standard. After being approved by CAPDS the voucher is electronically routed to the county's financial accounting system, known as SAP. All payments are tied to a vendor number. If the assigned counsel is a member of a law firm, the law firm has a 'parent vendor number' and all the firm's attorneys who are on the assigned counsel roster each have their own 'child vendor number.' Payments for indigent defense are made to the law firm (the parent vendor), but the information for each individual attorney (the child vendor) is tracked and reported on the county's Court Attorney Report required to be submitted to TIDC annually.

In the event either reviewer needs to reject an electronic voucher, an alert is sent to the submitting attorney notifying them the reason for the rejection and that they must resubmit the electronic voucher after addressing the issue. Exceptions to this electronic voucher review and approval process include that judges still approve expenses for transcripts and for competency evaluations via paper voucher forms, and paper vouchers are still submitted for Capital Cases, Extradition Orders, Protective Orders, and Specialty Court Vouchers as mentioned above.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

The County included some general court expenditures with the criminal indigent defense expenses in the FY 2015 Indigent Defense Expenditure Report (IDER) submitted under Texas Government Code Section 79.036 (e). The County Auditor's office provided the general ledger of activities for expert witness, investigation, and other direct cost, which supported the amounts reported on the IDER. Fourteen (14) invoices from the general ledgers for expert witness, investigation and other direct cost were reviewed. It appears that the vendors for these types of services submit their invoices directly to the county. To ascertain that the expense was requested by the defense attorney in preparation of the defense, the reviewer looked for motions that indicated approval by the courts to incur the expense. Eight (8) of the fourteen (14) vouchers did have such orders attached. The remaining six (6) vouchers included five (5) court reporter vouchers and one competency evaluation voucher. Of the court reporter vouchers, one was clearly indicated as an appeal transcript, which is permitted on the IDER; however, the remaining four (4) did not. One of the remaining four was an invoice for transcribing civil case records, one was for a substitute court reporter transcribing a writ hearing, and the remaining two just indicated transcription cost. The response from the county was that the civil case transcripts were requested to prepare for the criminal case. The last voucher was for competency/psychological evaluations that were ordered by the court. This order indicated that the court, defense counsel and prosecution would all be provided a copy of the findings. This request appears to be a general court expense. If the evaluations were requested by the defense counsel to be provided only to the defense attorney for the preparation of the defense, they are permitted to be reported on the IDER; however, if the evaluations are requested by the judge or prosecuting attorney they would not be allowed as an indigent defense expense. Also, expenses for evaluations by the defense attorney that are shared with the court and prosecution are also considered general court expense. Support that the expense is requested by the defense attorney strictly for defense purposes should be documented. Ex Parte motions requesting such services are an ideal form of documentation.

General court expenditures 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 general court costs. This could mean that the FY 2015 formula grant for Travis 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/40464/fy15-ider-manual.pdf>

### Recommendation:

Procedures should be developed that support the identification that a court reporter record or psychological evaluation expense was requested by the appointed defense counsel in preparation of a defense. These two types of expenditures can be requested by the prosecution or even the court in some instances. Therefore a method to identify that a psychological evaluation expense has been incurred for the exclusive use by the defense team for an indigent defendant should be apparent. In the case of a court reporter's record, a method should be developed to identify the expense was requested by the defense counsel for use in representing an indigent defendant.

**County Response:**

Travis County concurs that court-ordered psychological evaluations are general court expenditures and thus should not be included in the IDER submitted by the County. However, while all of the court reporter records were not clearly identified as requested by a defense attorney and for the purpose of representing an indigent defendant, Travis County Criminal Courts practice is to only pay transcripts for indigent defendants.

**Travis County Action Plan**

For the FY 2016 IDER submission, Travis County will exclude court-ordered psychological evaluations from its IDER submission as these expenses are general court expenditures. In regards to court reporter records, for the FY 2016 IDER submission we will exclude this expenses as the invoices were not clearly marked as pertaining to indigent defense. Effective October1, 2016, procedures will be established to insure that court reporter records will be identified as pertaining to requests by appointed defense counsel for use in representing indigent defendants.

**Contact person(s):** Joseph Kertz and Rhett Perry

**Completion date:** October 1, 2016

**Finding Two**

Under Section 79.036(e) of the Texas Government Code, the county auditor shall prepare and send to the Commission in the form and manner prescribed by the Commission an analysis of the amount expended by the county including investigation expenses, expert witness expenses, or other litigation expenses.

When attorneys submit their fee vouchers, in addition to the attorney fees, some attorneys request reimbursement for other expenditures such as mileage, cost of DVDs in DWI cases, etc. These reimbursements are paid to the attorney; however, they are in addition to the cost of the attorney fees and should be classified as other litigation costs. The review revealed that these reimbursements are included as attorney fees on the IDER, which overstates attorney fees and understates other litigation expense.

**Recommendation:**

If possible, it is suggested that the county include a separate code for reimbursements within the court software so that reimbursements can be recorded separately and not included as attorney fees.

**County Response:**

Travis County agrees that reimbursement of attorneys for other litigation expenses should not be included in the attorney fees reported in the IDER and should be classified as other litigation expenses.

**Travis County Action Plan**

Travis County has added a separate line item in the accounting system (SAP) to capture these expenses and will manually reclass the reimbursement of other litigation expenses paid to court-appointed attorneys in FY'16. Additionally, Travis County will enhance its court-appointed attorney payment system to include a category to separately categorize the reimbursement of these incidental expenses into a separate and distinct line item so that it can be reported as other litigation expenses on the IDER

**Contact person(s):** Joseph Kertz, Rhett Perry and Mark Erwin

**Completion date:** Manual capture of incidental expenses – Immediately  
Automated capturing of incidental expenses – November 1, 2016

**Finding Three**

Texas Administrative Code (TAC) rule 173.304 (c) requires that actual expenditures are adequately documented to verify the expenditure amount and appropriateness. Of the 105 attorney fee vouchers reviewed, one voucher that listed additional expenses of \$314.89 did not have the supporting documents to verify the expenses. The attorney submitted an itemization of the hours spent on a case by date of service and the out-of-pocket cost by date of expenditure. The attorney provided seven (7) receipts to support the out-of-pocket expenditures; however, these receipts did not support the amounts listed. There were sixteen (16) separate line items for out-of-pocket cost, each with a different date of expenditure. Two receipts supported two of the separate line items. Of the remaining five receipts, one was dated the same date as a receipt already supporting the amount for that date. The amount of this receipt did not match up with any other line item. Three receipts with the same date totaled 2 cents more than requested for that date. The remaining receipt was \$8.00 short of the amount indicated as spent on the date recorded. That leaves the \$8.00 for that date and the amount of the remaining twelve line items unsupported.

**Recommendation:**

Travis County officials should review internal control procedures in place and implement changes necessary to insure that adequate documentation for reimbursed expenses is followed.

**County Response:**

Travis County concurs that expenditures on attorney fee vouchers should be adequately documented and match the expense requested. At the time this voucher was approved, the Criminal Court Judges were responsible for approving vouchers.

**Travis County Action Plan:**

Travis County has developed a new Managed Assigned Counsel system to, among other duties, approve attorney fee vouchers. The MAC director, or deputy directors, will carefully scrutinize all attorney vouchers to ensure that actual expenditures are adequately documented and supported. We will develop a module in IDA that will provide attorneys with an easy to use template to enter and record detailed expenditures, and attach receipts.

**Contact person(s):** Joseph Kertz, Margaret Terronez and Mark Erwin

**Completion date:** Carefully scrutinize actual expenditures – Immediately.  
Module in IDA to record expenditures and receipts – January 1, 2017.

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>TRAVIS COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Population Estimate	1,083,288	1,126,684	1,142,032
Juvenile Assigned Counsel	\$112,655.34	\$112,965.23	\$204,891.92
Capital Murder	\$82,025.33	\$268,700.65	\$125,945.00
Adult Non-Capital Felony Assigned Counsel	\$3,027,080.80	\$3,738,534.29	\$3,590,110.96
Adult Misdemeanor Assigned Counsel	\$2,653,582.58	\$2,949,463.75	\$2,756,023.62
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$91,952.04	\$103,659.14	\$165,558.33
Adult Misdemeanor Appeals	\$5,176.44	\$2,000.00	\$4,143.68
Licensed Investigation	\$82,693.16	\$77,055.15	\$121,772.63
Expert Witness	\$457,207.56	\$467,689.44	\$451,603.94
Other Direct Litigation	\$136,673.32	\$243,538.06	\$206,763.15
Total Court Expenditures	\$6,649,046.57	\$7,963,605.71	\$7,626,813.23
Administrative Expenditures	\$0.00	\$0.00	\$777,517.15
Funds Paid by Participating County to Regional Program	N/A	N/A	N/A
Total Public Defender Expenditures	\$2,021,087.55	\$2,222,864.57	\$2,314,841.43
Total Court and Administrative Expenditures	\$8,670,134.12	\$10,186,470.28	\$10,719,171.81
Formula Grant Disbursement	\$810,429.00	\$1,494,376.00	\$1,002,937.00
Discretionary Disbursement	\$0.00	\$0.00	\$698,226.49
Reimbursement of Attorney Fees	\$130,683.21	\$80,863.22	\$74,363.30
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	25,251	25,140	24,273

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Travis County</b>				
<b>Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Texas 2015</b>
Population (Non-Census years are estimates)	1,083,288	1,126,684	1,142,032	27,213,214
Felony Charges Added (from OCA report)	12,251	12,481	12,033	271,744
Felony Cases Paid	8,623	8,746	8,358	193,560
% Felony Charges Defended with Appointed Counsel	70.39%	70.07%	69.46%	71.23%
Felony Trial Court-Attorney Fees	\$3,109,106.13	\$4,007,234.94	\$3,716,055.96	\$110,036,404.81
Total Felony Court Expenditures	\$3,586,200.68	\$4,591,757.60	\$4,242,128.86	\$126,091,674.15
Misdemeanor Charges Added (from OCA report)	32,454	34,743	34,652	503,299
Misdemeanor Cases Paid	16,683	16,580	15,945	222,408
% Misdemeanor Charges Defended with Appointed Counsel	51.41%	47.72%	46.01%	44.19%
Misdemeanor Trial Court Attorney Fees	\$2,653,582.58	\$2,949,463.75	\$2,756,023.62	\$39,141,724.3
Total Misdemeanor Court Expenditures	\$2,762,978.08	\$3,066,008.25	\$2,893,989.12	\$40,061,131.36
Juvenile Charges Added (from OCA report)	1,744	1,760	1,684	31,813
Juvenile Cases Paid	2,880	2,067	1,980	41,068
Juvenile Attorney Fees	\$112,655.34	\$112,965.23	\$204,891.92	\$11,072,433.54
Total Juvenile Expenditures	\$112,655.34	\$112,965.23	\$204,891.92	\$11,747,908.28
Total Attorney Fees	\$5,972,472.53	\$7,175,323.06	\$6,846,673.51	\$165,942,107.75
Total ID Expenditures	\$8,670,134.12	\$10,186,470.28	\$10,719,171.81	\$238,029,838.13
Increase In Total Expenditures over Baseline	85.17%	117.55%	128.93%	168.32%
Total ID Expenditures per Population	\$8.00	\$9.04	\$9.39	\$8.75
Commission Formula Grant Disbursement	\$810,429.00	\$1,494,376.00	\$1,002,937.00	\$23,931,689.00

**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**

Honorable Sarah Eckhardt  
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261st District Court Judge  
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Honorable Brenda P. Kennedy  
403rd District Court Judge  
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Honorable Elisabeth Earle  
Local Administrative Statutory County Court Judge  
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